



Senate Fiscal Agency
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BILL ANALYSIS

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Senate Bill 571 (as passed by the Senate)
Sponsor: Senator Wayne Kuipers
Committee: Education

Date Completed: 8-6-07

RATIONALE

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. Under 2004 amendments to the Act, each state must implement a performance plan to evaluate its implementation of and compliance with the Federal requirements. As a result of that evaluation in Michigan, it was determined that certain language in the Revised School Code regarding suspension or expulsion of students was not broad enough to protect all rights of individuals with disabilities under IDEA. Consequently, it has been suggested that the Code be amended to ensure compliance with the Federal Act.

CONTENT

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

Under Section 1311 of the Code, a pupil 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 pupil is handicapped, and the school district has not evaluated the pupil to determine if he or she is handicapped, then the pupil must be evaluated immediately.

Section 1311 requires a pupil 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 pupil in 6th grade or above must be expelled permanently if he or she physically assaults a school employee, contract employee, or volunteer engaged by the school board. A pupil in 6th 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 pupil 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, he or she may be enrolled in a strict discipline academy. It is the responsibility of the individual and his or her 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 he or she is 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 pupil 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 Code states that Sections 1311 and 1311a do not diminish the due process rights under Federal law of a pupil who has been determined to be eligible for special education programs and services.

Under the bill, these sections would not diminish any rights under Federal law of such a pupil.

Also, in Section 1311, the bill would replace the term "handicapped" with "eligible for special education programs and services".

MCL 380.1311 & 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

Children with disabilities sometimes act out in ways that may be misunderstood, resulting in disciplinary action when treatment or other accommodations would be more appropriate. Because misbehavior among such students 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. 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 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. Such 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.

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 IDEA. The bill would broaden the language to include any rights of those individuals, ensuring that the Michigan law complied with the Federal Act. The State must verify compliance with IDEA in order to remain eligible for Federal special education funds.

Legislative Analyst: Curtis Walker

FISCAL IMPACT

Because this bill simply would align State law with current practice, there would be no fiscal impact on the State or local units of government.

Fiscal Analyst: Kathryn Summers-Coty

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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.