

SUBJECT: Student code of conduct violations and supervision of police officers

COMMITTEE: Law Enforcement — favorable, without amendment

VOTE: 7 ayes — Driver, Jackson, Burnam, Frost, Hegar, Hupp, Veasey
0 nays

WITNESSES: For — Chuck Brawner, Texas School District Chief of Police Association; Will Harrell, ACLU, NAACP, LULAC; Kevin Lawrence, Texas Municipal Police Association; Ted Melina Raab, Texas Federation of Teachers; Jeff Ward, Texas Association of School District Police
Against — None

BACKGROUND: Chapter 37 of the Education code requires the board of trustees of an independent school district to adopt a student code of conduct for the district. The student code of conduct must specify the conditions under which a student may be removed from a classroom, placed in a disciplinary alternative education program, suspended or expelled and provide guidelines for setting the length of term for these offenses. Each school year, a school district must provide parents with notice of and information regarding the student code of conduct.

Education Code, ch. 37, subch. D, authorizes a board of trustees of a school district to adopt rules for the safety and welfare of students, employees, and property and other rules it considers necessary to protect buildings and grounds and to carry out the governance of the district, including rules providing for the operation and parking of vehicles on school property. A violation of these rules is a class C misdemeanor (maximum fine of \$500).

Education Code, sec. 37.081, authorizes the board of trustees of any school district to hire security personnel and commissioned peace officers to enforce laws and ordinances within the school district. A school district peace officer's duties must include the protection of any person in the jurisdiction and of school property. The chief of the school district police reports to the superintendent or the superintendent's designee. School

district police are supervised by the chief of police or by the chief's designee.

School district peace officers must file the oath required of peace officers as well as a \$1,000 bond payable to the board of trustees, with at least two sureties, conditioned on the officer fairly, impartially, and faithfully performing all the duties legally required of him. A plaintiff may sue on the bond up to the total amount.

DIGEST:

HB 1688 would specify that a violation of the student code of conduct is not a Class C misdemeanor unless the conduct was an offense under another law or under a specific rule adopted by the board of trustees under Education Code, ch. 37, subch. D, to protect buildings and grounds.

Only independent school districts would have the authority to hire security personnel and peace officers to enforce laws and ordinances within the school district. The bill would specify that the school district chief of police could be accountable only to an assistant, associate, or deputy superintendent designated by the superintendent and would authorize school district police to be supervised by either the chief of school police or a police officer designated by the chief of police.

The bill would repeal the requirement for a school district peace officer to file a bond.

This 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, 2005.

**SUPPORTERS
SAY:**

HB 1688 would make it clear that a student could not be issued a misdemeanor citation for activity that violated the code of conduct unless that activity was criminalized by another law. Some principals and school boards are using the penalties authorized in Education Code, ch. 7, subch. D, which protects buildings and grounds, to justify writing misdemeanor tickets for any violation of the student code of conduct, including dress code violations or chewing gum in class. The bill would make it clear to school districts and school authorities that they could not misapply statutory authority in this way.

Under current law, the school district chief of police can be accountable to anyone designated by the superintendent, including a school principal.

Conflicts of interest can arise because a principal – who is in closer contact with students than the superintendent or someone in the upper levels of administration – may order the chief to discipline or not discipline certain students based on personal biases or other improper reasons. The police chief should be accountable only to the superintendent or, in larger districts, an assistant, associate, or deputy superintendent. These officials are more removed from the students and appointed by the elected school board and are the appropriate entities for supervision of the police chief.

Similarly, the chief may designate someone with no law enforcement experience as the one to whom police in the district department report, including, again, a school principal. This creates the same problem as allowing the principal to be the person to whom the chief is accountable. The principal may have an interest in seeing certain students punished and certain students protected and also may order an officer to cite or arrest a student for a reasons that have no legal basis. It is important for the officers to report to someone with a law enforcement background and who is unlikely to favor particular students.

The bill would specify that only independent school districts, which are governed by an elected board of trustees, have the authority to hire security personnel and commissioned police officers. Under current law, charter schools, which are not operated by elected officials, have the authority to hire security personnel and commissioned peace officers. It is not in the public's best interest to allow peace officers, who have the authority to carry weapons and make arrests, to be governed by non-elected officials.

The bill would eliminate an outdated and unfair requirement that school police officers post bond of \$1,000. Peace officers are no longer required to post bonds and have not had to do so for many years. This requirement is no longer necessary and should be eliminated.

**OPPONENTS
SAY:**

For a school to function efficiently, the principal must have authority over people who work there. It would not be in the best interests of the school to have employees, including the district police officers and chief, answerable to someone other than the principal. The principal is in a better position than the superintendent or other school district officials to be familiar with the needs and interests of the students.

Principals should be able to instruct the school district police officers to write misdemeanor tickets students who engage in activities that violate the student code of conduct. The threat of such tickets is effective in deterring students from committing violations because a ticket imposes a punishment that is administered outside the school by the judicial system. Such a sanction is more than a mere inconvenience to the student because parents must attend the misdemeanor hearing.

Charter schools should be allowed to hire security personnel and peace officers under chapter 37 even though they are not responsible to an elected school board. Charter schools, like public schools, must deal with discipline issues and may need appropriate security personnel.