

Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

SFA



BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 183 (as introduced 1-28-99)
Sponsor: Senator Bev Hammerstrom
Committee: Education

Date Completed: 5-3-99

CONTENT

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

- **Require school boards to work with law enforcement agencies, child protection agencies, prosecutors, and probation officers to establish a memorandum of understanding to facilitate the reporting of incidents affecting school safety and the sharing of information.**
- **Require school boards to develop and implement a disciplinary action policy for pupils who committed an assault at school.**
- **Require that a disciplinary action policy provide for the expulsion of a pupil aged 12 or older who committed an assault at school.**
- **Allow an expelled pupil to petition for reinstatement.**
- **Require a school board to report incidents of crime at school to the Department of Education, and to report the number of pupils expelled under the disciplinary policy.**
- **Allow a teacher to suspend a pupil from a class for one day if his or her presence threatened the safety and welfare of other pupils or school personnel, or created an unsafe school environment.**

Memorandum of Understanding

A school board would have to work with local law enforcement agencies, child protection agencies, county prosecutors, appropriate probation officers, and other appropriate organizations to establish and implement a memorandum of understanding to facilitate the reporting of incidents, and the sharing of other information, affecting school safety. The memorandum of understanding would have to establish procedures to be followed when an incident (described below) occurred at school. The memorandum of understanding also could address procedures for reporting incidents involving possession of a dangerous weapon as required under the Code. ("School board" would mean a

school board, an intermediate school board, or the board of directors of a public school academy.)

The memorandum of understanding would have to address at least all of the following:

- Law enforcement protocols and priorities for the reporting process. The protocols would have to be developed with the cooperation of the appropriate State or local law enforcement agency. The priorities would have to include at least investigation of reported incidents, identification of those involved, and assistance in prevention of these types of incidents.
- Definition of the types of incidents requiring reporting to law enforcement and response by law enforcement, taking into account the actor's intent and the circumstances surrounding the incident. The definition would have to include incidents of sexual harassment that should be reported to law enforcement.
- Protocols for responding to reportable incidents, addressing at least initial notification and reporting by school officials; the information to be provided by them; initial response by law enforcement and child protection agencies; and custody of actors.
- The amount and nature of assistance to be provided by school officials, and the scope of their involvement in law enforcement procedures. This provision would have to require school officials to notify the parent or legal guardian of a minor pupil who was a victim or witness when law enforcement authorities interviewed the pupil.
- Any other matters that would facilitate reporting incidents and exchanging information.

If a pupil were involved in an incident reported to law enforcement according to the memorandum of understanding, upon request by school officials, the pupil's parent or legal guardian would have to execute any waivers or consents necessary to allow school officials access to school, court, or other pertinent records of the pupil concerning the incident and action taken as a result of it.

If officials of a school district determined that an incident had occurred at school and was required to be reported to law enforcement agencies and/or child protection agencies according to the memorandum of understanding, the superintendent of the district, or his or her designee, immediately would have to report that finding to the appropriate State or local law enforcement agency and to the appropriate State or local child protection agency, as provided in the memorandum. ("School district" would mean a school district, a local act school district, an intermediate school district (ISD), or a public school academy. "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 it was held on school premises.)

If provided in the memorandum of understanding, a local law enforcement agency having jurisdiction over a school building of a school district would have to report to the school officials of the building incidents reported to the law enforcement agency that alleged the commission of a crime and that, according to the incident report, either occurred on school property or within 1,000 feet of school property, or involved a pupil or staff member of the school as a victim or alleged perpetrator. Upon the agency's request, school officials would have to give it any information needed to provide this report to school officials.

If provided in the memorandum of understanding, the prosecuting attorney of a county would have to notify a school district located entirely or partly in that county of any criminal or juvenile court action initiated or taken against a pupil of the district, including convictions, adjudications, and dispositions. This notice would have to be made to the school district superintendent or to the intermediate superintendent of the ISD in which the county was located, as provided in the memorandum. If the notice were made to the intermediate superintendent, he or she would have to forward the information to the superintendent of the school district in which the pupil was enrolled. Upon receiving the information, the superintendent would have to share it with appropriate school building personnel. The prosecutor could ask each school age individual involved in a court action described in this provision whether he or she was a pupil in a school district and, if so, in which district.

Disciplinary Action Policy

Each school board would have to develop, publish, and implement a policy concerning disciplinary action for pupils who committed an assault at school. At a minimum, the policy would have to require that the school board expel a pupil aged 12 or older from the district if he or she committed an assault at school; if

the assault were reported to the school board by the victim or, if the victim could not report the assault, by another person on the victim's behalf; and if the school board determined that an assault did in fact occur and was committed by the pupil. The expulsion would have to be permanent, subject to possible reinstatement as provided in the bill. These provisions would apply to any assault on a teacher or other school employee or on a person acting as a volunteer, and to an assault on another pupil that resulted in serious or aggravated injury or constituted an assault with a dangerous weapon.

If an individual were expelled, the school district would have to enter on the individual's permanent record that he or she had been expelled pursuant to the policy and the reason for the expulsion. Unless a district operated or participated cooperatively in an appropriate alternative education program, and in its discretion admitted the individual to that program, the individual would be expelled from all public schools in this State, and the officials of a school district could not allow him or her to enroll in the district unless the individual had been reinstated. Except as otherwise provided by law, an program operated for individuals expelled for assault or possession of a weapon would have to ensure that they were physically separated at all times during the school day from the general pupil population.

If an expelled individual were not placed in an alternative education program, the school district could provide, or arrange for the ISD to provide, appropriate instructional services to the individual at home. The type of instructional services provided at home would have to meet certain requirements of the State School Aid Act, and could be contracted for in the same manner as services for homebound pupils under that Act. The bill specifies that these provisions would not require a school district to spend more money for providing services for an expelled pupil than the amount of the foundation allowance the district received for the pupil under the School Aid Act.

If a school board expelled an individual, it would have to ensure that, within three days after the expulsion, an official of the district referred the individual to the appropriate county community mental health agency or other appropriate human services agency, and notified the individual's parent or legal guardian or, if the individual were at least 18 or were an emancipated minor, notified the individual of the referral.

If a pupil were permanently expelled under a disciplinary action policy, his or her parent or legal guardian or, if the individual were at least 18 or emancipated, the individual could petition the expelling school board for reinstatement to public education in the district. If the expelling board denied

the petition, the parent, legal guardian, or individual could petition another school board for reinstatement in that other district. A reinstatement petition could be initiated 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 180 school days after the expulsion date.

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 a parent, guardian, or individual, a school board would have to make a petition form available.

Within 10 school days after receiving a reinstatement petition, a school board would have to appoint a committee to review it and any supporting information submitted by the parent, guardian, or individual. The committee would have to 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 or his or her designee would have to 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, any supporting information, and information provided by the district, and would have to 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 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 liability or individual liability for the school board or school district personnel.
- The individual's age and maturity.
- 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, to reinstate conditionally, or to deny reinstatement. The board's decision would be final.

The school board could require the individual and, if the petition were filed by a parent or legal guardian, his or her parent or guardian to agree to specific conditions before reinstating the individual in a conditional reinstatement. The conditions would have to include specific requirements for parental involvement and 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 an individual at least 18 or emancipated, could include proposed conditions in a reinstatement petition.

A school board or school administrator that complied with the bill would not be liable for damages for expelling a pupil pursuant to the disciplinary action policy, and the authorizing body of a public school academy would not be liable for damages for expulsion of a pupil by the academy.

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 reinstatement petition for possession of a weapon as a form that could be used under the bill.

A school board would have to use its locally adopted due process policy in expulsion proceedings pursuant to the disciplinary action policy. The Department would have to develop and distribute to school districts a model due process policy that they could adopt for use in reinstatement 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 an expelled pupil 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 immediately eligible

for the prorated share of either the expelling school district's foundation allowance or the academy's foundation allowance, whichever was higher.

If an individual were expelled under a disciplinary action policy, it would be the responsibility of that individual and of his or her parent or legal guardian to locate a suitable educational program and to enroll the individual in it during the expulsion. The Office of Safe Schools in the Department would have to compile information on and catalog existing alternative education programs or schools and nonpublic schools that could be open to enrollment of individuals under the bill or for possession of a weapon. The office also would have to distribute this information periodically to school districts for distribution to expelled individuals. The office would have to work with and provide technical assistance to school districts, authorizing bodies for public school academies, and other interested parties in developing these types of alternative education programs or schools in geographic areas that were not being served.

Reporting Requirements

A school board or its designee would have to report all assaults occurring at school to appropriate State or local law enforcement officials and prosecutors within three school days.

In order to obtain an accurate local and statewide picture of school crime and to develop the partnerships necessary to plan and implement school safety programs, at least annually each school board would have to report to the Department incidents of crime occurring at school within the district. The reporting would have to include at least crimes involving physical violence, gang-related activity, illegal possession of a controlled substance or controlled substance analogue, or other intoxicant, trespassing, and property crimes, including theft and vandalism. For a property crime, the report would have to include an estimate of the resulting cost to the district.

At least annually, each school district would have to prepare and submit to the Department a report stating the number of pupils expelled pursuant to the disciplinary action policy during the immediately preceding school year, with a brief description of the incident that caused each expulsion.

Suspension

If a teacher in a public school had good reason to believe that a pupil's presence in a class, subject, or activity posed a clear threat to the safety and welfare of other pupils or school personnel, or created an unsafe school environment, the teacher could cause the pupil to be suspended from the class, subject, or

activity for up to one full school day.

The teacher immediately would have to report the suspension and the reason for it to the school principal and send the pupil to the principal or his or her designee for appropriate action. If that action required the continued presence of the pupil at school, he or she would have to be under appropriate supervision.

As soon as possible after a suspension, the teacher would have to ask the pupil's parent or guardian to attend a parent-teacher conference regarding the suspension. Whenever practicable, a school counselor, school psychologist, or school social worker would have to attend the conference. A school administrator would have to attend the conference upon the request of the teacher, parent, or guardian.

During a suspension, the pupil could not be returned that school day to the class, subject, or activity from which he or she was suspended without the concurrence of the teacher and the principal.

Proposed MCL 380.1308-380.1311c

Legislative Analyst: S. Lowe

FISCAL IMPACT

The Department of Education could incur costs on two fronts: 1) developing and distributing a "model" due process policy for expulsion proceedings; and 2) compiling information on and cataloging existing alternative education programs open to enrollment for expelled pupils. Depending on current workloads, one FTE could probably satisfy both requirements at a cost of \$80,000.

The fiscal impact on local entities is more difficult to analyze. This bill would require extensive cooperation among local school districts, law enforcement agencies, community health agencies, and others. If there already exists a strong partnership, additional costs could be nonexistent. If, however, communication between the agencies does not exist or is minimal, some costs could be incurred with the formation of these partnerships and reporting requirements. Additional costs could be incurred by the district pursuant to the requirement of establishing a committee to review reinstatement petitions. Often, these types of panels are paid per diem stipends each time they convene. Overall, it is anticipated that there would be increased costs to local agencies, but the amounts are indeterminate and would vary according to existing conditions.

Fiscal Analyst: K. Summers-Coty

S9900\183sa

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.