

## SPECIAL EDUCATION STUDENTS' RIGHTS

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**Senate Bill 571 as passed by the Senate**

**Sponsor: Sen. Wayne Kuipers**

**House Committee: Education**

**Senate Committee: Education**

### **First Analysis (10-17-07)**

**BRIEF SUMMARY:** The bill would ensure that special education students were not denied their rights under state and federal law, in the event they were expelled or suspended from school.

**FISCAL IMPACT:** The bill would appear to have no fiscal impact on the state or on local government.

### **THE APPARENT PROBLEM:**

The Individuals with Disabilities Education Act (IDEA) requires states to ensure that students with disabilities have access to free, appropriate public education in the least restrictive environment possible. The states must verify compliance with IDEA in order to remain eligible for federal special education funds.

Under the act, each state implements a performance plan to evaluate its compliance with the federal requirements. Several years ago, that evaluation revealed language in the Michigan Revised School Code regarding suspension or expulsion of students that was not broad enough to protect all rights of individuals with disabilities under IDEA. Consequently, each year when Michigan Department of Education officials submit the performance plan to the federal government, the plan receives only "conditional" approval.

It has been suggested that the Revised School Code be amended to ensure compliance with the federal act.

### **THE CONTENT OF THE BILL:**

The bill would amend the Revised School Code to say that certain sections of the law concerning student expulsion or suspension would not diminish "any" rights (rather than "the due process rights," as currently provided) of a special education student under federal law.

The bill also would replace the term "handicapped" with the phrase "eligible for special education programs and services."

MCL 380.1311 & 380.1311a

### ***HOUSE COMMITTEE ACTION:***

The House Education Committee reported out the Senate-passed version of the bill without amendment. Some of the information in this analysis is based on the analysis by the Senate Fiscal Agency dated 8-6-07.

### ***BACKGROUND INFORMATION:***

Suspension and Expulsion from School. Under Section 1311 of the Revised School Code, a student who is guilty of gross misdemeanor or persistent disobedience may be suspended or expelled from school if, in the judgment of the school board or its designee, that suspension or expulsion serves the interest of the school. If there is reason to believe that the student is "handicapped," and the school district has not evaluated the student to determine if he or she is handicapped, then the pupil must be evaluated immediately. (As noted earlier, Senate Bill 571 would replace the term *handicapped* with *eligible for special education programs and services*.)

Section 1311 requires a student to be expelled permanently from a school district if he or she possesses a dangerous weapon in a weapon-free school zone, commits arson in a school building or on school grounds, or commits criminal sexual conduct in a school building or on school grounds.

Under Section 1311a, a student in sixth grade or above who *physically* assaults a school employee, contract employee, or volunteer engaged by the school board must be expelled permanently. A student in sixth grade or above who *verbally* assaults a school employee, contract employee, or volunteer is subject to suspension or expulsion from the school district for a period of time determined by the school board or its designee.

When a student is expelled under Section 1311 or 1311a, the school district may provide, or arrange for the intermediate school district to provide, appropriate instructional services at home. If the district operates or cooperates in an alternative education program appropriate for expelled individuals, the district may admit the individual into that program. Alternatively, the student may be enrolled in a strict discipline academy. It is the responsibility of the individual and the parent or legal guardian to locate a suitable alternative education program and to enroll the individual in such a program during the expulsion.

The parent or legal guardian of an individual expelled under Section 1311 or 1311a (or the individual, if at least 18 or an emancipated minor) may initiate a petition for reinstatement, to be reviewed by a designated committee consisting of two school board members, a school administrator, a teacher, and a parent of a student in the district. Based on certain factors, the committee must review the petition for reinstatement and submit a recommendation for unconditional reinstatement, for conditional reinstatement, or against reinstatement.

The Revised School Code specifies that Sections 1311 and 1311a do not diminish *the due process rights* under federal law of a student who has been determined to be eligible for special education programs and services. If this bill were enacted into law, these sections would not diminish *any rights* under federal law of such a student.

School-based Discipline of Students with Disabilities. In school, children with disabilities occasionally act out in ways that may be misunderstood. They are then sometimes inappropriately disciplined. Because their misbehavior may be a manifestation of the disability, careful evaluation is needed to determine the course of action that is in the best interest of the child. For example, in some cases, a behavior intervention program could be more beneficial to the child than punishment, helping the child to overcome the tendency to act in a negative way.

Under the federal Individuals with Disabilities Education Act (IDEA), an Individual Education Plan (IEP) must be developed for each student with disabilities, taking into account that individual's particular needs and prescribing special services as appropriate to ensure that those needs are met. If a child with disabilities is disruptive or displays violent behavior, the response should be a part of the IEP, and should be considered in the context of the child's disabilities. The children should not be immune from punishment, but the decision to discipline a special education student should be made by those familiar with his or her background, and based on what is in the best interest of the child.

**ARGUMENTS:**

**For:**

Currently, in cases involving suspension or expulsion, the Revised School Code protects the due process rights of children with disabilities. That language, however, does not cover the full extent of the child's individual rights under the federal law known as the Individuals with Disabilities Education Act (sometimes called IDEA). Instead, the language of the state statute appears to diminish the rights of special education students. This bill would broaden the language of the state statute to include "any rights" (not only due process rights) of students with disabilities, ensuring that the Michigan law complied with the federal act.

**POSITIONS:**

The Michigan Department of Education supports the bill. (10-16-07)

The Michigan Association of Intermediate School Administrators – Region 8 supports the bill. (10-16-07)

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■ 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.