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# SENATE COMMITTEE ON EDUCATION

Senator Carol Liu, Chair  
2015 - 2016 Regular

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**Bill No:** SB 1343  
**Author:** Wolk  
**Version:** April 12, 2016  
**Urgency:** No  
**Consultant:** Lynn Lorber  
**Hearing Date:** April 20, 2016  
**Fiscal:** No

**Subject:** Pupils: transfer of pupil convicted of violent felony or misdemeanor

## SUMMARY

This bill authorizes the governing board of a school district to transfer to another school in that district a student who has been convicted of a violent felony or specified misdemeanor if the student to be transferred and the victim of the crime for which the student was convicted attend the same school.

## BACKGROUND

Existing law:

- 1) Prohibits a student from being denied enrollment or readmission to a public school solely on the basis that he or she has had contact with the juvenile justice system, including arrest, adjudication by a juvenile court, formal or informal supervision by a probation officer, or detention in a juvenile facility or enrollment in a juvenile court school. (Education Code § 48645.5)
- 2) Authorizes the involuntary transfer of a student to a continuation school and requires the governing board of a school district that assigns students to continuation schools to adopt rules and regulations governing procedures for the involuntary transfer of students. (EC § 48432.5)
- 3) Prohibits the assignment of a student to a community day school (operated by a school district) only if the student meets one or more of the following conditions:
  - a) The student is expelled for any reason.
  - b) The student is referred by a probation department.
  - c) The student is referred by a school attendance review board or other district level referral process. (EC § 48662)
- 4) Prohibits a student from being suspended or recommended for expulsion unless the principal of the school determines that the pupil has committed certain acts, and gives schools the discretion to take action for most offenses. Existing law authorizes a student to be suspended or expelled for certain acts that are related to a school activity or school attendance *that occur at any time*. (EC § 48900)

- 5) Defines “violent felony” to include 23 acts, such as murder, rape, great bodily injury, threats to a victim or witness, robbery, and burglary. (Penal Code § 667.5)
- 6) Sets forth misdemeanor penalties for offenses related to possession of a firearm. (PC § 29805)

## ANALYSIS

This bill authorizes the governing board of a school district to transfer to another school in that district a student who has been convicted of a violent felony or specified misdemeanor if the student to be transferred and the victim of the crime for which the student was convicted are enrolled in the same school.

## STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author, “Recently, a student was convicted of an off-campus violent felony against another student and the local school board was unable to transfer the perpetrator to a different high school simply because the incident occurred off-campus. The victim obtained a temporary restraining order but by law it wasn’t in effect on campus. As a result, the victim had to change his classes to avoid direct daily contact with his attacker.

“Trustees of single high school districts are currently prohibited from involuntarily transferring students to another educational placement, even if the student has been convicted of a violent felony against a fellow student. In larger school districts (those with more than one traditional high school), trustees may involuntarily transfer a student under certain circumstances. This measure ensures that the local autonomy statutorily granted school boards, applies to all school boards regardless of size.”

- 2) ***Why transfer?*** According to the author, the rationale for transferring a student who has been convicted of a violent felony for an offense that was unrelated to school is because the presence of the student who was convicted is intimidating for the student who was the victim of the offense, and schools fear they cannot ensure the safety of students. Schools are well-equipped to take a number of disciplinary actions against a student who commits any number of acts that are related to a school activity or school attendance *that occur at any time*, such as bullying, threatening, or harassing the victim of an assault.

Existing law requires the decision to involuntarily transfer a student to a continuation school or community day school to be based upon disciplinary factors. Students may be transferred to a community day school *only* if the student was expelled, or referred by probation, a school attendance review board or other district level referral process. The decision to involuntarily transfer a student to a community day school must be based on a finding that the student committed an act for which the student may be suspended or expelled, or has been habitually truant or irregular in attendance.

Existing law specifically prohibits a student from being denied enrollment or readmission to a public school solely on the basis that he or she has had contact

with the juvenile justice system, including arrest, adjudication by a juvenile court, formal or informal supervision by a probation officer, or detention in a juvenile facility or enrollment in a juvenile court school. This bill appears to be in direct conflict with this provision.

Should a student be involuntarily transferred unless the student has been found to have committed an act that is related to school? Does this bill create a double-jeopardy situation for a student who has already been adjudicated and has not reoffended?

- 3) **Temporary Restraining Order vs compulsory education.** According to the author, this bill addresses a specific situation in which a student was convicted of an off-campus violent felony against another student, and the victim obtained a temporary restraining order. Counsel for the school district advised that the school cannot enforce the restraining order because the student who is the subject of the restraining order has a right to an education. Should this Committee pass legislation that could jeopardize a student's right to an education?
- 4) **School options.** This bill authorizes a school district to transfer a student to another school *in that district*. It appears that many school districts with several schools currently transfer students to another traditional school within the district. According to the author, this bill addresses a situation related to a school district with a single high school. This bill would enable a school district with one elementary, middle, or high school, or one school all together, to transfer a student to an alternative education setting, such as a continuation school (for students age 16-18) or community day school (for K-12 students).

Existing law requires each school district to operate continuation classes for students' age 16-18 who have not yet graduated from high school. Students may be voluntarily or involuntarily transferred to a continuation school. Existing law authorizes school districts to operate a community day school for K-12 students who have been expelled, or referred by a probation department, school attendance review board, or other district level referral process. It appears that school districts that operate a continuation school but not a community day school, and have no other schools in which to transfer a student, would have no options pursuant to this bill to transfer a student who is younger than age 16.

Should students be involuntarily transferred out of a traditional school and into an alternative school, arguably a less rigorous and less comprehensive education opportunity?

- 5) **Transfers to alternative schools.** Existing law prohibits a student from being assigned to a community day school unless the student has been expelled or referred by probation, a school attendance review board, or other district level referral process. Any route of referral to a community day school requires a process to determine if the student should be transferred. Existing law requires school districts to adopt procedures for the involuntary transfer of students to

continuation schools, including a determination based on specific findings. This bill does not provide for a hearing or process to determine the basis for the transfer.

Existing law requires school districts, relative to an involuntary transfer to a continuation school, to provide written notice to the student and parent, and authorizes the parent to request a meeting. Existing law provides that parents are to be included in the hearings or referral processes (expulsion or attendance review board hearing), relating to the involuntary transfer of a student to a community day school. This bill does not require parental notification or participation in the determination prior to transferring a student to an alternative school.

Existing law requires the decision to involuntarily transfer a student to a continuation school to indicate whether the decision is subject to periodic review and the procedure therefor. This bill does not provide for an opportunity for a student who is involuntarily transferred to return to the school of origin.

- 6) ***Restorative justice and multi-tiered systems of support.*** The Legislature has recently passed several measures relating to out-of-school discipline and support for the establishment of restorative justice practices, whereby schools address the root causes of behavior rather than imposing out-of-school suspension or expulsion.

AB 104 (Committee on Budget, Ch. 13, 2015) among other things, appropriated \$10 million to the Superintendent of Public Instruction to be apportioned to a designated county office of education to provide technical assistance and develop statewide resources to assist local educational agencies to establish and align systems of learning and behavioral supports. The Governor's proposed budget includes an additional \$30 million for these purposes.

- 7) ***Matriculation.*** This bill applies to schools serving any and all grade levels. This bill makes no provision for students who are transferred while in elementary or middle school to matriculate to the next school that the student would have attended. If a student is transferred while in middle school, for example, will that student be allowed to attend the high school in which he or she would have attended if not transferred?
- 8) ***Related legislation.*** AB 2489 (McCarty) requires the California Department of Education (CDE) to develop a standard model to implement restorative justice practices on a school campus and make the standard model available on the CDE's Internet Web site for use by any school district that chooses to implement restorative justice practices as part of its campus culture. AB 2489 is pending in the Assembly Appropriations Committee.
- 9) ***Prior legislation.*** AB 1025 (Thurmond, 2015) required the CDE to establish a three-year pilot program in school districts to encourage inclusive practices that integrate mental health, special education, and school climate interventions following a multi-tiered framework. AB 1025 was held in the Senate Appropriations Committee.

SB 1396 (Hancock, 2014) would have provided funding to a designated county office of education for the purposes of establishing a multi-tiered intervention and support program that includes, but is not limited, the Schoolwide Positive Behavior Intervention and Support program. SB 1396 was held in the Assembly Appropriations Committee.

**SUPPORT**

None received.

**OPPOSITION**

American Civil Liberties Union  
Legal Services for Children  
Public Advocates  
Public Counsel  
Youth Law Center

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