

SUBJECT: Considering mitigating circumstances in assigning student discipline

COMMITTEE: Public Education — favorable, without amendment

VOTE: 9 ayes — Sadler, Dutton, Dunnam, Grusendorf, Hardcastle, Hochberg, Oliveira, Olivo, Smith
0 nays

WITNESSES: For — None
Against — Eric Hartman, Texas Federation of Teachers
On — Dohn Larson, Texas Classroom Teachers Association

BACKGROUND: Education Code, sec. 37.006 establishes that a student must be removed from class and placed in an alternative education program if the student commits certain serious offenses, including public lewdness, assault, selling, giving, or distributing certain controlled substances, or retaliation against a school employee. In determining whether there is a reasonable belief that a student has engaged in felony behavior, the superintendent may consider all available information.

Sec. 37.007 establishes that a student must be expelled from school if the student commits certain serious offenses, including using, exhibiting, or possessing a firearm or illegal knife, aggravated assault, sexual assault, murder, indecency with a child, or arson. An appropriate administrator may modify the length of expulsion in certain cases of a student bringing a firearm to school or a school-related activity.

DIGEST: HB 447 would allow school administrators to take mitigating circumstances into account when assigning student punishment for certain offenses.

A board of trustees of a school district could adopt a written policy to allow a school principal or other appropriate administrator to reduce the term of an alternative education program placement or to suspend the student for selling, giving, or delivering marihuana or other controlled substance, a dangerous drug, or alcohol, committing a serious offense while under the influence of alcohol, using abusable glue, aerosol paint, volatile chemicals,

or engaging in public lewdness or indecent exposure, unless the conduct would constitute a felony.

A board of trustees of a school district also could adopt a written policy to allow the board or board's designee to reduce the term of an expulsion or to place a student in an alternative education program rather than expelling the student for using, exhibiting, or possessing a firearm, an illegal knife, a club, or a prohibited weapon.

The written policy would provide that a student's disciplinary history, intent or lack of intent, academic standing, and any other mitigating circumstance would have to be considered.

The commissioner of education would have to provide by rule for appropriate reporting of any action taken under these new sections.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2001.

**SUPPORTERS
SAY:**

HB 447 is necessary because the "zero tolerance" policy established under current statute requires a student to be punished for certain offenses without taking mitigating circumstances into account. There are situations in which a student unintentionally or inadvertently commits an offense and because of it could end up being sent to an alternative education program and lose valuable opportunities, such as a college scholarship. For example, a straight "A" student who was holding a prescription bottle temporarily for a friend in his backpack could be sent to alternative school if the bottle were found there. Similarly, under zero tolerance policies, a student could be suspended for giving her girlfriend an over-the-counter medicine such as Advil or Midol. In dealing with the fate of children's lives, all circumstances should be considered.

HB 447 would ensure that local administrators were able to run their schools and make decisions in the best interest of students. It is important for these administrators, who are involved with students on a regular basis, to retain local control over student discipline and not have to apply a blanket "zero tolerance" policy to all students, no matter what.

OPPONENTS
SAY:

HB 447 is inappropriate because it would send Texas schools back to where they were before enactment of the safe schools legislation in 1995. This bill would allow administrators too much discretion to favor some students over others in assigning consequences for the same misconduct.

The offenses laid out in Education Code, secs. 37.006 and 37.007 are serious offenses and are tied to the Penal Code definitions, which include an intent requirement. If there were instances in which intent were not being considered, then it would be appropriate to emphasize in the statute the need to find intent rather than establishing that there should be mitigating circumstances, which could lead to discriminatory practices.