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**AB-2806 Childcare and developmental services: preschool: expulsion and suspension: mental health services: reimbursement rates. (2021-2022)**

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**Assembly Bill No. 2806**

**CHAPTER 915**

An act to amend Section 8243 of, to add Article 24 (commencing with Section 8489) to Chapter 2 of Part 6 of Division 1 of Title 1 of, and to repeal Section 8222 of, the Education Code, to amend Section 1596.893c of the Health and Safety Code, and to amend Section 10281 of, to add Section 10281.2 to, and to add Chapter 33 (commencing with Section 10491) to Part 1.8 of Division 9 of, the Welfare and Institutions Code, relating to childcare.

[ Approved by Governor September 30, 2022. Filed with Secretary of State September 30, 2022. ]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 2806, Blanca Rubio. Childcare and developmental services: preschool: expulsion and suspension: mental health services: reimbursement rates.

(1) The Child Care and Development Services Act, administered by the State Department of Social Services, establishes a system of childcare and development services for children up to 13 years of age.

The Early Education Act requires the Superintendent of Public Instruction, to, among other things, provide an inclusive and cost-effective preschool program. The act prohibits a contracting agency, as part of the state preschool program, from expelling or unenrolling a child because of a child's behavior, except as provided. Existing law requires the State Department of Social Services to consider, in determining whether to issue a citation or impose a civil penalty to a state preschool program, whether the program is in the process of complying with the above law relating to expulsion or unenrollment.

This bill would revise and recast the above provisions relating to the expulsion or unenrollment of a child from the state preschool program and would include a general childcare and development program and family childcare home education network program as part of those provisions, as provided. The bill would also establish requirements for the use of suspensions in the programs described above. The bill would require these programs to maintain records on expulsion and suspension, as provided. The bill would require, beginning July 1, 2030, and annually thereafter, the State Department of Education or the State Department of Social Services, as applicable, to collect specified data on this information, as provided, and would require the departments to publish that information no later than January 1, 2031, and annually thereafter. The bill would require the respective departments, on or before December 31, 2023, to issue guidance for programs on implementing these requirements. The bill would also require those departments to create guidelines for offering additional support and requiring additional staff training for programs with exceptionally high numbers of suspension and expulsion, as specified.

The bill would make the above-mentioned provisions on expulsions and suspensions inapplicable to licensed family childcare providers until a specified joint labor-management committee makes recommendations for potential changes related to suspensions and expulsions.

The bill would also authorize a child daycare facility to appeal a citation or civil penalty issued by the State Department of Social Services that is related to the behavior of a child if the facility is in the process of complying with those provisions and would require the department to withdraw the citation or civil penalty upon presentation of evidence of that fact. The bill would make other conforming changes to related provisions.

(2) Existing law requires the cost to a childcare provider agency of providing an early childhood mental health consultation service, as defined, to be reimbursable if certain requirements are met, including that the consultation service is provided on a schedule of sufficient and consistent frequency and that the consultation service is supervised and provided by specified mental health professionals.

This bill would update the definition of early childhood mental health consultation service, revise the requirements relating to the nature and frequency of the consultation service provided, and expand the types of mental health professionals who can provide the consultation service, as specified. The bill would require, among other things relating to the consultants, the contracting agency to ensure, within the first 30 days upon hire or start of consultation service, that a consultant have specified training.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

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## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

### **SECTION 1.** (a) The Legislature finds and declares all of the following:

(1) National data indicate that children are expelled, suspended, excluded from, and counseled out of early learning and care programs at much higher rates than in K–12 education and that African American, Black, and Latinx children, especially boys, are disproportionately impacted by this practice. California does not currently prohibit expulsion or suspension in early learning and childcare programs.

(2) Inequitable access to, and exclusion from, developmentally appropriate, culturally and linguistically relevant, trauma-informed, anti-racist, and inclusive environments for diverse learners in early learning and care programs significantly contribute to discriminatory and racist practices, contributing to the school readiness gap, the academic achievement gap, and the graduation gap.

(3) Better access to data on suspension, expulsion, and unenrollment from early learning and care programs would allow policymakers and providers to make informed decisions about where to invest additional resources to address gaps and inequities in the availability of, and access to, early learning and care.

(4) Subsidized early learning and care programs that accept state funds should not be permitted to use California state resources in a way that stigmatizes young children and disproportionately targets African American, Black, American Indian, and Latinx children, and children with disabilities.

(5) The prevalence of trauma, toxic stress, and adversity experienced by staff, families, and children in early care and learning settings impacts the quality of the relationships, the quality of care, and the well-being of adults and children.

(6) Early childhood mental health consultation empowers and equips adults, including staff and families, within the early learning and care setting with the skills to transform their practices, attitudes, behaviors, and interactions. This transformation builds the adults' capacity and ability to promote the healthy development, deeper learning, and stronger social-emotional well-being of all young learners in the setting.

(7) Research shows that proactive and consistent early childhood mental health consultation can play an important role in improving classroom climates, reducing stress and anxiety, healing trauma, and reducing the rate of expulsion and suspension of children from early learning and care programs.

### (b) Therefore, it is the intent of the Legislature to enact legislation that will accomplish all of the following:

(1) Prohibit suspension and expulsion of children in early learning and care settings absent exceptional circumstances, and eliminate the disproportionate exclusion of African American, Black, American Indian, and Latinx children and children with disabilities.

(2) Provide equitable access to developmentally appropriate, culturally and linguistically relevant, trauma-informed, anti-racist, and inclusive environments for diverse learners in early learning and care settings.

(3) Provide childcare programs access to early childhood mental health consultation services that are proactive and consistent as a means of providing adequate training and supports to early learning providers, teachers, and caregivers to promote positive interactions, buffer the effects of toxic stress and trauma, and cultivate an inclusive learning environment for all children.

**SEC. 2.** Section 8222 of the Education Code is repealed.

**SEC. 3.** Section 8243 of the Education Code is amended to read:

**8243.** (a) (1) For purposes of this section, “early childhood mental health consultation service” means a service benefiting a child who is served in a California state preschool program.

(2) For purposes of this section, “early childhood mental health consultation service” includes, but is not limited to, all of the following:

(A) Support for providers, parents, legal guardians, and caregivers to create trauma-informed, proactive inclusive environments and to respond effectively to all children.

(B) Assistance through individual site consultations, provision of resources, formulation of training plans, referrals, and other methods that address the unique needs of programs and providers.

(C) Aid to providers, parents, legal guardians, and caregivers, and encouragement and facilitation of collaboration and communication, in developing the skills and tools needed to be successful as they support the development and early learning of all children, including observing environments, facilitating the development of action plans, and supporting site implementation of those plans.

(D) The development of strategies for addressing prevalent child mental health concerns, including internalizing problems, such as appearing withdrawn, and externalizing problems, such as exhibiting persistent and serious behaviors.

(E) If a child exhibits persistent and serious behaviors, support with the pursuit and documentation of reasonable steps to maintain the child’s safe participation in the program, as described in Section 8489.1.

(F) Face-to-face interactions or video-based platforms and other modes of communication that are compliant with the federal Health Insurance Portability and Accountability Act (Public Law 104-191), such as the telephone.

(G) Group or individual consultations of any of the actions described in this paragraph.

(b) The cost to an agency of providing an early childhood mental health consultation service shall be reimbursable pursuant to Section 8244 if all of the following apply:

(1) The early childhood mental health consultation service is provided on a schedule of sufficient and consistent frequency continuously throughout the program year, to significantly contribute to all of the following:

(A) Improving interpersonal relationships and child outcomes.

(B) Increasing the confidence, competence, and well-being of those consulted.

(C) Eliminating suspensions and expulsions.

(2) (A) The early childhood mental health consultation service is provided by one of the following persons:

(i) A licensed mental health professional, including a marriage and family therapist, a licensed clinical social worker, a licensed professional clinical counselor, a licensed psychologist, a licensed child and adolescent psychiatrist, a credentialed school counselor, or a school psychologist credentialed pursuant to Section 44266 and employed pursuant to Section 49400. The person described in this subparagraph shall have at least three years of experience providing mental health services to children zero to five years of age, inclusive, shall have training in infant, family, and early childhood mental health, shall be adequately insured, shall have held their respective license for a minimum of two years, and shall be in full compliance with all continuing education requirements applicable to their profession.

(ii) A license-eligible marriage and family therapist, a license-eligible clinical social worker, a license-eligible professional clinical counselor, a license-eligible psychologist, or a license-eligible child and adolescent psychiatrist, who is supervised by a person meeting all of the requirements described in clause (i).

(iii) A person holding, at a minimum, a master’s degree in a field related to mental health or human services, including, but not limited to, marriage and family therapy, clinical social work, professional clinical counseling, infant mental health, human development, human services, psychology, school psychology, child and adolescent psychiatry or occupational therapy, education, social work, and other related fields, as determined by the department, and who has at least two years of experience working with children zero to five years of age, inclusive, who is supervised by a person meeting all of the requirements described in clause (i).

(iv) A person meeting all of the requirements described in clause (i) who is providing supervision pursuant to clause (ii) may be an employee of a contracting agency, including on a temporary or part-time basis, or engaged as an external contractor, provided that supervision takes place on a regular basis that is sufficient to offer professional guidance and support.

(B) Any person providing mental health consultation services pursuant to this section shall have a successful criminal background check.

(3) The early childhood mental health consultation service uses a relationship-based model emphasizing strengthening relationships among early childhood education providers, parents, children, and representatives of community systems and resources, and integrates reflective practice into the onsite consultation model. This model shall include, but not be limited to, all of the following:

(A) At least twice per program year, conducting early care- and education setting-based mental health assessments, such as the "Climate of Healthy Interactions for Learning & Development (CHILD)" or other appropriate instrument.

(B) Recordkeeping that adequately documents all consultation activities.

(C) With consent from parents or legal guardians, at least one screening of each enrolled child for adverse childhood experiences and screening for buffering factors, including, but not limited to, resilience.

(4) Within the first 30 days upon hire or start of consultation service, a provider agency ensures that a consultant is trained in all of the following:

(A) California law and professional ethics for early childhood mental health consultation, including all of the following:

(i) Contemporary professional ethics and statutory, regulatory, and decisional laws that delineate the scope of practice of early childhood mental health consultation.

(ii) The therapeutic, clinical, and practical considerations involved in the legal and ethical practice of early childhood mental health consultation.

(iii) Confidentiality, particularly as it pertains to minors.

(B) Child abuse and neglect mandated reporting laws.

(C) Best practices and foundations of early childhood mental health consultation.

(D) All relevant laws and regulations regarding state and federal childcare programs.

(5) Consultants and supervisors shall participate in continuing professional development and education for at least 18 hours per program year. Topics may include, but are not limited to, infant-family and early childhood mental health, implicit bias and equity, trauma-informed practice, early childhood development, and consultation.

(c) 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) and Section 33308.5, until regulations are filed with the Secretary of State, the department shall, in consultation with the State Department of Social Services, on or before December 31, 2023, issue guidance through management bulletins or similar letters of instruction for programs on implementing the requirements set forth in this section.

**SEC. 4.** Article 24 (commencing with Section 8489) is added to Chapter 2 of Part 6 of Division 1 of Title 1 of the Education Code, to read:

#### **Article 24. Expulsion and Suspension Procedures in Childcare and Development Services Programs**

**8489.** For purposes of this article, 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, 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 California State Preschool program described in subdivision (w) of Section 8205 or family childcare home education network programs described in subdivision (k) of Section 8205 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.

**8489.1.** (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 Education 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 17783 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) and Section 33308.5, until regulations are filed with the Secretary of State, the State Department of Education shall, in consultation with the State Department of Social Services, on or before December 31, 2023, issue guidance through management bulletins or similar letters of instruction for programs on implementing the requirements set forth in this article.

(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 Education 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 Education 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 Education 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 Education shall, to the greatest extent possible, be undertaken within the framework of the department's existing data systems.

(g) The State Department of Education 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) 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 of the Welfare and Institutions Code makes recommendations for potential changes related to suspensions and expulsions.

**SEC. 5.** Section 1596.893c of the Health and Safety Code is amended to read:

**1596.893c.** (a) The department shall consider, in determining whether to issue a citation or impose a civil penalty under any provision of this chapter to a child daycare facility that contracts with the department or the State Department of Education, whether the child daycare facility is in the process of complying with Section 8489.1 of the Education Code or Section 10491.1 of the Welfare and Institutions Code.

(b) A child daycare facility may appeal a citation or civil penalty issued by the department that is related to the behavior of a child, including the actions of the facility or its staff related to the behavior of a child, if the facility is in the process of complying with

Section 8489.1 of the Education Code or Section 10491.1 of the Welfare and Institutions Code. The department shall withdraw all citations or civil penalties upon the presentation of evidence by the facility that it was in the process of complying with Section 8489.1 of the Education Code or Section 10491.1 of the Welfare and Institutions Code.

**SEC. 6.** Section 10281 of the Welfare and Institutions Code is amended to read:

**10281.** (a) (1) For purposes of this section, “early childhood mental health consultation service” means a service benefiting an infant or toddler who is 0 to 36 months of age, inclusive, and is served in a general childcare and development program pursuant to this chapter, or a child who is 0 to 5 years of age, inclusive, and is served in a family childcare home education network setting funded by a general childcare and development program pursuant to this chapter.

(2) For purposes of this section, “early childhood mental health consultation service” includes, but is not limited to, all of the following:

(A) Support for providers, parents, legal guardians, and caregivers to create proactive trauma-informed, inclusive environments and to respond effectively to all children.

(B) Assistance through individual site consultations, provision of resources, formulation of training plans, referrals, and other methods that address the unique needs of programs and providers.

(C) Aid to providers, parents, legal guardians, and caregivers, and encouragement and facilitation of collaboration and communication, in developing the skills and tools needed to be successful as they support the development and early learning of all children, including observing environments, facilitating the development of action plans, and supporting site implementation of those plans.

(D) The development of strategies for addressing prevalent child mental health concerns, including internalizing problems, such as appearing withdrawn, and externalizing problems, such as exhibiting persistent and serious behaviors.

(E) If a child exhibits persistent and serious behaviors, support with the pursuit and documentation of reasonable steps to maintain the child’s safe participation in the program, as described in Section 10491.1.

(F) Face-to-face interactions or video-based platforms and other modes of communication that are compliant with the federal Health Insurance Portability and Accountability Act (Public Law 104-191), such as the telephone.

(G) Group or individual consultations of any of the actions described in this paragraph.

(b) The cost to a provider agency of providing an early childhood mental health consultation service shall be reimbursable pursuant to Section 10281.5 if all of the following apply:

(1) The early childhood mental health consultation service is provided on a schedule of sufficient and consistent frequency, continuously throughout the program year, to significantly contribute to all of the following:

(A) Improving interpersonal relationships and child outcomes.

(B) Increasing the confidence, competence, and well-being of those consulted.

(C) Eliminating suspensions and expulsions.

(2) (A) The early childhood mental health consultation service is provided by one of the following persons:

(i) A licensed mental health professional, including a marriage and family therapist, a licensed clinical social worker, a licensed professional clinical counselor, a licensed psychologist, a licensed child and adolescent psychiatrist, a credentialed school counselor, or a school psychologist credentialed pursuant to Section 44266, and employed pursuant to Section 49400, of the Education Code. The person described in this subparagraph shall have at least three years of experience providing mental health services to children zero to five years of age, inclusive, shall have training in infant, family, and early childhood mental health, shall be adequately insured, shall have held their respective license for a minimum of two years, and shall be in full compliance with all continuing education requirements applicable to their profession.

(ii) A license-eligible marriage and family therapist, a license-eligible clinical social worker, a license-eligible professional clinical counselor, a license-eligible psychologist, or a license-eligible child and adolescent psychiatrist, who is supervised by a person meeting all of the requirements described in clause (i).

(iii) A person holding, at a minimum, a master’s degree in a field related to mental health or human services, including, but not limited to, marriage and family therapy, clinical social work, professional clinical counseling, infant mental health, human development, human services, psychology, school psychology, child and adolescent psychiatry or occupational

therapy, education, social work, and other related fields, as determined by the department, and who has at least two years of experience working with children zero to five years of age, inclusive, who is supervised by a person meeting all of the requirements described in clause (i).

(iv) A person meeting all of the requirements described in clause (i) who is providing supervision pursuant to clause (ii) may be an employee of a contracting agency, including on a temporary or part-time basis, or engaged as an external contractor, provided that supervision takes place on a regular basis that is sufficient to offer professional guidance and support.

(B) Any person providing mental health consultation services pursuant to this section shall have a successful criminal background check.

(3) The early childhood mental health consultation service uses a relationship-based model emphasizing strengthening relationships among early childhood education providers, parents, children, and representatives of community systems and resources, and integrates reflective practice into the onsite consultation model. This model shall include, but not be limited to, all of the following:

(A) At least twice per program year, conducting early care- and education setting-based mental health assessments, such as the "Climate of Healthy Interactions for Learning & Development (CHILD)" or other appropriate instrument.

(B) Recordkeeping that adequately documents all consultation activities.

(C) With consent from parents or legal guardians, at least one screening of each enrolled child for adverse childhood experiences and screening for buffering factors, including, but not limited to, resilience.

(4) Within the first 30 days upon hire or start of consultation service, a provider agency ensures that a consultant is trained in all of the following:

(A) California law and professional ethics for early childhood mental health consultation, including all of the following:

(i) Contemporary professional ethics and statutory, regulatory, and decisional laws that delineate the scope of practice of early childhood mental health consultation.

(ii) The therapeutic, clinical, and practical considerations involved in the legal and ethical practice of early childhood mental health consultation.

(iii) Confidentiality, particularly as it pertains to minors.

(B) Child abuse and neglect mandated reporting laws.

(C) Best practices and foundations of early childhood mental health consultation.

(D) All relevant laws and regulations regarding state and federal childcare programs.

(5) Consultants and supervisors shall participate in continuing professional development and education for at least 18 hours per program year. Topics may include, but are not limited to, infant-family and early childhood mental health, implicit bias and equity, trauma-informed practice, early childhood development, and consultation.

(c) 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 section through all-county letter or similar instructions until regulations are adopted.

**SEC. 7.** Section 10281.2 is added to the Welfare and Institutions Code, to read:

**10281.2.** Notwithstanding paragraph (1) of subdivision (a) of Section 8243 of the Education Code or paragraph (1) of subdivision (a) of Section 10281 of this code, alternative payment programs and agencies administering CalWORKs Stage 1, Stage 2, or Stage 3 programs, serving children zero to five years of age, inclusive, may utilize funds for administrative and support services to provide early childhood mental health consultation services, if the service meets the requirements of Section 10281.

**SEC. 8.** Chapter 33 (commencing with Section 10491) is added to Part 1.8 of Division 9 of the Welfare and Institutions Code, to read:

#### **CHAPTER 33. Expulsion and Suspension Procedures in Childcare and Development Services Programs**

**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.

**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) 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

