

SUBJECT: Requiring consideration of mitigating factors before disciplining students

COMMITTEE: Public Education — committee substitute recommended

VOTE: 6 ayes — Eissler, Farias, Jackson, Olivo, Patrick, Weber

0 nays

5 absent — Hochberg, Allen, Aycock, Dutton, Shelton

WITNESSES: For — Sheri Aleman, Kaige Kloesel; Rose Cruz; Amelia Deschenes; Casey and Jennifer Harmeier; Frank Harmeier, Voice of Truth; Kara Johnson, for Laura Guerra-Cardus of the Children’s Defense Fund; Rebecca Lightsey, Texas Appleseed; Damon McCall; Dustin Rynders, Advocacy Incorporated; Anne Sananikone; Jason and Tracie Stallings; Rona Statman, The Arc of Texas; Fred Wink, Texas Zero Tolerance; (*Registered, but did not testify*: Jazmin Acuna, Texas Criminal Justice Coalition; Jessica Cassidy, American Civil Liberties Union of Texas; Christine Gendron, Texas Network of Youth Services; Merrylynn Gerstenschlager, Texas Eagle Forum; Noelita Lugo, Texans Care for Children; Susan Moffat, Representation Alliance; Sheena Molsbee; Maryann Overath, The Southern Disability Law Center; Jason Sabo, Children at Risk; Bill Stout, Green Party of Texas; Erica Terrazas, Texas Appleseed)

Against — None

On — Monty Exter, Association of Texas Professional Educators; Angela Lello, Texas Council for Developmental Disabilities, Ted Melina Raab, Texas AFT; (*Registered, but not testifying*: Linda Brooke, Texas Juvenile Probation Commission)

BACKGROUND: Education Code, chapter 37 requires each school district to adopt a student code of conduct in which the district must specify whether consideration would be given to certain mitigating factors — such as self defense, intent, a student's disciplinary history, or any disability a student may have— before suspending, expelling, or assigning a student to a disciplinary alternative education program.

DIGEST: CSHB 171 would require school districts to consider mitigating factors such as self-defense, intent, a student's disciplinary history, or any disability a student may have, before suspending, expelling, or assigning a student to a disciplinary alternative education program (DAEP) or juvenile justice alternative education program (JJAEP), regardless of whether the disciplinary action was mandatory under the district's code of conduct.

The bill would apply beginning in the 2009-10 school year.

The 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, 2009.

SUPPORTERS SAY: CSHB 171 would decrease the number of students disciplined unreasonably because a school district did not consider mitigating factors when evaluating a student's actions. Seventy-eight percent of the students suspended, expelled, or assigned to DAEP or JJAEP are not placed there by mandatory disciplinary actions under a school district's code of conduct, indicating that the student probably had not misbehaved previously or had committed a minor offense. Students in a school district with a zero tolerance policy who defend themselves against another student physically harming them receive the same punishment as the students' attackers because school administrators do not consider self defense. Districts sometimes punish students for accidents or overreact if a student who has never been in trouble before violates the code of conduct.

Punishments that do not fit the misbehavior have long-term negative emotional effects on students, and unjustified assignments to alternative education programs isolate students and often result in the students falling behind academically. School administrators are allowed to consider mitigating factors but sometimes choose not to exercise common sense. This bill would help ensure that students were not unnecessarily removed from the traditional learning environment.

OPPONENTS SAY: CSHB 171 would restrict the amount of local control afforded to school administrators. Education Code, ch. 37 is too prescriptive as is and already permits a district to consider mitigating factors.

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NOTES: The companion bill, SB 2270 by Gallegos, passed the Senate by 31-0 on April 28.