

SUBJECT: Revising provisions for discipline of public school students

COMMITTEE: Public Education — favorable, as substituted

VOTE: 8 ayes — Grusendorf, Branch, Dawson, Dutton, Eissler, Griggs, Hochberg, Madden

0 nays

1 absent — Oliveira

WITNESSES: (*On original version:*)

For — Bonny Cain, Pearland ISD; Harley Eckhart, Texas Elementary Principals and Supervisors Association; Lindsay Gustafson, Texas Classroom Teachers Association; David Hodgins, Texas Association of School Administrators and Texas Association of School Boards; Cathy Sartain, Texas Council of Administrators of Special Education

Against — Michelle Dooley; Virginia Eernisse, ARC of the Gulf Coast; Melanie Gantt, Mental Health Association in Texas; Trisha Gordon; Allison Gouris and Ronnie Schleiss, Autism Society of Greater Austin; Colleen Horton, Texas Center for Disability Studies; Deborah Hyatt, Texas Federation of Families for Children’s Mental Health; Kay Lambert, Advocacy, Inc.; Audrey Manajek; Renee Mattson; Rona Statman, The ARC of Texas; Sharleston Tillery-Thee, Mentally Impaired Children

On — Brock Gregg, Association of Texas Professional Educators; Merily Ho Keller; Richard LaVallo, Advocacy, Inc.; Susan Maxwell, Texas Council for Developmental Disabilities; Ted Melina Raab, Texas Federation of Teachers

BACKGROUND: Education Code, ch. 37, the Safe Schools Act, sets forth conditions for discipline in public schools, from the use of time-out and restraint to suspensions and expulsions. SB 1196 by Truan, enacted by the 77th Legislature in 2001, banned the use of seclusion and regulated the use of time-out and restraint.

Each school district adopts a student code of conduct, but the state’s “zero-

tolerance policy” makes certain offenses subject to mandatory expulsion under state law. Two settings exist for students who are suspended or expelled. For violations of a district’s student code of conduct, students may be suspended for three days or removed for a longer period of time to an alternative education program (AEP), a program within the school district that can be either on or off campus. Education funding for discretionary expulsions comes from local school districts.

For a major offense such as arson, murder, selling drugs, or aggravated assault, a student must be expelled. In a county with a population of more than 125,000, students expelled mandatorily are sent to a juvenile justice alternative education program (JJAEP), a cooperative venture between counties and school districts. Smaller counties may elect to have a JJAEP but are not required. Education funding for mandatory expulsions comes from the state.

DIGEST:

CSHB 2707 would amend provisions for when and how time-out and restraint of students could be used, as well as specifying certain behaviors that would trigger suspension, expulsion, and mandatory use of AEPs.

State policy. The bill would declare a state policy that all students be treated with dignity and respect, including students with disabilities who qualified for special education services under the federal Individuals with Disabilities Education Act (IDEA).

Seclusion, time-out, and restraint. A special education student could not be confined in a locked box, locked closet, or other specially designed locked space as either a discipline management practice or a behavior management technique. The bill would redefine “time-out” to mean that a student could not be physically blocked into a room behind a closed door that was held shut from the outside in any way. Restraint would be redefined to mean the use of physical force or a mechanical device that significantly restricts the free movement of all or a part of a student’s body.

Exceptions to restraint and seclusion. Students who were court-ordered to an educational setting outside the school district would not be subject to Chapter 37 rules on restraint and seclusion, but instead would be governed by the rules of the court-ordered placement. A peace officer performing law enforcement duties, a juvenile probation, detention, or corrections officer, or

an educational services provider at a judicial educational placement outside the school district also would be exempt from Chapter 37 rules on restraint and seclusion.

Placement of special education student. If a teacher refused the return of a special education student to the teacher's class, the child's placement review committee would have to take into account all federal and state laws and agency requirements relating to special education when making its determination for placement.

Grounds for suspension. A principal or other administrator could suspend a student for any conduct identified as worthy of suspension by the school district in its student code of conduct.

Retaliatory conduct. If a student engaged in retaliatory conduct against any school employee, on or off school property, that student would have to be removed from class and placed in an AEP.

Firearms at school. A student younger than six years of age could be removed from class and placed in an AEP if he or she brought a firearm to school.

Mandatory and discretionary expulsions. Three offenses would be added to the list of those that require mandatory expulsion: aggravated robbery, manslaughter, and criminally negligent homicide. JJAEPs would have to provide timely educational services to any student who had been expelled to the program, regardless of the student's age or whether juvenile court had jurisdiction over the student. A student who engaged in deadly conduct would be subject to a discretionary expulsion. Jurisdiction for a discretionary expulsion would be expanded to an offense committed within 300 feet of school property.

Notice to teachers and law enforcement. A school district would have to inform each teacher who had regular contact with a student through a classroom assignment if that student had engaged in expellable conduct. The school principal would have to notify local law enforcement if he or she had reasonable grounds to believe that a student had engaged in conduct that constituted a criminal offense.

Notice to parents. A school district could not deny unreasonably the written request of a noncustodial parent to be notified of his or her child's expellable misconduct, but the school would have to comply with a court order denying the parent access to such information.

The bill would repeal a requirement that teachers file written reports documenting every student violation of the student code of conduct and that school administrators send copies of those reports to a student's parent or guardian within 24 hours of receiving them.

Appeals. If a school district policy allowed a student to appeal a principal's or other administrator's decision to the board of trustees or the board's designee, the decision of the board would be final and unappealable.

Posting the code of conduct. The student code of conduct would have to be prominently posted at each school campus in the principal's office.

Miscellaneous. A specific reference to abusable glue and aerosol paint would be replaced with a more general reference to "abusable volatile chemicals."

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2003.

**SUPPORTERS
SAY:**

CSHB 2707 would address a number of practical implementation issues that have arisen in schools since enactment of the Safe Schools Act. For example, administrators need the flexibility to suspend students for violations of a district's student code of conduct. Current law allows suspension only for a violation worthy of a discretionary expulsion. Administrators need to be able to suspend a student for one to three days for minor offenses such as dress code violations, rather than being able to use suspensions only when a discretionary expulsion should apply.

The bill would ensure that JJAEPs provided timely educational services to expelled students who were at least 17 years old. In several counties, JJAEPs have refused to serve students in that age group because they are not subject to the jurisdiction of juvenile court. State funding exists to educate any student of admissible age (up to 21 years old), and often these students are court-ordered

to receive an education while in a JJAEP setting, yet some school districts have been compelled to pay up to \$10,000 per student for private placement because a JJAEP has refused to educate these students. The bill would address this problem.

CSHB 2707 would clear up some of the problems that have occurred with the use of restraint and seclusion for certain students who were sent to court-ordered educational settings. The bill would make it clear that a student at a court-ordered boot camp, or in a judicial detention setting could be restrained appropriately or subjected to lockdown in a private cell if needed for behavior management. It also would lift restrictions on peace officers sent to public schools to deal with students who had engaged in criminal behavior.

The bill would make technical changes to conform the Safe Schools Act with federal law or with other state laws. For example, it would make it clear that a student with a disability meant a student who qualified for special education services under IDEA. It would align jurisdiction to within 300 feet of school property for both expulsions and AEP removals. It also would make common-sense changes such as adding several serious felony offenses to the list of offenses that are subject to mandatory expulsion.

CSHB 2707 would eliminate frivolous appeals by students by making school board decisions final in all cases except when a student is expelled for a serious offense. Current law does not limit how far a student can appeal a principal's decision for even minor suspensions. If a student is sent to a 30-minute detention, he or she could appeal it all the way to the Supreme Court. This consumes school board time, creates unnecessary litigation, and costs districts money that could be spent better on educating students.

CSHB 2707 would reduce teacher paperwork and unnecessary administrative burden related to reporting student violations of the student code of conduct. The bill would repeal a requirement that teachers write up a report on every violation and that administrators mail those reports to parents within 24 hours of receiving them. Most of the offenses being written up are for minor infractions such as dress code violations or chewing gum. This is an unreasonable amount of paperwork and requires weekend work when an offense occurs on a Friday. Parental notice would be preserved for serious offenses and even expanded in the case of noncustodial parents.

OPPONENTS
SAY:

The bill should restrict the use of seclusion for all students, not only for those who qualify for special education services under IDEA. Some children with mental health problems may not qualify for special education services but still could be damaged by seclusion or time-out in a room with a closed door where they were separated from other children. Secluded children often panic, later describing physical symptoms that are identified medically with panic attacks. Also, many children exhibit less serious behavior problems related to being placed in seclusion. Children in therapy sometimes experience regression after seclusion and require additional therapy or may even be at higher risk for suicide after being secluded. Seclusion also creates stress and may cause a child to avoid school. Seclusion harms children physically and emotionally and impedes academic progress.

NOTES:

CSHB 2707 originally was sent to the Local and Consent Calendars Committee. The committee substitute modified the bill as filed by:

- amending the definitions of time-out and restraint;
- removing provisions related to using restraint and time-out;
- amending provisions related to documentation of restraint and parental notice;
- removing school security personnel from the list of those exempted from rules of restraint;
- removing a school bus stop from the jurisdiction of where a student could commit an offense punishable by being sent to an AEP;
- adding aggravated robbery to the list of offenses punishable by mandatory expulsion;
- permitting noncustodial parents to request notice of student misconduct;
- requiring that the provision of education services in a JJAEP be timely and provided regardless of the student's age or whether a juvenile justice had jurisdiction over them; and
- requiring a principal to notify local law enforcement when a student commits an expellable offense.

The companion bill, SB 1548 by Janek, passed the Senate by 31-0 on April 30 and has been referred to the House Public Education Committee.