

- SUBJECT:** School placement for students involved in sexual assault
- COMMITTEE:** Public Education — committee substitute recommended
- VOTE:** 5 ayes — Grusendorf, Branch, Eissler, Hochberg, Mowery
0 nays
4 absent — Oliveira, Delisi, Dutton, B. Keffer
- WITNESSES:** For — Lindsay Gustafson, Texas Classroom Teachers Association; Sandra LeRoy, Janice Sager, Texans for Equal Justice; Kellan and Thomas Davis
Against — None
- BACKGROUND:** Under Education Code, ch. 37, a student must be expelled if the student commits certain serious offenses on school property or while attending school-sponsored or school-related activities on or off school property. These offenses include sexual assault and aggravated sexual assault.
- Counties with populations of more than 125,000 must operate juvenile justice alternative education programs (JJAEPs). If a student is expelled under ch. 37 for sexual assault or aggravated sexual assault, the juvenile court, juvenile board, or board's designee, as appropriate, must order the student to attend the JJAEP. A student placed on probation must attend the JJAEP from the date of disposition as a condition of probation unless placed in a post-adjudication treatment facility. A student placed on deferred adjudication must attend a JJAEP for up to six months. The mission of JJAEPs is to enable students to perform at grade level. A JJAEP must focus on English/language arts, mathematics, science, social studies, and self-discipline.
- Counties with populations of less than 125,000 are not required to operate JJAEPs, but each school district must operate a district alternative education program (DAEP) that:
- is provided in a setting other than a student's regular classroom;
 - is located on or off of a regular school campus;
 - separates students in DAEPs from students in the regular program;

- focuses on language arts, mathematics, science, history, and self-discipline;
- provides for students' educational needs; and
- provides supervision and counseling.

A DAEP may provide for a student's transfer to a different campus, a school-community guidance center, or a community-based alternative school. School districts may provide a DAEP jointly with one or more other districts. A student removed to a DAEP is counted in computing the average daily attendance for that district.

DIGEST:

CSHB 308 would require a school district, on the request of a parent or other person authorized to act on behalf of a student who had been sexually assaulted by another student attending the same campus, to transfer the victim to another campus under certain circumstances.

The victim would be transferred to a district campus other than the one the victim attended at the time the assault occurred and other than a campus to which the student who committed the offense may have since been assigned. If only one campus in the district served the victim's grade level, the district would transfer the student to a neighboring school district. The transfer would be to a campus or school district agreeable to the parent or other person with authority to act on the student's behalf.

If the victim did not wish to transfer to another campus or district, the school board would transfer the student who committed the assault to a campus other than the one the victim attended or, if only one campus in the district served the offender's grade level, to an alternative education program. Limits on the length of placement in a DAEP or a JJAEP would not apply to these students. The school district would have to notify the victim where the student who committed the assault was enrolled.

Offenders subject to the provisions of the bill would include students convicted, adjudicated, placed on deferred adjudication, placed on probation, or whose prosecution had been deferred for committing sexual assault or aggravated sexual assault against another student who at the time of the offense was assigned to the same campus as the victim. The bill would apply to conduct occurring on or off of school property.

The school district would not be required to provide transportation to a student who transferred to another campus or school district under the provisions of the bill.

CSHB 308 also would require every district to have an DAEP that employed only certified teachers in a facility other than a regular school campus.

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, 2005. The portions of the bill applying to student placement would take effect beginning with the 2004-05 school year. The requirement regarding DAEPs would apply beginning with the 2005-06 school year.

**SUPPORTERS
SAY:**

HB 308 would ensure that sexual assault victims did not have to attend school with their attackers, regardless of where the offense occurred, after the offender was eligible to return to a regular campus.

Under current law, a student who commits sexual assault and related offenses on school property must be expelled, but nothing prevents a student from returning to the same campus if the offense occurred off school grounds and away from a school activity. School boards and other local authorities also have little recourse under current law if a student convicted of sexual assault returns to campus after meeting the conditions of the court. The bill would set up procedures to separate the victim and the offender and would specify that the procedures applied to offenses occurring on or off campus.

Sexual assault and related crimes have a high recidivism rate that makes separation from other students appropriate. Sexual offenders would be able to attend different schools or alternative education programs, so these students would not be prevented from getting a basic education.

It is unlikely that the bill would create significant additional costs for JJAEPs because it would offer a variety of placement options for the offender as well as the victim. A limited number of students would have to stay in a JJAEP after meeting the conditions of the court, so cost estimates based on an extended stay are unrealistic.

All school districts should provide some form of off-campus DAEP so that victims would not be required to attend school with their attackers, and school districts should assume the cost of providing these facilities.

Transportation in these situations should not be the responsibility of the school district.

OPPONENTS
SAY:

C SHB 308 would create barriers for students involved in sexual assault that could prevent them from completing their educations. Students who have met the conditions of the court could be barred from returning to their regular campuses and would have to find transportation to attend schools that may be long distances from home. Students consigned to alternative education programs indefinitely would have little hope of graduating and likely would drop out of school. Most alternative education programs are designed to serve students temporarily and are not set up to provide a full curriculum leading to high school graduation.

School districts should be required to provide transportation for students who choose to transfer, whether the transfer is voluntary or not. For many students, lack of transportation is a major barrier that makes transferring to another campus difficult if not impossible.

While the bill's fiscal note indicates no significant impact to the state, the Texas Juvenile Probation Commission estimates costs to JJAEPs of nearly \$7 million over the next biennium, primarily because of the additional time offenders would spend in JJAEPs. JJAEPs, which are funded through set-asides from the Foundation School Program, already are underfunded and do not have the resources to handle this additional burden.

The bill would be particularly expensive for the 76 percent of school districts that do not currently operate an off-campus DAEP. TEA estimates that these districts would need to accommodate at least 46,000 additional students in separate facilities beginning in the 2005-06 academic year, at a likely cost of millions of dollars.

NOTES:

The committee substitute specifies that a school district would not be required to provide transportation to a student who transferred to another school or district.

A similar bill, HB 878 by Talton, passed the House on second reading on April 19 and is scheduled for third-reading consideration today. HB 878

would prohibit a student from being placed in a regular classroom or campus if the student had been adjudicated or placed on deferred prosecution or probation for indecency with a child, sexual assault, or aggravated assault. This would apply whether the conduct occurred on or off of school property. As amended on second reading, HB 878 would allow a student to be readmitted to the campus after completing probation if the student received counseling and the principal of the campus reasonably believed the student was not a threat to other students on the campus.