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EXPULSIONS & DISCIPLINARY EDUCATION PROGRAMS

Senate Bill 313 (Substitute H-4)

Sponsor: Sen. Leon Stille
Senate Committee: Education
House Committee: Education

House Bill 5424 (Substitute H-3)

Sponsor: Rep. George Mans
Committee: Education

First Analysis (4-28-98)

THE APPARENT PROBLEM:

Schools should be safe places for teaching and learning. Amid all the disagreements over education policy, there is widespread agreement about that. Teachers should not have to worry about assaults and verbal abuse from their students; students should not stay away from school out of fear for their personal safety. Violence and the threat of violence should not prevent schools from being effective communities of learning. Fear should not permeate school classrooms, playgrounds, and school buses. A House Subcommittee on Violence in the Schools has recently completed several months of conducting hearings around the state on the issue and has transmitted proposed legislation to the House Committee on Education. The report from the chair of the subcommittee noted:

"Reporting of school violence is not systematic in Michigan, and accurate records of school violence at a statewide level do not exist. Consequently, the committee sought to explore the severity and frequency of school violence, possible causes of incidents that occurred and programs that were already effective in combating the problem. The main goal of the committee's inquiry was to develop legislative solutions that give every school in Michigan the resources and flexibility to directly confront, neutralize and responsibly remove violent students who threaten the safety of students, teachers and school personnel." At the same time, the chair's report says, "The mere removal of violent students from the classroom to the streets puts our communities at greater risk," and suggests that "any effort to reduce school violence must require the expelled student to attend structured, supervised, disciplinary educational programs that keep students off the street."

Legislation addressing these and other subjects is now before the House.

THE CONTENT OF THE BILLS:

Each of the bills would amend the Revised School Code. Senate Bill 313 would require the expulsion of students for physical assaults and other violent acts and require their placement in a disciplinary education program. It also would provide a reinstatement process. House Bill 5424 would require school boards to ensure that expelled students were provided with an appropriate disciplinary education program and would describe the required design of disciplinary education programs. They are tie-barred to six other bills, as described later. Following is a summary of the content of the two bills.

Senate Bill 313 would apply to:

- a physical assault at school;
- an intentional act that resulted in violence to another's person or property; or
- an intentional act that posed a direct threat to the safety of others;

if one of those was identified in the school district's suspension/expulsion policy under Section 1310 as a disciplinary violation that could result in expulsion. (Section 1310 would be created by House Bill 5696, which is currently in the House Education Committee. That bill requires a school board to develop and adopt a suspension/expulsion policy describing the type of

disciplinary violations that could result in suspension or expulsion from school or in an in-school suspension.)

The term "assault" would mean intentionally causing or attempting to cause physical harm to another through force or violence. "At school" would mean in a classroom, elsewhere on school premises, on a school bus or other school-related vehicle, or at a school-sponsored activity or event, whether or not held on school premises.

Under the bill, if the assault or other act was reported to the school principal by the victim or, if the victim was unable to report the assault, by another on the victim's behalf, then the principal would have to review the circumstances of the incident. If he or she determined an assault or other act had in fact occurred and was committed by the student, the principal would have to report the determination to the school board or its designee. The school board would have to conduct an expulsion hearing affording the due process required under Section 1310. If the school board agreed with the principal's determination, the board would expel the student from any educational placement in the school district other than a disciplinary education program. The expulsion could be permanent, although subject to reinstatement, or could be for a specified number of school days, and would be entered on the student's permanent record.

Within three days after the expulsion, the school district would have to refer the student to the appropriate county community mental health agency or other appropriate human services agency and notify the parent/legal guardian of the referral (or the student if he or she was an emancipated minor or 18 years of age or older). The school board would also have to refer the student for placement in a disciplinary education program under Section 1311b (as created by House Bill 5424).

Reinstatement. A parent/legal guardian (or the individual if eligible) could petition the school board for reinstatement. For a student in grade 5 or below, the petition could be initiated at any time, but reinstatement could not occur before the expiration of 10 school days after expulsion. For a student in grades 6 and above, a petition for reinstatement could only be initiated more than 150 days after expulsion and the student could not be reinstated until more than 180 school days after the expulsion. A school board would have to make a form for a reinstatement petition available upon request but would not be

required to provide any assistance in preparing the petition.

Not less than 10 school days after receiving a petition, a school board would have to appoint a committee to review the petition and supporting information. The committee would be composed of two board members, one administrator, one teacher, and one parent of a student in the district. The superintendent would submit information about the circumstances of the expulsion and any factors supporting or opposing reinstatement.

The committee would have to review the petition and information and make a recommendation not later than 10 school days after being appointed. The recommendation could be for unconditional reinstatement, for conditional reinstatement, or against reinstatement, and would have to be accompanied by the reasons for the recommendation.

(The bill lists factors to be considered by the reinstatement committee, including the risk of harm to students and school personnel; the risk of liability to the district and district personnel; the age and maturity of the student; the student's prior school record; the student's attitude to the incident that led to the expulsion; the student's subsequent behavior and prospects for remediation; the degree of support and cooperation to be expected from the parent/legal guardian.)

The school board would have to act on the recommendation no later than its next regularly scheduled meeting. The decision of the board would be final. A school board could require a student, as well as the parent/legal guardian, to agree in writing to specific conditions for reinstatement. Conditions could include a behavior contract, participating in an anger management program or other counseling; periodic progress reviews, and specified immediate consequences for failure to abide by a condition.

A school board or school administrator, or the authorizing body of a public school academy, that complied with the provisions of the bill in good faith would not be liable for damages for the expulsion of a student.

The Department of Education would have to develop and distribute to all school districts a form for petitioning for reinstatement; the form currently in use for reinstatement under Section 1311 could be used.

A school board would have to use the locally-adopted due process policy required under Section 1310 in expulsion proceedings covered by this bill. The State Board of Education would have to develop and distribute a model due process policy that districts could adopt for use in reinstatement proceedings and similar proceedings. The bill specifies that it would not diminish the due process rights under federal law of a student determined to be eligible for special education programs and services.

If the physical assault or other act was an incident that required reporting to law enforcement according to the memorandum of understanding required under Section 1308 (which would be created by House Bill 5478), the school board or its designee would have to report the assault or other act to appropriate state or local law enforcement officials.

House Bill 5424 (Disciplinary Education Programs). A school board would have to ensure that all students who were expelled from the district under Section 1311 or Section 1311a (which would be created by Senate Bill 313) were provided with an appropriate disciplinary education program. (Section 1311 contains existing provisions on expulsion, including those dealing with expulsion for weapons possession, arson, and sexual assault.) Disruptive students could also be placed in such a program. The board could provide the program directly or in cooperation with other school districts; it also could participate in a program conducted by one or more intermediate school districts. A student placed in a program would be required to attend school in the program and would be subject to the compulsory school attendance provisions of the code if he or she failed to attend the program. The bill specifies that the state would have to provide sufficient funds each year to fully fund disciplinary education programs.

Under the bill, a disciplinary education program would have to:

- be provided in a setting other than the student's regular classroom;
- be located on or off a regular school campus;
- be in a setting that ensures that students are physically separated from the general student population at all times during the school day;

-- provide for both the academic and behavior management needs of the student in a structured, controlled environment;

-- involve, to the greatest extent practicable, local mental health, social services, community health, and other supportive agencies in a collaborative approach for referral, treatment, and assistance in meeting the needs of the student; and

-- involve a student's parent/legal guardian in an ongoing fashion.

A school district would be required to cooperate with other governmental agencies and community organizations providing services to a student placed in a disciplinary education program.

Intermediate School Districts. Upon the request of a constituent school district, an intermediate school district (ISD) would have to coordinate and assist the district's participation in or providing of a disciplinary education program or provide technical assistance to the district in developing the district's own disciplinary education program.

Disruptive Pupil (or student). The bill would define a disruptive pupil as one who consistently engaged in disruptive behavior and whose behavior:

- posed a threat to the safety and welfare of other students, teachers, and other school personnel;
- created an unsafe school environment; or
- materially interfered with the learning of other students or disrupted the overall educational process in a continuing and ongoing fashion.

Other Provisions. The bill also would amend existing Section 1311 in several ways.

It would delete the general reasons that currently can result in expulsion (being guilty of "gross misdemeanor or persistent disobedience") and replace it with a reference to the commission of a disciplinary violation of the type described in the suspension/expulsion policy developed under Section 1310 (as proposed in House Bill 5696). It also would specify that students are to be expelled from any educational placement "other than a disciplinary education program" and would require the expelled

student to be placed in such a program. Current language says an expelled student not placed in alternative education could be provided with instructional services at home similar to those provided homebound or hospitalized students. The bill would require such home services if a student was not placed in a disciplinary education program.

The bill also would require that expulsions under Section 1311 be conducted using the locally adopted due process policy required under Section 1310 and would provide that reinstatements could be conducted using a model due process policy developed by the State Board of Education.

Tie-Bars. The two bills are tie-barred to each other and to six other bills described briefly below.

-- House Bill 4075, which would specify that provisions that require the reporting of crimes committed by certain school personnel apply to teachers and administrators, whether certificated or not.

-- House Bill 5478, which would require the development of a memorandum of understanding by school boards, local law enforcement agencies, child protection agencies, county prosecutors, probation officers, and others to facilitate the reporting of incidents affecting school safety and sharing of other school safety information. The memorandum, among other things, would determine what incidents must be reported by school officials to law enforcement and child protection agencies.

-- House Bill 5482, which would create an Office For Safe Schools within the Department of Education and would allow a teacher to suspend a student from a class, subject, or activity for up to one full day if the student's presence posed a clear threat to others or created an unsafe school environment.

-- House Bill 5696, which would create the new Section 1310 referred to in Senate Bill 313 and House Bill 5424. That section would require a school board to develop and adopt a suspension/expulsion policy; develop and adopt a due process policy for suspensions and expulsions; develop and maintain a school discipline record for each school; and distribute to the households of students its student conduct codes, sexual harassment policies, suspension/expulsion policies, and due process policies. The State Board of

Education would be required to create models of such codes and policies for school districts.

-- House Bill 5699, which would create an intervention/prevention grant program in the Department of Education to provide grants to school districts for locally designed, innovative local programs that enhance educational attainment through coordinated services to respond to the needs of students and to provide a safe and secure learning environment.

-- House Bill 5700, which would provide \$75 million for the grant program referred to above; provide \$1.25 million for some districts to extend the school day for nonathletic programs; and specify that state aid funding per pupil follows a student placed in a disciplinary education program.

HOUSE COMMITTEE ACTION:

The House Committee on Education reported a substitute for Senate Bill 313 that differs in a number of ways from the Senate-passed version of the bill. The following is a brief comparison of some key differences between the two bills.

As passed by the Senate, the bill would apply to students in grade six and above who physically assaulted (for permanent expulsion, with reinstatement possible) or verbally assaulted (for a 10-day suspension) at school a school employee, a volunteer, or a person under contract with the school. School districts could provide alternative education, but would not be required to do so. The House substitute would apply to students in all grades who committed physical assaults, intentional acts that result in violence to the person or property of another person, or intentional acts that pose a direct threat to the safety of others (whether teachers, students, or whomever). It also would allow for expulsions for a specified number of days. Further, the House substitute requires placement of the student in a disciplinary education program. The reinstatement provisions are similar in the two versions.

FISCAL IMPLICATIONS:

There is no information at present. It should be noted that House Bill 5424 says: "This state shall appropriate sufficient funds each year to fully fund disciplinary education programs under this section."

ARGUMENTS:**For:**

A recent report by the chair of the House Education Committee's Subcommittee on Violence in the Schools, issued after several months of hearings, argues:

"The state's policy must be zero tolerance for assaultive behavior. In order for students and teachers to be safe, schools must have the ability to suspend or expel students, coupled with the flexibility to determine the factors, punishment and length of time for the suspensions or expulsions. Local school boards need the flexibility to take into account the intent and severity of offenses before making final determinations. A strong suspension/expulsion policy must include appropriate due process procedures. Those procedures may require law enforcement participation in the investigative process for violent behaviors."

Senate Bill 313 implements this point of view. It would require a school board to expel a student, after a hearing affording due process, when it agreed with the school principal that the student had committed a physical assault or an intentional act that either resulted in violence to another person or posed a direct threat to the safety of others. The suspension could be "permanent" (although subject to reinstatement upon petition by the student's family) or could be for a specified number of days. The bill requires that a school board follow its due process policy, which companion legislation would require be adopted. The assaultive or violent incident would have to be reported to law enforcement if it met the criteria of the memorandum of understanding that the school would have to enter into with law enforcement, child protection agencies, and others, under related legislation.

Response:

Senate Bill 313 as passed by the Senate applied only to assaults on teachers and only by students in middle school and high school. It also applied to verbal assaults against teachers by students. This narrower focus was preferable. Teachers have complained about assaults by students going unreported and about pressure from school officials not to report assaults. Student assaults on teachers and other school personnel, whether physical or verbal, should not be tolerated, and students should know that punishment for such actions will be swift and certain. Focusing on the middle and high schools puts the emphasis where the problems are most likely to arise.

For:

The subcommittee chair's report also argues:

"Students who are suspended or expelled cannot be released onto the streets with no supervision. Testimony from law enforcement officials clearly indicated that to leave assaultive students unsupervised would amount to exporting violence from the schools to our neighborhoods and further endanger the community-at-large. Participation in a supervised, structured disciplinary education program should be required for all expelled students. Additionally, schools need to communicate and collaborate with other law enforcement and community service agencies in order for disciplinary education to be effective."

House Bill 5424 would put this into practice. It requires school boards to put expelled students into disciplinary education programs separate from the general student body. Such a program would have to provide for both the academic and behavior management needs of its students in a structured, controlled environment, and would have to involve local mental health and social service agencies in a collaborative approach. Parents and guardians would have to be involved too.

Response:

By requiring school districts to establish disciplinary education programs, the bill suggests that expelled children are primarily the responsibility of the schools. The proposed legislation first requires that more children be expelled and then requires that the schools that have expelled them apply additional energy and expenditures to keep them off the street in order to protect the community. Is this really fair? Shouldn't this burden be put elsewhere, so that the schools can concentrate their efforts on educating the vast majority of well-behaved students in the regular schools and in existing alternative programs?

Against:

Is there really a need for these bills? Has it been demonstrated that local school districts do not have the desire and devices to deal with the problem of school violence and school safety themselves? There may have been some isolated instances where school districts did not deal appropriately with violent acts by children, but is there evidence that this is an area in need of comprehensive new state legislation? The Revised School Code already permits local school officials to expel and suspend students who commit gross misdemeanors or are persistently disobedient.

They have the authority to ensure the safety of teachers and students. These bills would remove flexibility in dealing with "violent" incidents from the people who know their students and communities best. They could result in more expulsions, more hearings, more petitions for reinstatement, and generally more headaches for local school officials. Expulsion may not be the appropriate response when a student commits an isolated act of violence; school officials who know the child might prefer to keep him or her in school and provide counseling. Further, school officials can already notify law enforcement when laws are broken, and the Michigan Penal Code contains penalties for committing assaults and other violent acts.

Response:

Senate Bill 313 as reported from committee allows for expulsions of various durations at the discretion of the local board; allows for the reinstatement of expelled students upon the petition of the student's family; and assumes the creation of local suspension/expulsion policies to govern the decisions of school officials. The bill recognizes that local schools are the best judges of the conduct of their students and of the suitable punishment.

POSITIONS:

The Michigan Federation of Teachers and School Related Personnel supports the bills. (4-22-98)

The Michigan Education Association supports the bills. (4-27-98)

The Michigan Association of Secondary School Principals reports that it is pleased with direction the House Committee is taking and considers the proposal preferable to that passed by the Senate. (4-22-98)

The Michigan Association of School Administrators has no official position at present. (4-22-98)

The Michigan Association of School Boards has no position at this time. (4-24-98)

The Middle Cities Education Association is opposed to the bills. (4-22-98)

Analyst: C. Couch

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.