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## SENATE COMMITTEE ON EDUCATION

Senator Connie Leyva, Chair

2019 - 2020 Regular

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<b>Bill No:</b>	AB 123	<b>Hearing Date:</b>	July 29, 2020
<b>Author:</b>	McCarty		
<b>Version:</b>	July 7, 2020		
<b>Urgency:</b>	No	<b>Fiscal:</b>	Yes
<b>Consultant:</b>	Lynn Lorber		

**Subject:** Early childhood education.

**NOTE:** This bill has been amended to replace its contents and this is the first time the bill is being heard in its current form.

### SUMMARY

This bill deems recipients of Medi-Cal or CalFresh as eligible for subsidized child care, authorizes state preschool programs to serve younger two-year-olds, requires the California Department of Education (CDE) to allow state preschool programs and general child care providers to serve children age 0-12 in a commingled classroom, authorizes state preschool providers and general child care providers to waive family fees if serving students only via distance learning, and requires CDE to allow and arrange interagency adjustments between California state preschool contracts and general child care contracts.

### BACKGROUND

Existing law:

#### *Subsidized child care eligibility*

- 1) Provides that families must meet at least one requirement in *each* of the following areas to be eligible for federal and state subsidized child development services:
  - a) A family is (i) a current aid recipient, (ii) income eligible, (iii) homeless, or (iv) one whose children are recipients of protective services, or whose children have been identified as being abused, neglected, or exploited, or at risk of being abused, neglected, or exploited.
  - b) A family needs the childcare services (i) because the child is identified as (I) a recipient of protective services, (II) being neglected, abused, or exploited, or at risk of neglect, abuse, or exploitation, or (III) being homeless or (ii) because the parents are (I) engaged in vocational training leading directly to a recognized trade, paraprofession, or profession, (II) engaged in an educational program for English language learners or to attain a high school diploma or general educational development certificate, (III) employed or seeking employment, (IV) seeking permanent housing for family stability, or (V) incapacitated. (Education Code § 8263)
- 2) Establishes priority for federal and state subsidized child development services is as follows:

- a) First priority shall be given to neglected or abused children who are recipients of child protective services, or children who are at risk of being neglected or abused.
- b) Second priority shall be given equally to eligible families, regardless of the number of parents in the home, who are income eligible. Within this priority, families with the lowest gross monthly income in relation to family size shall be admitted first. For purposes of determining order of admission, grants of public assistance recipients shall be counted as income. (EC § 8263)

*Child care age categories*

- 3) Requires, whenever groups of children of two age categories are commingled and the younger age group exceeds fifty percent of the total number of children present, the ratios for the entire group to meet the ratios required for the younger age group. If the younger age group does not exceed fifty percent of the total number of the children present, the teacher-child and adult-child ratios are to be computed separately for each group. (California Code of Regulations, Title 5 § 18291)
- 4) Provides adjustment factors to reflect the additional expense of serving children who meet specified criteria (enrollment is multiplied by the adjustment factor):
  - a) For infants who are 0 to 18 months of age, the adjustment factor is 2.44.
  - b) For toddlers who are 18 to 36 months of age, the adjustment factor is 1.8.
  - c) For children with exceptional needs who are 0 to 21 years of age, the adjustment factor is 1.54.
  - d) For severely disabled children who are 0 to 21 years of age, the adjustment factor is 1.93.
  - e) For children at risk of neglect, abuse, or exploitation who are 0 to 14 years of age, the adjustment factor is 1.1.
  - f) For limited-English speaking and non-English speaking children who are two years of age through kindergarten age, the adjustment factor is 1.1.
  - g) For specified children in programs where early childhood mental health consultation services are provided, the adjustment factor is 1.05. (EC § 8265.5)
- 5) Provides that the preferred placement of 11- and 12-year olds is in before or after school programs, and that 11- and 12-year olds are eligible for subsidized child care services only for the portion of care needed that is not available in a before or after school program.. (EC § 8263.4)

*California state preschool*

- 6) Establishes that three- and four-year-old children are eligible for the part-day California state preschool program if the family meets at least one of the criteria described in # 1(a) above (a current aid recipient, income eligible, homeless, or one whose children are recipients of protective services). (EC § 8235)
- 7) Requires state preschool providers to give first priority to three- or four-year-old neglected or abused children who are recipients of child protective services; second priority is for eligible four-year-old children who are not enrolled in a state-funded transitional kindergarten program; third priority is for eligible three-year-old children. (EC § 8236)
- 8) Defines “three-year-old children” as children who will have their third birthday on or before December 1 of the fiscal year in which they are enrolled in a California state preschool program. Children who have their third birthday on or after December 2 of the fiscal year, may be enrolled in a California state preschool program on or after their third birthday. (EC § 8208)

#### *Preschool family fees*

- 9) Requires that families be assessed a flat monthly fee based on income, certified family need for full-time or part-time care services, and enrollment. The family fee is determined by a schedule that is developed by the Superintendent of Public Instruction. The family fee shall *not* be based on actual attendance. (EC § 8273)

#### *Preschool reserve fund*

- 10) Authorizes a California state preschool program contracting agency to retain a reserve fund balance equal to 15 percent of the sum of the maximum reimbursable amounts of all contracts to which the contractor is a party, or two thousand dollars (\$2,000), whichever is greater. Of the 15 percent retained, 10 percent must solely be used for professional development for state preschool program instructional staff. (EC § 8450)

#### *Intra- and inter-agency adjustments*

- 11) Requires the CDE to promote full utilization of child care and development funds and match available unused funds with identified service needs. In doing so, the CDE is required to arrange intra-agency adjustments between California state preschool contracts and general child care contracts (for the same agency and funding allocation). (EC § 8236.2)
- 12) To further full utilization and match fund with needs, requires the CDE to arrange interagency adjustments between different contractors with the same type of contract when both agencies mutually agree to a temporary transfer of funds for the balance of the fiscal year. (EC § 8275.5)

## **ANALYSIS**

This bill deems recipients of Medi-Cal or CalFresh as eligible for subsidized child care, authorizes state preschool programs to serve younger two-year-olds, requires the California Department of Education (CDE) to allow state preschool programs and general child care providers to serve children age 0-12 in a commingled classroom, authorizes state preschool providers and general child care providers to waive family fees if serving students only via distance learning, and requires CDE to allow and arrange interagency adjustments between California state preschool contracts and general child care contracts. Specifically, this bill:

*Eligibility for subsidized child care and State preschool*

- 1) Deems recipients of Medi-Cal or CalFresh as eligible for subsidized child care or State preschool, essentially providing for the direct certification of these families.
- 2) Defines a “current recipient of Medi-Cal or CalFresh” as a family in which a member of the family has been certified as fully eligible to receive CalFresh or Medi-Cal benefits.
- 3) Requires the parent to provide documentation of current enrollment in CalFresh or Medi-Cal, unless the contractor has and elects to use other means of obtaining verification for that enrollment.
- 4) Prohibits further proof of income from being required for determining eligibility.
- 5) Authorizes families to submit a self-certification of income that is signed by the parent under penalty of perjury for the purposes of prioritizing enrollment and calculating family fees (but not for determining eligibility).
- 6) Authorizes CDE to implement and administer these provisions through the issuance of guidance or other written directives.

*Expands eligibility for state preschool to younger two-year-olds*

- 7) Authorizes California state preschool providers to serve two-year-old children in extenuating circumstances, including but not limited to the unavailability of an alternative placement in an infant and toddler general childcare and development program.

*Commingled classrooms*

- 8) Requires the CDE to allow state preschool and general child care contractors, during the 2020-2021 fiscal year, to provide services to children from 0 to 12 years of age in commingled classrooms.
- 9) Defines “commingled classroom” as a classroom that serves children from 0 to 12 years of age.
- 10) Requires, if groups of children of varying ages are commingled within a single classroom, the teacher and adult ratios to be proportionate and appropriate to the

ages and groups of children.

- 11) Requires that adjustment factors to the standard reimbursement rate, including those based on child age, continue to apply irrespective of whether a child is served in a commingled classroom.
- 12) Authorizes the CDE to implement and administer these provisions through the issuance of guidance or other written directives.

*Preschool reserve fund balance*

- 13) Deletes the requirement that 10 percent of reserve funds solely be used for purposes of professional development for California state preschool program instructional staff.
- 14) Authorizes reserve funds to be used to cover costs of waiving family fees (see # 17).

*Waiving family fees*

- 15) Authorizes state preschool and general child care contractors to elect to waive family fees for families who are enrolled but only receiving services through distance learning.
- 16) Requires the cost to the contractor for waiving family fees to be an allowable use of contract funds received for providing child care and development services.
- 17) Authorizes contractors to utilize their reserve fund to cover the cost of waiving family fees (see #14).

*Interagency adjustments between contracts*

- 18) Requires the CDE to allow and arrange interagency adjustments between California state preschool contracts and general child care contracts for the same or different agencies, and the same funding allocation.
- 19) Requires the CDE to establish timelines for interagency contract fund transfers.
- 20) Authorizes the CDE to implement and administer these provisions through the issuance of guidance or other written directives, which may include, but is not limited to, establishing timelines for submittal of requests to transfer funds.

**STAFF COMMENTS**

- 1) *Need for the bill.* According to the author, “AB 123 will provide much-needed support for preschool and childcare providers in order to meet the needs of families in their communities, improve continuity of care for children, and decrease administrative costs. Early learning, including preschool, is a crucial component of a strong economy. This is a pressing statewide issue, and as the COVID-19 pandemic persists, subsidized child care and preschool providers are

struggling with economic hardships from fluctuating attendance and costs associated with evolving public health requirements. At the same time, families struggling with the pandemic’s impacts need access to slots for preschool and early learning programs, as it will allow parents to go back to work, provide for their families, and give their child high-quality early learning. In addition to benefitting families along with early learning and preschool providers, the solutions in AB 123 will support California’s overall subsidized early learning system in meeting both long- and short-term goals to maximize existing slots to serve the most children in need.”

- 2) *Automatic eligibility for subsidized child care and State preschool.* This bill deems recipients of Medi-Cal or CalFresh as eligible for subsidized child care or State preschool, essentially providing for the direct certification of these families.

As of July 1, 2020, Medi-Cal income ceilings, 138 percent of the Federal poverty level, are as follows:

Family Size	Annual Income
1	\$17,609
2	\$23,792
3	\$29,974
4	\$36,156
5	\$42,339
6	\$48,521

CalFresh income ceilings (for most recipients), 200 percent of the Federal poverty level, are as follows:

Family Size	Annual Income
1	\$24,288
2	\$32,928
3	\$41,568
4	\$50,208
5	\$58,848
6	\$68,328

- a) *Subsidized child care*  
 The California Department of Education’s (CDE) Early Learning and Care Division recently issued the revised State Median Income (SMI) ceilings and income ranking table for fiscal year 2020–21 (to be used to determine families’ income eligibility for state subsidized early learning and care programs). Pursuant to the Education Code, for families to be eligible for subsidized early learning and care services based on income, a family’s adjusted monthly income must be at or below 85 percent of the SMI adjusted for family size. The income ceilings are as follows:

Family Size	Family Monthly Income	Family Annual Income
1-2	\$5,540	\$66,479

3	\$6,157	\$73,885
4	\$7,069	\$84,822
5	\$8,199	\$98,393
6	\$9,330	\$111,965

This bill does not modify the requirement that income-eligible families also demonstrate need for care to be eligible for subsidized child care. Further, this bill does not modify existing priorities for enrollment; therefore, a recipient of Medi-Cal or CalFresh with a lower income than another higher income eligible family would have priority for an available slot, but would not jump the line or bump another equally-eligible family from receiving care. However, the Budget Act of 2020 did not include additional funding to expand slots; this bill could enable additional families to be eligible for a static number of slots (some may be placed on a waiting list, for example).

b) *State preschool*

The Education Code provides that three- and four-year-old children are eligible for the part-day California state preschool program if the family meets at least one of the income-eligibility criteria for subsidized child care (a current aid recipient, income eligible as per the chart in (a), homeless, or one whose children are recipients of protective services).

This bill does not modify existing priorities for enrollment in State preschool.

Income thresholds for Medi-Cal and CalFresh are much lower than for subsidized child care and State preschool. Therefore, recipients of Medi-Cal or CalFresh are income-eligible for subsidized child care and State preschool. This bill essentially provides for direct-certification, whereby a recipient of Medi-Cal or CalFresh is automatically income-eligible for subsidized child care and State preschool. A similar process is used to deem students in families who are recipients of CalFresh as eligible for free meals or milk without completing an application.

This bill enables providers to enroll categorically-eligible children without verifying or documenting income eligibility and accept self-certification of income for the purpose of prioritizing enrollment and calculating family fees.

3) *Expands age eligibility for State preschool to two-year-olds.* The California State preschool program serves three- and four-year-old children. Existing law defines “three-year-old children” as children who will have their third birthday on or before December 1 of the fiscal year in which they are enrolled in a California state preschool program. State preschool programs can currently serve children who are two-years and nine months old.

This bill, to provide continuity of care and “developmentally appropriate services,” requires state preschool providers to be allowed to serve two-year-old children in “extenuating circumstances,” including but not limited to the unavailability of an alternative placement in an infant and toddler general childcare and development

program.

Most state preschools are not equipped, nor are providers trained, to serve young two-year-olds, who are considered toddlers. The developmental needs of toddler are very different from three- and four-year-olds. State preschools use the Preschool Learning Foundations curriculum and evaluate children using the Desired Results Developmental Profile; the curriculum and assessment are not suited for younger children. Staffing ratio requirements also vary between infants/toddlers and preschools; this bill does not require ratios to change when serving two-year-olds. This bill references “developmentally appropriate services” and “extenuating circumstances” but does not include definitions.

**Staff recommends an amendment** to remove this provision from the bill.

- 4) *Commingled age groups.* This bill allows, for the 2020-21 fiscal year, state preschools and general child care programs to serve children age birth through age 12 in commingled classrooms. Existing law allows preschools to serve three- and four-year-olds.

Subsidized child care providers may currently serve children ranging from birth through age 12, but are licensed to do so and typically serve younger children in separate classroom from older children (with the exception of home-based care).

The goal of this expansion is to allow providers to safely meet family needs during the COVID-19 pandemic and recovery. For example, a preschool provider might decide to serve school-age siblings of enrolled children in the same cohort group or serve a preschooler and a toddler who are siblings in the same group, thus reducing the risk of spread the coronavirus by keeping family members together.

State preschool facilities may not be equipped to serve younger or older children, and providers may not be trained (or licensed) to serve infants and toddlers, or students older than age 4. State preschool programs use the Preschool Learning Foundations, and evaluate children using the Desired Results Developmental Profile; the foundations and assessment are not suited for younger or older children.

This bill requires, if groups of children of varying ages are commingled within a single classroom, the teacher and adult ratios to be proportionate and appropriate to the ages and groups of children. Would State preschool providers who choose to serve infants/toddlers pursuant to this bill need to hire additional staff to meet the lower ratio?

**Staff recommends an amendment** to remove State preschool programs from this section of the bill, while still allowing other subsidized child care programs to serve children age birth to 12 in a commingled classroom.

**Staff recommends an amendment** to move the remaining provisions to an area of the Education Code that relates to general child care (the bill language is in the State preschool area of the Education Code).



Further, **staff recommends an amendment** to require the staffing ratios for commingled classroom to adhere to existing regulations, which require “whenever groups of children of two age categories are commingled and the younger age group exceeds fifty percent of the total number of children present, the ratios for the entire group to meet the ratios required for the younger age group. If the younger age group does not exceed fifty percent of the total number of the children present, the teacher-child and adult-child ratios are to be computed separately for each group.”

*Should child care programs that serve varied age ranges in commingled classrooms notify parents?*

- 5) *Reserve funds and professional development.* This bill deletes the requirement that 10 percent of reserve funds solely be used for purposes of professional development for California state preschool program instructional staff. This change would make funds available for other purposes such as the additional costs imposed if family fees are waived, increased cleaning costs or personal protective equipment (not for slots or reimbursement rates).
- 6) *Waiving family fees.* This bill authorizes state preschool and general child care contractors to elect to waive family fees for families who are enrolled but only receiving services through distance learning. Fees are based on the income, family size, and hours of need self-certified by the parent at time of enrollment. This bill allows contractors to cover the cost for waiving family fees by using contract funds, or reserve funds. The fee schedule for the 2020-21 fiscal year were released by CDE on June 26, 2020: – <https://www.cde.ca.gov/sp/cd/ci/mb2013.asp>
- 7) *Creates a new crime.* In the provisions of this bill that relate to categorical eligibility for subsidized care or preschool for recipients of Medi-Cal or CalFresh, families are authorized to submit a self-certification of income that is signed by the parent under penalty of perjury for the purposes of prioritizing enrollment and calculating family fees (but not for determining eligibility). The penalty of perjury clause creates a new crime. **Staff recommends an amendment** to remove reference to penalty of perjury.
- 8) *Related legislation.* AB 2883 (Quirk-Silva, 2020) among other things, modifies the percentage of alternative payment program reserve funds relating to administration and supportive services. AB 2883 is in the Senate Education Committee.
- 9) *Prior legislation.* AB 1754 (McCarty, 2018) among other things, would have CDE to develop and implement a process to use participation data from the Medi-Cal program to directly certify children whose families meet the applicable income criteria into the full-day preschool programs operated by Title I schools. AB 1754 was held in the Senate Appropriations Committee.

AB 605 (Mullin, Chapter 574, Statutes of 2017) requires the Department of Social Services to implement a child care center license to serve infant, toddler, preschool,

and school-age children by January 1, 2021, and requires all day care centers to possess this license by January 1, 2024.

**SUPPORT**

Early Edge California (sponsor)  
Kidango (sponsor)  
Fight Crime: Invest in Kids  
Mission: Readiness  
ReadyNation

**OPPOSITION**

None received.

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