

BILL ANALYSIS

Senate Research Center

C.S.S.B. 136
By: Bivins
Education
3-2-97
Committee Report (Substituted)

DIGEST

Currently, a student who is expelled from school for engaging in conduct under Section 37.007, Education Code, must also be found by a juvenile court to have engaged in delinquent conduct in order to be placed in a juvenile justice alternative education program (JJAEP). However, many students who are expelled from school have engaged in conduct that does not rise to the level of delinquent conduct as defined by the Family Code, and these students avoid placement in JJAEP. In addition, current law requires expulsion for felony controlled substance violations, but only allows placement in an alternative education program for misdemeanor controlled substance offenses. This legislation, while maintaining local discretion on the part of counties and school districts, requires all expelled students to be served by the school district or the JJAEP in an effort to keep children off the streets. S.B. 136 also allows, but does not require, a school district to expel students for any controlled substance violation that occurs on school property or at a school-sponsored event.

PURPOSE

As proposed, C.S.S.B. 136 establishes the placement of students who are expelled from public schools in juvenile justice alternative education programs.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 37.001(a), Education Code, to delete the provision requiring each school district to adopt a student code of conduct for the district jointly with the juvenile board of each county in which the district is located. Deletes the provisions requiring the student code of conduct to contain certain references to juvenile boards. Makes conforming changes.

SECTION 2. Amends Sections 37.006(a) and (b), to make conforming changes.

SECTION 3. Amends Section 37.007, Education Code, to set forth the terms by which a student is authorized to be expelled if the student sells, gives, or delivers to another person or possesses, uses, or is under the influence of an amount of marihuana, certain controlled substances, drugs, or alcohol; or engages in conduct that contains the elements of certain offenses relating to abusable glue, aerosol paint, or volatile chemicals. Makes conforming changes.

SECTION 4. Amends Sections 37.010(a), (b), and (f), to set forth the terms by which an expelled student is required to immediately attend an educational program as provided by law or by the memorandum of understanding from the date of expulsion, provided certain conditions are met. Deletes the provision authorizing an officer to determine whether a petition should be filed alleging that the student is in need of supervision or has engaged in delinquent conduct, or should be referred to an appropriate state agency. Makes conforming changes.

SECTION 5. Amends Section 37.011, Education Code, by amending Subsection (b) and adding Subsections (k), (l), and (m), to set forth the terms by which a juvenile court is required, if a student is expelled under Section 37.007, to order the student to attend JJAEP from the disposition date if the student is placed on probation under Section 54.04, Family Code; to require the student to

immediately attend JJAEP for not more than six months if the student is placed on deferred prosecution; and to consider the length of the school district's expulsion order in determining the conditions of the deferred prosecution or probation. Deletes the provision which requires an affirmative finding by a juvenile court under Title 3, Family Code, before a student is required to be placed in the program. Establishes the conditions by which each school district in a county with a population greater than 125,000 and the county juvenile board is required annually to enter into a joint memorandum of understanding regarding JJAEP operation, funding, and students served. Requires the school district to be responsible for providing an immediate educational placement for students who seriously or persistently misbehave, but are ineligible for admission into the JJAEP. Requires the memorandum of understanding to address the circumstances under which students who persistently misbehave shall be admitted into the JJAEP. Sets forth the terms by which the issues of dispute between a school district and juvenile board unable to reach an agreement for adoption of a memorandum of understanding are required to be resolved.

SECTION 6. Amends Section 37.012(a), Education Code, to require the school district in which a student is enrolled on the date a juvenile court orders the student to attend a JJAEP to transfer to the appropriate juvenile board funds in an amount determined by the memorandum of understanding under Section 37.011(k)(2), rather than funds equal to the district's average per student expenditure in alternative education programs under Section 37.008.

SECTION 7. Amends Chapter 37A, Education Code, by adding Section 37.020, as follows:

Sec. 37.020. REPORT OF EXPULSIONS. Requires each school district to report all expulsions to the commissioner of education (commissioner) in the manner required by the commissioner.

SECTION 8. Amends Section 51.03(b), Family Code, to make a conforming change.

SECTION 9. Amends Section 52.041, Family Code, by adding Subsections (c)-(e), to require an office or official designated by the juvenile court, upon receipt of an expulsion notice, to conduct a preliminary investigation and determination as required by Section 53.01. Requires the office or official to notify the school district that expelled the child within two working days regarding certain determinations and court findings. Sets forth the terms by which no student shall be expelled without written notification by the board of the school district or its designated agent to the juvenile board's designated representative.

SECTION 10. Amends Section 53.02, Family Code, by adding Subsection (e), to require the release of a child expelled under Section 37.007, Education Code, in a county with a population greater than 125,000, to be conditioned on the child's attending a JJAEP pending a deferred prosecution or formal court disposition of the child's case.

SECTION 11. Amends Section 54.01(f), Family Code, to make a conforming change.

SECTION 12. Amends Section 59.003(a), Family Code, to authorize the probation department or the juvenile court in a disposition hearing under Section 54.04 and after a child's first commission of delinquent conduct or conduct indicating a need for supervision (CINS), to assign sanction level two for CINS under Section 51.03(b)(6).

SECTION 13. Provides that this Act applies beginning with the 1997-1998 school year.

SECTION 14. Emergency clause.
Effective date: upon passage.

SUMMARY OF COMMITTEE CHANGES

Amends SECTION 1 by deleting the existing text and amending Section 37.001(a), Education Code, to delete provisions regarding juvenile boards as they relate to adoption of a student code of conduct.

Amends SECTION 3, by deleting the existing text and amending Section 37.007, Education Code, to authorize expulsion of a student for sale, delivery, possession, use, or being under the influence of certain drugs, controlled substances, and chemicals.

Amends SECTION 4 to delete existing text and amend Section 37.010, Education Code, to require an expelled student to immediately attend JJAEP in compliance with compulsory school attendance requirements and the memorandum of understanding, provided certain conditions are met. Deletes the provision authorizing an officer to determine whether a petition should be filed alleging that the student is in need of supervision, has engaged in delinquent conduct, or should be referred to a state agency.

Adds SECTION 5, formerly SECTION 1, Section 37.011, Education Code, to require a juvenile court, if a student is expelled from school, to order the student to attend JJAEP if the student is placed on probation; to require the student to immediately attend JJAEP for up to six months if the student is placed on deferred prosecution; and to consider the length of the school district's expulsion order in determining these conditions. Requires certain school districts to enter into a joint memorandum of understanding with a county juvenile board. Requires school districts to provide immediate educational placement for students who persistently misbehave but are not eligible for JJAEP. Requires the memorandum of understanding to address the circumstances under which students who persistently misbehave shall be admitted to JJAEP.

Adds SECTION 6, Section 37.012(a), Education Code, to require the school district in which a student is enrolled on the date a juvenile court orders the student to attend JJAEP to transfer to the appropriate juvenile board funds in an amount determined by the memorandum of understanding, rather than funds equal to the district's average per student expenditure in alternative education programs.

Adds SECTION 7, by adding Section 37.020, Education Code, to require each school district to report all expulsions to the commissioner of education.

Adds SECTION 9, Section 52.041, Family Code, to require an office or official designated by the juvenile court to conduct a preliminary investigation and determination following receipt of an expulsion notice; and notify the school district that expelled the child of certain determinations and court findings.

Adds SECTION 10, Section 53.02, Family Code, to require the release of a child expelled in certain counties under Section 37.007, Education Code, to be conditioned on attendance at JJAEP pending deferred prosecution or formal court disposition.

Adds SECTION 12, Section 59.003(a), Family Code, to authorize the probation department or the juvenile court to assign sanction level two for CINS under Section 51.03(b)(6) under certain circumstances.