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SFA**BILL ANALYSIS**

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Senate Bill 313 (Substitute S-1 as passed by the Senate)
Sponsor: Senator Leon Stille
Committee: Education

Date Completed: 2-4-98

RATIONALE

Public Act 328 of 1994 amended the School Code to require a local school board or a superintendent, principal, or other designated school official to expel permanently a pupil who unlawfully possesses a dangerous weapon in a weapon free school zone, commits arson in a school building or on school grounds, or rapes a person in the building or on school grounds. Since the law took effect January 1, 1995, more than 600 students across the State reportedly have been expelled for possessing guns, knives, and other types of weapons. While Public Act 328 attempts to reduce violence in schools by requiring the expulsion of students who commit these offenses, school safety still is threatened when students physically and verbally assault teachers. According to some teachers in southeastern Michigan schools, they have been beaten, knocked to the floor, and kicked by unruly students. In other cases, students have yelled vulgarities and verbal threats at their teachers. Some people believe that school safety cannot be ensured unless students who physically assault teachers face mandatory expulsion and students who verbally attack teachers are suspended from school.

CONTENT

The bill would amend the Revised School Code to do the following:

- Require the expulsion of a student, subject to possible reinstatement, if he or she were enrolled in grade six or above and physically assaulted at school a school employee, a volunteer, or a person under contract with the school. A student would be expelled from all public schools in the State unless a district operated or participated in an alternative education program appropriate for expelled students.

- Require the suspension of a student for 10 school days, if he or she were enrolled in grade six or above and verbally assaulted at school a school employee, volunteer, or contractor.
- Provide that an expulsion or suspension would take effect only after a student had been afforded the required due process. A school board would have to use a locally adopted due process policy, and the State Board of Education could develop and distribute to school districts a model due process policy that they could adopt.
- Require a school district, within three days after an expulsion, to refer the student to an appropriate county social services or mental health agency.
- Provide that an expelled student's parent or legal guardian or the student if he or she were at least 18 years old or an emancipated minor, could petition the school board to reinstate the student, but the petition could not be brought and the student could not be reinstated before a specified number of days had elapsed.
- Require a school district to submit annually to the Department of Education a report stating the number of pupils expelled or suspended, with a brief description of the incident that caused an expulsion or suspension.
- Require a school board to report all physical assaults to State or local law enforcement officials.

Expulsion Requirement

A school board, or the designee of a school board, would be required, after affording the required due process, to expel a pupil permanently from the school district if he or she were enrolled in grade

six or above and committed a physical assault at school against a person employed by or engaged as a volunteer or contractor by the board, and the assault were reported to the board by the victim or, if he or she were unable to report the assault, by another person on the victim's behalf. The expulsion would be subject to possible reinstatement under the bill. A school board or its designee would have to report all physical assaults to State or local law enforcement officials in a timely manner. ("At school" would mean on property owned by or under the control of the school district, on a vehicle used by the school district or under contract with the school district to transport pupils to or from school, or at a school-related activity sponsored or approved by the school district. "Physical assault" would mean intentionally causing or attempting to cause physical harm to another through force or violence or an intentional act other than a verbal assault that places another in reasonable apprehension of being physically harmed through force or violence.)

If a pupil enrolled in grade six or above committed a verbal assault at school against school personnel, described above, and the assault were reported to the school board by the victim, the school board or its designee would be required, after affording the required due process, to suspend the pupil from the school district for 10 days. ("Verbal assault" would mean intentionally threatening through spoken or written words to cause physical harm to another through force or violence, with the apparent ability to carry out that threat.)

If a school district included grade six in its elementary schools so that those schools were operated as kindergarten through sixth grade schools within that school district, these expulsion and suspension requirements would apply only to pupils enrolled in grade seven or above.

An expelling school district would have to enter on the expelled individual's permanent record that he or she had been expelled pursuant to these provisions. Unless a school operated or participated cooperatively in an alternative education program appropriate for individuals expelled under the bill or Section 1311 and in its discretion admitted the individual to that program, an individual expelled under the bill would be expelled from all public schools in this State and the officials of a school district could not allow the individual to enroll in the district unless he or she had been reinstated (as provided below). Except as otherwise provided by law, a program operated

for expelled individuals would have to ensure that they were physically separated at all times during the school day from the general pupil population. (Section 1311 requires the expulsion of a pupil for possessing a weapon in a weapon-free school zone, committing arson in a school building or on school grounds, or committing criminal sexual conduct in a school building or on school grounds. A school board, superintendent, principal, or other school district official also may authorize the suspension or expulsion of a pupil guilty of a gross misdemeanor or persistent disobedience. A school district may operate or participate cooperatively in an alternative education program for expelled students.)

If an expelled individual were not placed in an alternative education program, the school district could provide, or could arrange for the intermediate school district (ISD) to provide, appropriate instructional services to the individual at home. The type of services provided would have to be similar to those provided to homebound or hospitalized pupils under Section 109 of the State School Aid Act, and the services could be contracted for in the same manner as under that section. (Section 109 requires each district or ISD to provide appropriate instructional services to an enrolled pupil who is certified by his or her attending physician as having a medical condition that requires the pupil to be hospitalized or confined to his or her home during regular school hours for more than five school days.)

The bill specifies that these provisions would not require a school district to spend more money for providing services for a pupil expelled under the bill than the amount of the foundation allowance the district received for the pupil under the State School Aid Act.

If a school board expelled an individual under the bill, the board would have to ensure that, within three days after the expulsion, an official of the district referred the individual to the appropriate county department of social services or county community mental health agency, and notified his or her parent or legal guardian or, if the individual were at least 18 or an emancipated minor, notified him or her of the referral.

Reinstatement

The parent or legal guardian of an individual expelled under the bill or, if he or she were at least 18 or an emancipated minor, the individual could petition the expelling school board for

reinstatement to public education in the district. If the board denied the petition, the parent or legal guardian or the individual could petition another school board for reinstatement in that other district. All of the following would apply to reinstatement under these provisions.

The individual's parent or legal guardian or, if the individual were at least 18 or emancipated, the individual could initiate a petition for reinstatement at any time after the expiration of 150 school days following the date of expulsion. The individual could not be reinstated before the expiration of a number of school days after the date of expulsion equal to the number of days of pupil instruction required in a school year under Section 1284. (Section 1284 requires the board of a school district or public school academy to determine the length of a school term and requires a board to ensure that a minimum number of pupil instruction days are provided in a school year--up to 182 days in 1998-99 and up to 190 days by 2006-2007--in order not to have State school aid payments withheld.)

It would be the responsibility of the parent or legal guardian or, if the individual were at least 18 or emancipated, of the individual to prepare and submit the petition. A school board would not be required to provide any assistance in preparing the petition. Upon request by the parent, legal guardian, or individual, a school board would have to make a form available for a petition.

Within 10 school days after receiving the petition, the school board would have to appoint a committee to review the petition and any supporting information submitted by the parent, legal guardian, or individual. The committee would consist of two school board members, one school administrator, one teacher, and one parent of a pupil in the district. During this time, the district superintendent could prepare and submit for the committee's consideration information concerning the circumstances of the expulsion and any factors mitigating for or against reinstatement.

Within 10 school days after all members were appointed, the committee would have to review the petition and any supporting information, and submit a recommendation to the school board on the issue of reinstatement. The recommendation would have to be for unconditional reinstatement, for conditional reinstatement, or against reinstatement, and would have to be accompanied by an explanation of the reasons for the recommendation and of any recommended conditions for

reinstatement. The recommendation would have to be based on consideration of all of the following factors:

- The extent to which reinstatement would create a risk of harm to pupils or school personnel.
- The extent to which reinstatement would create a risk of school district or individual liability for the school board or school district personnel.
- The age and maturity of the individual.
- The individual's school record before the incident that caused the expulsion.
- The individual's attitude concerning the incident.
- The individual's behavior since the expulsion and the prospects for his or her remediation.
- If the petition were filed by a parent or legal guardian, the degree of cooperation and support that he or she had provided and that could be expected if the individual were reinstated, including receptiveness toward possible conditions placed on the reinstatement.

By the next regularly scheduled board meeting after receiving the committee's recommendation, the school board would have to make a decision to reinstate the individual unconditionally, reinstate him or her conditionally, or deny reinstatement. The board's decision would be final.

A school board could require an individual and, if the petition were filed by a parent or legal guardian, his or her parent or guardian, to agree in writing to specific conditions before reinstating the individual conditionally. The conditions could include, but would not be limited to, agreement to a behavior contract, which could involve the individual, parent, or guardian, and an outside agency; participation in or completion of an anger management program or other appropriate counseling; periodic progress reviews; and specified immediate consequences for failure to abide by a condition. A parent or legal guardian or, if the individual were at least 18 or emancipated, the individual could include proposed conditions in a petition for reinstatement.

Annual Report

A school district at least annually would have to prepare and submit to the Department, in the form and manner prescribed by the Department, a report stating the number of students expelled or suspended pursuant to the bill during the immediately preceding school year, with a brief

description of the incident that caused each expulsion or suspension.

Other Provisions

A school board or school administrator that complied with the bill would not be liable for damages for expelling or suspending a pupil under the bill, and the authorizing body of a public school academy would not be liable for damages for expulsion or suspension of a pupil under the bill.

The Department of Education would have to develop and distribute to all school districts a form for a reinstatement petition. The Department could designate the form used for a petition under Section 1311 as a form that could be used under this provision.

A school board would have to use a locally adopted due process policy in expulsion, suspension, and reinstatement proceedings under the bill. The State Board of Education could develop and distribute to school districts a model due process policy that school districts could adopt for use in proceedings under the bill and similar proceedings.

The bill specifies that it would not diminish the due process rights under Federal law of a pupil who had been determined to be eligible for special education programs and services.

If a pupil expelled from a school district under the bill were enrolled by a public school sponsored alternative education program or a public school academy during the period of expulsion, the program or academy would be eligible immediately for the prorated share of either the academy's foundation allowance or the expelling school district's foundation allowance, whichever was higher.

Proposed MCL 380.1311a

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

A safe learning environment must be guaranteed for teachers as well as students. Public Act 328 of 1994, which mandates the expulsion of students who possess weapons on school grounds or commit certain other offenses, took an important step to making Michigan's public schools safer for teachers and students. There apparently still are problems, however, as students physically and verbally assault teachers as well as their fellow students. A 1994 University of Michigan study reportedly found that one out of every seven public school teachers across the country was threatened or physically attacked. In addition, reports indicate that New York City schools, with approximately 35,000 teachers, experienced about 1,461 assaults on staff in 1995, and the Chicago school authorities investigated approximately 1,734 assaults on the district's 32,000 teachers. The National Center for Education Statistics, within the U.S. Department of Education, reports that from 1987-88 to 1990-91, there was an increase from approximately 26% to nearly 30% in the percentage of public secondary school teachers reporting physical conflicts among students as either moderate or serious problems in their schools. This percentage then rose from 30% to nearly 40% from 1990-91 to 1993-94. Public elementary school teachers also reported physical conflicts as moderate or serious problems over the same period, with nearly 30% making these reports in 1993-94. Teachers who try to break up fights between students often become victims as the fighting students turn on those who try to stop the conflict. School officials need help to provide a school setting in which educators can teach and students can learn in safe surroundings. An informal survey conducted by the Texas Federation of Teachers reportedly concluded that Texas's zero-tolerance law has resulted in a reduction of

violent crime across the state. Since the law took effect in 1993 and for three years thereafter, reported student-on-student assaults dropped 10%, threats of violence to students fell 6%, and assaults on teachers dropped 35%. The bill would result in safer school environments in Michigan by requiring that students who physically or verbally assaulted a teacher were removed from the school.

Supporting Argument

Under the bill, a school board would be required, within three days after an expulsion, to refer the child to a social services or mental health agency. Currently, unless a student is expelled for other violations, a child may come into contact with these agencies only if he or she is charged with a crime, and subsequently is referred to an agency through the judicial process. Mandating this referral would ensure the child's contact with the persons and programs that could address the causes for his or her behavior. Furthermore, the bill would allow an expelled student's parent or legal guardian to petition the school board to reinstate the student. Thus, a student who benefitted from the services of a mental health or social services agency could seek to return to school.

Response: Instead of requiring a student's referral to a social services or mental health agency after the expulsion, the State should be encouraging schools to address the violence problem before it starts. Conflict resolution or violence prevention education programs have been successful in improving school climate and reducing the incidence of disciplinary problems.

Opposing Argument

The bill is not needed since Michigan law already provides the means for dealing with students who physically assault teachers and school personnel. The Michigan Penal Code prescribes misdemeanor and felony penalties for persons who commit various assault offenses. Furthermore, the Revised School Code permits school boards to authorize or order the expulsion or suspension of a pupil when he or she is guilty of a gross misdemeanor or persistent disobedience and it is in the school's best interest to take this action. Armed with this authority under Michigan law, school officials and prosecuting attorneys already are able to deal with students who physically assault teachers and other school personnel.

Response: Teachers complain that school officials frequently do not report to authorities incidents of student assault and some school administrators reportedly have discouraged teachers from reporting the attacks to local or State police. The bill not only would require the

expulsion of physically violent students, but also would require a school board to report in a timely manner all physical assaults to State or local law enforcement officials.

Opposing Argument

The bill would take from school officials, law enforcement agencies, county prosecutors, and probate judges the ability to use their discretion in dealing with students who assaulted a teacher or other school personnel. Since the Revised School Code permits a board to expel or suspend a student for disruptive behavior, school boards have the discretion to take steps that may be more appropriate than expulsion. In some cases, a student may not have any prior behavioral difficulties in school and the assault may be an isolated incident. Instead of expelling a student, a board may want to keep the child in school and obtain counseling for the student to help him or her deal with the problem. By mandating that a student be expelled, the bill would take from school boards and administrators the flexibility they need to determine appropriate responses to these incidents.

Opposing Argument

The bill would not require expelled students to attend alternative education, or require school districts to establish some form of alternative education or provide instructional services. Instead, the bill would provide only for the proration of the foundation allowance for public school academies or school districts that had an alternative education program for those students. Since not all school districts offer an alternative education program for troubled students, there is concern that most of those who had been expelled would be free to roam the streets and would not be in school or participating in a program where they would be under adult supervision.

Response: Although expulsion would be mandatory, students could apply for reinstatement. Thus, the bill would provide an opportunity for a student to return to school.

Legislative Analyst: L. Arasim

FISCAL IMPACT

The fiscal impact of the bill is indeterminate. The fiscal impact would depend on the number of students expelled pursuant to the bill and the nature and cost of the educational or social services programs used by an expelled student.

Currently, all school districts receive a foundation

allowance with State payments calculated on a per-pupil basis. A district expelling a student would lose the State payment for that pupil. An expelled student, however, possibly could become a student in another school district or in an institutional setting, requiring additional State support.

Fiscal Analyst: J. Carrasco

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.