

**SUBJECT:** Student discipline in public schools

**COMMITTEE:** Public Education — committee substitute recommended

**VOTE:** 8 ayes — Sadler, Dutton, Culberson, Hernandez, Hochberg, Price, Rhodes, Uher  
0 nays  
1 absent — Williamson

**SENATE VOTE:** On final passage, April 19 — 31-0

**WITNESSES:** For — Sandy Kress, Community Education Partners; Donald Lee, Conference of Urban Counties; Kenneth Mayfield, Dallas County Commissioners Court; Mike McLamore, Association of Texas Professional Educators; Ilorna Robinson-Holbort, African American Summit  
Against — Eric Hartman, Texas Federation of Teachers  
On — Marjorie Wall, Texas State Teachers Association

**BACKGROUND :** Chapter 37 of the Education Code, enacted in 1995 as part of SB 1, provides for removing disruptive and violent students from the regular classroom into alternative education programs (AEPs). The law requires each school district to adopt a student code of conduct and outlines circumstances under which a student may be placed in an AEP run by the school district or one operated by the county juvenile court. It authorizes expulsions for certain kinds of behavior, but does not require that every expelled student be placed in an educational program.  
  
For further information on current issues in alternative education programs, see *Making the Grade: Alternative Education and Safe Schools*, House Research Organization, Session Focus Report Number 75-12, April 4, 1997.

**DIGEST:** CSSB 133 would completely revise Chapter 37 of the Education Code and require that all students, including those expelled from a regular school program, be placed in some form of educational program.

**Student code of conduct.** Each school district, working with its district-level planning committee, would have to adopt and annually review a student code of conduct specifying the circumstances under which students could be removed from their classroom, suspended, or expelled. The code of conduct would have to be posted and prominently displayed at each school campus. CSSB 133 would establish procedures for reporting and investigating violations of the code.

Violations of the code could be punished by:

- **Removal from the classroom** — A teacher could remove students who violated the code or whose behavior was so unruly, disruptive, or abusive that it seriously interfered with order and instruction. The principal could place students in another appropriate classroom or in-school setting or in a district alternative education setting. As soon as practicable after the student was removed from the classroom, the principal would have to inform the parents about the incident and possible consequences.
- **Suspension** — Students suspended for violating the code of conduct could be placed in an in-school suspension setting or into an alternative education setting. A student could not be placed in an in-school suspension program for longer than five days at a time or for more than 10 days in any one school year without a hearing that included the principal or appropriate administrator, the teacher, the student, and the student's parents.
- **Expulsion** — A student would have to be expelled for committing certain felony offenses while on or within 1,000 feet of school property or while attending a school-sponsored event or school-related activity on or off of school property. These offenses would involve weapons, assault, sexual assault, arson, murder or attempted murder, indecency with a child, and alcohol or drug possession or distribution. Districts also would have the option of expelling students engaged in other felony offenses. Students who engaged in expellable behavior would have to be placed in a district alternative education setting (DAES).

Students removed from the classroom or suspended could not attend or participate in a school-sponsored or school-related activity during that time.

A parent whose child had been removed or suspended could request a conference with the principal or a designated administrator and any involved teacher. At the conference, the student would be entitled to written or oral notice of the reasons for suspension or removal. The student could not be returned to the original classroom pending the conference. Following the conference, the principal could order the student to continue the period of suspension or be placed in another classroom. The principal's decision would be final and could not be appealed.

Each school would have to establish a three-member campus review committee to determine placement of students when teachers refused to accept them back into the classroom. The committee also would make recommendations to the district concerning readmission of expelled students. The committee would be made up of two teachers chosen by the faculty and one member of the campus advisory staff chosen by the principal. The principal could also choose a student to serve as an advisory, nonvoting member. A teacher removing a student could not serve as a member or alternate. The student would have to be sent to the principal's office and could not return to that class without the teacher's consent unless the campus review committee determined that the placement was the best or only alternative

CSSB 133 also would authorize principals to order expulsion or immediate placement of a student into a DAES under certain conditions.

**District alternative education setting.** Every school district would have to provide an alternative education setting (DAES) for students who had committed certain drug and felony offenses on or within 1,000 feet of school property or while attending a school-sponsored or school-related activity on or off of school property or while off school property and outside school events. Off-site offenses would include any offense under Title 5 of the Penal Code, robbery, aggravated robbery, burglary, committing a serious act or offense while under the influence of alcohol, or using exhibiting or possessing a firearm, knife, club or weapon.

The DAES could be either on or off the regular school campus but would have to keep students separate from those in the regular program. The DAES would have to offer an academic program that enabled students to perform at grade level and offered the course necessary to fulfill high school graduation requirements. A DAES would have to administer state-mandated assessment tests, and the education commissioner would have to annually evaluate the academic performance of students in the setting.

Students could not attend or participate in a school-sponsored or school-related activity while in a DAES. School districts could join together to operate a combined DAES.

The board of trustees would set the term for a student's placement into an DAES. Students would have to receive a review of their status, including their academic status, at intervals not to exceed 120 days. High school students and their parents would have to meet with the board's designee to determine progress toward meeting high school graduation requirements and would have to establish a specific graduation plan for the student.

A student placed in an DAES on or before the first anniversary of a previous placement would have to remain in the DAES for two full school semesters.

Students who continued to violate the code of conduct while in an DAES or who had been placed in an DAES more than two times in a single school year could be expelled for serious and persistent misbehavior. Before a student could be expelled, the student and parents would have to be notified that the student's behavior could result in placement in a juvenile justice alternative education setting. A conference would have to be held and the student given an opportunity to modify the offensive behavior.

**Court involvement.** No later than two working days after a student was ordered expelled or placed in an DAES, the school district board of trustees would have to deliver a copy of the order to the appropriate county juvenile court. If a student was expelled, the board or its designee would have to refer the student to the juvenile court for appropriate proceedings under Title 3 of the Family Code. The court would have to conduct an investigation

and notify the school district whether it had jurisdiction and any disposition of the case.

In counties with a population of less than 125,000, the juvenile board would have to enter into a memorandum of understanding (MOU) with the school board concerning the juvenile probation department's role in supervising and providing other support services for students in a DAES. A court could order an expelled student to attend a DAES as a condition of probation unless otherwise agreed in the MOU. Any DAES student referred to juvenile court more than once in a year could not be placed by the court back in the DAES without the school district's consent, unless otherwise agreed in the MOU. A court order placing a student in an DAES would have to prohibit the student from attending or participating in school-sponsored or school-related activities.

An expelled student who was not detained or receiving treatment under a juvenile court order would have to be enrolled in an educational program. A school district could readmit an expelled student on its own initiative or at the recommendation of the campus review committee while the student was completing any requirements imposed by the court. The district could not refuse to readmit a student who had successfully completed any court-imposed requirements but could place the student in a DAES.

If a student transferred to another district, the school board would have to include with the student's records a copy of the expulsion order and referral to juvenile court. The new district could continue the expulsion, place the student in an DAES, or allow the student to attend regular classes without completing the expulsion.

**Juvenile justice alternative education setting (JJAES).** The juvenile board of a county with a population of more than 125,000 would have to develop a JJAES, subject to the approval of the Texas Juvenile Probation Commission (TJPC). A juvenile board in counties with populations of less than 125,000 could voluntarily establish a JJAES, but would not have to meet the review and approval requirements.

In a county with a JJAES, a student could not be expelled without timely written notice from the school district board of trustees to the juvenile court.

The district would have to continue to provide educational services until timely notice was given.

The juvenile court would have to order a student placed on probation or deferred prosecution to attend a JJAES. The court would have to consider the length of the school district's expulsion order in determining the terms of the court-ordered probation or deferred adjudication.

A JJAES would have to adopt a student code of conduct. The education commissioner and the TJPC would jointly establish educational goals for the JJAES focusing on English language arts, mathematics, science, history, and self-discipline. Each school district would have to consider credits earned in a JJAES as credit earned in a district school. Each JJAES would have to administer state-mandated assessment tests and would have to offer, at a minimum, a high school equivalency program.

Expelled students who were performing at an academic level that would enable them to graduate on the expected graduation date would have to be provided with the courses they needed. High school students, their parents, and a board designee would have to review progress toward graduation and establish a specific graduation plan.

A JJAES could be provided in a facility owned by a school district, and a school district could provide personnel and services under a contract with the JJAES.

A JJAES would have to operate seven hours a day, 180 days per year, and offer an extended program 224 days each year to students identified as unlikely to be promoted to the next grade level.

Not later than September 1 of each year, school districts in counties with a population of more than 125,000 would have to enter into an MOU with the county juvenile board unless the parties agreed that each school district would enter into an individual MOU. An MOU would have to outline the responsibilities of the juvenile board for the JJAES and define the amount and conditions of payment from the school districts to the juvenile board for students served in the JJAES. The MOU also would have to address other issues, such as placement timeframes and transportation of students.

If the parties were unable to agree to an MOU, the issues of dispute would have to be referred to a binding arbitration process.

Students in a JJAES would be reported as if they were enrolled at their assigned campuses for purposes of state financing. Students progressing well in a JJAES could choose to remain in the program, with parental permission, despite being released from court jurisdiction. Students could not attend or participate in a school-sponsored or school-related activity while in a JJAES.

**Hearings.** Principals would have to make timely notification to parents when a student was placed in an DAES, JJAES, or in-school suspension for more than 10 days and schedule a hearing. At such hearing, students would be entitled to written notice of the reasons for removal and an explanation of the basis of the placement and could explain their positions. Students could be represented by a parent or another adult who was not an employee of the school district. Students could not return to the regular classroom pending the hearing.

After the hearing, the principal would send a written notice of decisions and recommendations about placement to the student's parents and to the board of trustees of the school district. The student could appeal the decision to the board of trustees, whose decision would be final.

**Funding.** Funding for students in an DAES would be provided in the same manner as if they were attending the regular program. Funding arrangements for students in a JJAES would be determined by the MOU between the county and the school district, but could not be less than the amount that would be attributable to the student in the regular education program or DAES, whichever was greater.

The new school district would provide funds for students reassigned from one JJAES to another.

Funds paid by school districts to the JJAES would have to be spent on programs in alternative education settings and for the benefit of the student on whose placement the funds were based.

The school district in which the student was last enrolled would have to provide transportation to and from a JJAES. The students in a JJAES would have to be transported separately from students not attending an alternative education setting.

The Office of State-Federal Relations would have to identify additional state or local funds to assist local juvenile probation officers conducting job training or educational programs in a JJAES and would have to coordinate its efforts with the TJPC. These efforts would have to be described in an annual report to the Legislature summarizing any funds provided.

Each school district would have to provide a detailed report to the commissioner of placements into alternative education settings.

**Reporting certain offenses.** All primary and secondary school principals would have to report to the appropriate law enforcement officials any reasonable suspicions that certain criminal activities had occurred in school, on school property, or at a school-sponsored or school-related activity on or off of school property. The principal would have to provide the names and addresses of the students involved, and notify each teacher and support staff member having regular contact with the students involved. This notification would not be required if the principal reasonably believed that the activities involved did not constitute criminal offenses.

Teachers, school administrators, and school employees would not be liable for civil damages for reporting to a school administrator or governmental authority a student suspected of using, possessing or selling alcohol, marijuana or other drugs, or abusable glue or aerosol paint.

CSSB 133 would take effect beginning with the 1997-98 school year.

**SUPPORTERS  
SAY:**

CSSB 133 would strengthen Chapter 37 and provide clear guidelines for school districts and counties on how to provide a quality educational setting for every student in Texas. The bill would retain the authority of teachers and schools to remove disruptive and violent students from the classrooms while eliminating the expulsion of students to the streets. Schools would have clear authority to adopt a true “zero tolerance” policy towards the use of drugs and alcohol or the possessions of weapons on campus. The bill

would give schools and courts the tools they need to create truly safe schools where students can learn and provide appropriate alternative education settings for students who are removed from the regular classroom setting.

By requiring that every expelled student attend some sort of educational program, CSSB 133 would ensure that students who have been removed from the regular classroom continue to get an education. School districts, the juvenile justice system, and the students themselves all would benefit from educational programs that keep young people off the streets where the chances of getting into more trouble are much greater. Texas prisons are full of people who were expelled from school and left with no other chances to get an education. Students in danger of being expelled would also benefit from individual attention provided in an alternative education setting.

CSSB 133 would clearly outline a required hearing process for students removed from the classroom that would protect their rights to due process. Questions about this right under Chapter 37 have led to a number of lawsuits against school districts in the two years since the new law was enacted. CSSB 133 would provide a clear, legally defensible hearing process that would protect students and schools.

CSSB 133 would allow school districts to expel or place in alternative education settings students who came to school or school-sponsored events with even a small amount of alcohol or illegal drugs. This would send a clear message to students that schools are serious about ridding campuses of alcohol and drugs.

CSSB 133 would ensure that students placed in a DAES or JJAES receive a basic education comparable to that provided in regular programs. Students who are placed in a DAES, often for one or two semesters, would be able to continue to stay on track for graduation even outside the regular school environment. These students would also have to take state-mandated assessment tests, and their scores would be figured in with those of the student's regular school. Holding alternative education settings to the same educational standards and expectations, including state-mandated assessment tests, would reduce any incentive for alternative education settings to become "dumping grounds" for the difficult to educate.

The alternative education settings would have to provide an extended program for students who would not otherwise be able to move on to the next grade level. This is important because many students removed from the classroom are behind academically, a fact that is often directly related to the behavior problems that propelled them to the alternative education setting.

**OPPONENTS  
SAY:**

CSSB 133 would go too far in allowing school districts to adopt zero tolerance policies prohibiting drugs or alcohol at school or school-sponsored events and activities. This policy would authorize school districts to expel students for behavior that might not warrant such extreme punishment. For example, a school could expel a student for being caught with a can of beer at a football game, on a debate team trip, or at any other school-sponsored event. This kind of strict policy would have a number of unintended consequences. Thousands of students across the state could be expelled for relatively minor and rather common offenses, then required to enter a JJAES alongside juveniles accused of far more serious crimes.

The cost of educating students in alternative educational settings can be significantly higher than the cost of educating them in a regular classroom. Yet, under the bill, schools and counties would receive the same per student allotment regardless of where the student was educated. Although the Legislature has set aside \$36 million for the Texas Education Agency to administer the DAES and \$14 million to counties for JJAES funding for fiscal 1998-99, these sums may not be sufficient to cover the educational requirements outlined in the bill.

**NOTES:**

The committee substitute represents a complete rewrite of the Senate-passed version of the bill.