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WELFARE AND INSTITUTIONS CODE - WIC

DIVISION 9. PUBLIC SOCIAL SERVICES [10000 - 18999.98] (*Division 9 added by Stats. 1965, Ch. 1784.*)

PART 1.8. Child Care and Development Services Act [10207 - 10492.2] (*Part 1.8 added by Stats. 2021, Ch. 116, Sec. 260.*)

CHAPTER 33. Expulsion and Suspension Procedures in Childcare and Development Services Programs [10491 - 10491.1] (*Chapter 33 added by Stats. 2022, Ch. 915, Sec. 8.*)

10491. For purposes of this chapter, the following terms shall apply:

- (a) "Expulsion" means the permanent dismissal of a child from a program in response to a child's behavior.
- (b) "Licensed family childcare provider" means a childcare provider who participates in a state-funded early care and education program, as defined in Section 10421, and is an individual who operates a family daycare home, as defined in Section 1596.78 of the Health and Safety Code, and is licensed pursuant to the requirement in Section 1596.80 of the Health and Safety Code.
- (c) "Program" means a general childcare and development program, as described in Chapter 7 (commencing with Section 10240), a childcare and development service for children with severe disabilities, as described in Chapter 9 (commencing with Section 10260), or a migrant childcare and development program, with the exception of migrant alternative payment programs, as described in Chapter 6 (commencing with Section 10235), that serves children from zero to five years of age, inclusive.
- (d) "Suspension" means any removal of a child from all or part of the program day, or the prevention of a child from attending the program for one or more days, in response to the child's behavior.
- (e) "Persistent and serious behaviors" means either repeated patterns of behavior that significantly interfere with the learning of other children, or interactions with peers and adults that are not responsive to the use of developmentally appropriate guidance. This includes, but is not limited to, physical aggression, property destruction, and self-injury.

(*Added by Stats. 2022, Ch. 915, Sec. 8. (AB 2806) Effective January 1, 2023.*)

10491.1. (a) (1) Except as authorized by paragraph (3), a program shall not do either of the following:

(A) Expel or unenroll a child because of a child's behavior.

(B) Persuade or encourage a child's parents or legal guardians to voluntarily unenroll from the program due to a child's behavior.

(2) (A) If a child exhibits persistent and serious behaviors, the program shall expeditiously pursue and document reasonable steps, including, but not limited to, consulting with the child's parents or legal guardians and teacher, and, if available, engaging an early childhood mental health consultant, to maintain the child's safe participation in the program. The program shall inform the parents or legal guardians of a child exhibiting persistent and serious behaviors of the process described in this section in writing, including a description of the behaviors and the program's plan for maintaining the child's safe participation in the program.

(B) (i) If the child has an individualized family service plan or individualized education program, the program, with written parental consent, shall contact the agency responsible for the individualized family service plan or individualized education program to seek consultation on serving the child.

(ii) The program shall consider, if appropriate, completing a comprehensive screening to identify the needs of the child, including, but not limited to, screening the child's social and emotional development, referring the child's parents or legal guardians to community resources, and implementing behavior supports within the program.

(3) If a program has expeditiously pursued and documented reasonable steps to maintain the child's safe participation in the program and determines, in consultation with the parents or legal guardians of the child, the child's teacher, and, if applicable, the local agency responsible for implementing the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), that the child's continued enrollment would present a serious safety threat to the child or other enrolled children, it shall refer the parents or legal guardians to other potentially appropriate placements, the local childcare resource and referral agency, or other referral service available in the local community, and, to the greatest extent possible, support direct transition to a more appropriate placement. The program may then unenroll the child.

(4) A program shall have up to 180 days to complete the process described in paragraphs (2) and (3).

(b) (1) Except as provided in paragraphs (2), (3), and (4), a program shall not do either of the following:

(A) Suspend a child due to a child's behavior.

(B) Encourage or persuade a child's parents or legal guardians to prematurely pick up a child due to a child's behavior before the program day ends.

(2) Suspension shall only be used as a last resort in extraordinary circumstances when there is a serious safety threat that cannot be reduced or eliminated without removal. To the greatest extent possible, a program shall endeavor to ensure the full participation of enrolled children in all program activities.

(3) Before a program determines that suspension is necessary, the program shall collaborate with the child's parents or legal guardians and use appropriate community resources, as needed, to determine no other reasonable option is appropriate, and provide written notice to the child's parents or legal guardians pursuant to paragraph (4) of subdivision (c).

(4) If suspension is deemed necessary, a program shall help the child return to full participation in all program activities as quickly as possible while ensuring child safety by doing all of the following:

(A) Continuing to engage with the parents or legal guardians and continuing to use appropriate community resources.

(B) Developing a written plan to document the action and supports needed.

(C) Providing referrals to appropriate community services.

(D) If the child has an individualized family service plan or individualized education program, the program, with written parental consent, shall contact the agency responsible for the individualized family service plan or individualized education program to seek consultation on serving the child.

(c) (1) The State Department of Social Services shall, commencing July 1, 2023, include in each contract for service with a program the limitations on expulsion and suspension provided in this section.

(2) Commencing July 1, 2023, upon enrollment of a child, a program shall notify the child's parents or legal guardians of the limitations on disenrollment, including expulsion and suspension provided in this section. This notification shall be in writing and shall inform parents on how they may file an appeal to the department in the event of the expulsion or suspension of a child.

(3) Commencing July 1, 2023, in the event a program suspends or expels a child pursuant to this section, the program shall issue the child's parent or guardian a written "Notice of Action, Recipient of Services," as described in Section 18095 of Title 5 of the California Code of Regulations, with the exception that the effective date of the action may be no less than 24 hours after service of the notice. The agency shall, at the same time, inform the parent or guardian in writing of their right to file an appeal of the action directly with the department no later than 14 calendar days after receipt of the notice. Because the action to suspend or expel a child involves persistent and serious behaviors that impact the safety of children, the action shall not be stayed during the pendency of any appeal.

(d) Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), until regulations are filed with the Secretary of State, the State Department of Social Services shall, in consultation with the State Department of Education, on or before December 31, 2023, implement this chapter through all-county letter or similar instructions until regulations are adopted.

(e) A program shall maintain records on, and, beginning on July 1, 2030, and subject to an appropriation by the Legislature for this purpose, the State Department of Social Services shall annually collect from contracting agencies, all of the following information:

(1) The number of times the process described in paragraph (2) of subdivision (a) was initiated during a program year, and the outcome of each reported instance.

(2) The number of times the process described in paragraphs (3) and (4) of subdivision (b) was initiated during a program year, and the outcome of each reported instance, including, if applicable, how long a child was excluded from the program.

(3) The data collected pursuant to paragraphs (1) and (2) shall include for each child, at a minimum, age, sex, race and ethnicity, foster status, home language, disability, and whether the child has an individualized family service plan or an individualized education program.

(f) (1) Subject to an appropriation by the Legislature for this purpose, no later than January 1, 2031, and annually thereafter, the State Department of Social Services shall publish aggregate data on how many times during the most recent program year the processes described in paragraph (2) of subdivision (a) and paragraphs (3) and (4) of subdivision (b) were initiated and the outcomes of the processes, disaggregated by student demographic, as required, and how many appeals or complaints the State Department of Social Services received from parents or legal guardians regarding expulsion and suspension. The data shall be made available at a statewide and countywide level and shall be disaggregated by age, sex, race and ethnicity, foster status, home language, disability, and assignment of an individualized family service plan or individualized education program, as applicable, pursuant to all applicable federal and state privacy protections.

(2) Data collection pursuant to subdivision (e), and reporting pursuant to this subdivision, by the State Department of Social Services shall, to the greatest extent possible, be undertaken within the framework of the department's existing data systems.

(g) The State Department of Social Services shall create guidelines for offering additional support and requiring additional staff training for programs with exceptionally high numbers of suspension and expulsion reported pursuant to this section.

(h) (1) This section shall not apply to licensed family childcare providers until the joint labor-management committee established pursuant to paragraph (2) of subdivision (a) of Section 10424.5 makes recommendations for potential changes related to suspensions and expulsions.

(2) Within 10 calendar days of the committee recommendations being completed, the State Department of Social Services and State Department of Education shall provide the committee recommendations to the Senate Health and Human Services budget subcommittees, Assembly and Senate Education budget subcommittees, and the Legislative Analyst's Office.

(Amended by Stats. 2023, Ch. 193, Sec. 15. (SB 140) Effective September 13, 2023.)