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Making the Grade: Alternative Education and Safe Schools

Texas schools continue to grapple with problems created by violent and disruptive students. In enacting the Safe Schools Act as part of the 1995 rewrite of the Education Code, the Legislature had two main objectives: to give teachers and administrators clear authority to remove disruptive students from the classroom and to create a safety net so that students expelled from school would not be cast on the streets. The act aimed at eliminating the traditional process of suspending and expelling students, requiring instead that students be "expelled" to an alternative education program either within the public school system or operated in conjunction with the juvenile justice system. However, thousands of students with behavioral problems still are being expelled to the streets, primarily because of gaps in the current law and funding limitations. There is also concern about students' rights to due process; the Safe Schools Act does not specify procedures for protecting these rights in certain situations. On the other hand, some say the act weakened local control by establishing looser standards than the "zero tolerance" policies some districts already had in place for students caught with alcohol or drugs at school or school-sponsored events.

In an attempt to solve some of these problems, the 75th Legislature is revisiting the Safe Schools Act. The Senate has already passed several bills (SB 132, SB 139, and SB 136) to revise provisions of the Safe Schools Act. Most of the provisions in the Senate bills have been included in an omnibus House bill, HB 1090 by Goodman.

for JJAEPs. While every large county in the state operates a JJAEP, the range of students served varies from county to county. Bexar County operates a year-round JJAEP that accepts every expelled

Operational Issues

Funding is a major area of concern for school districts and counties trying to operate effective and efficient alternative education programs (AEPs) and juvenile justice alternative education programs (JJAEPs). School districts are expected to operate AEPs on the basis of a "dollar following the student" formula, but the cost of educating students in an AEP is often higher because of the demands of educating disruptive and violent students. Each local school district and county makes its own funding arrangements

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The Safe Schools Act

The Safe Schools Act, codified as Chapter 37 of the Texas Education Code, outlines the circumstances under which students may be removed from the classroom and placed in a school-based alternative education program, known as an AEP, or in an alternative education program operated by the juvenile justice system, usually referred to as a JJAEP.

The act requires every Texas school district to adopt a student code of conduct developed in consultation with a district-level committee and, as appropriate, with the local county juvenile board. The code of conduct must establish standards for student conduct; specify the circumstances under which a student may be removed from a classroom, campus or AEP; outline the responsibilities of each county juvenile board concerning the establishment and operation of a county AEP; and specify conditions for payments from the district to the local juvenile board to cover JJAEP costs.

Furthermore, every school district must create an AEP, either on or off the campus, for students who have been removed from the regular campus. AEPs must offer basic instruction in English language arts, mathematics, science, history and self-discipline. Students are placed in an AEP if they engage in conduct punishable as a felony or commit certain offenses on school property or while attending a school-sponsored event. These offenses include selling or using drugs or alcohol and retaliating against a school official. Students removed under these conditions may not attend or participate in school-sponsored or school-related activities.

A teacher may remove a student from class if the teacher has documented repeated disruptive behavior or if the student's behavior is so unruly, disruptive or abusive that it interferes with

a teacher's ability to teach or other students' ability to learn. The student cannot be returned to the classroom without the teacher's consent. If the teacher refuses to readmit the student to the classroom, a three-member committee, made up of other teachers and school officials, determines the appropriate placement for the student.

Within three days of the student's removal from a classroom by a teacher, the principal must schedule a hearing with the student, the student's parent or guardian, and the teacher who removed the student from class to determine whether to place a student in an AEP.

Students may be expelled if, after being placed in an AEP, they continue to engage in serious or persistent misbehavior that violates the district's code of conduct. Students must be expelled if they commit certain felonies, including possession of firearms, murder, and indecency with a child. Prior to expulsion, the school board must conduct a hearing, with the student represented by a parent or another adult. Hearing procedures must guarantee the student's due process rights under the federal constitution.

The 22 Texas counties with populations of more than 125,000 must work with school districts to establish JJAEPs for students who have been expelled from school and found by a court to have engaged in delinquent conduct. The JJAEP must provide an academic program focusing on English language arts, mathematics, science, history and self-discipline. The program must operate at least seven hours per day, 180 days per year. Counties and school districts have some flexibility in arranging the terms of a JJAEP: the school district may provide personnel and services, or it may contract with an independent third party to assume full responsibility for operation of the JJAEP.

student in the county. Harris County currently serves only a portion of all expelled students. A key difference between the two counties is that Bexar County supplements its funding with equalization funds from the property-rich Alamo Heights Independent School District, while Harris County does not have access to equalization funds. Dallas and Travis counties are the only other counties that have access to equalization funds for alternative education programs. Meanwhile, most small counties do not operate JJAEPs because the cost of serving the relatively small number of expelled students is simply too high.

In May 1996, the state allocated \$7 million to eligible counties to pay for JJAEP start-up costs and \$18 million to the Texas Education Agency for school-based AEPs. Local school districts usually pay for the operation of AEPs and JJAEPs based on the number of students transferred into the programs, using the average student cost per day.

Counties have complained that they need more from districts than the average student cost per day to cover daily overhead and teacher costs — expenses that must be maintained regardless of the number of students transferred into JJAEPs — and that teaching serious juvenile offenders is more costly than teaching regular students. State officials estimate that by August 31, 1997, 3,500 students will have been served in JJAEPs.

CSHB 1, the general appropriations bill for fiscal 1998-99, would maintain state funding for AEPs at the current level of \$18 million per year but provide no additional funding for JJAEPs. However, funding for JJAEPs is on the House version of the Article 11 "wish list" of items for which additional appropriations should be provided if more money becomes available.

Under current law, counties that have a population of more than 125,000 residents enter into agreements

with every school district in that county on funding arrangements and other issues relating to the operation of a JJAEP. These counties also have input into developing each district's student code of conduct. In some cases, the difficulties involved in negotiating a separate contract with each individual school district have hampered the ability of counties to effectively provide services for all students who need to be in a JJAEP.

Proposals under consideration by the 75th Legislature would address this problem by allowing large counties to develop one memorandum of understanding (MOU) with all of the school districts in that county each year, unless the parties agree to execute individual MOUs.

“ . . . compulsory attendance requirements would ensure that no student in Texas was expelled to the streets.”

“ . . . the Legislature should not enact compulsory attendance laws without providing sufficient funding to operate programs . . . ”

The MOU would have to address such issues as funding, programmatic concepts, behavior for which a student could be placed in a JJAEP, transportation to JJAEPs, and maximum operating

capacity for the JJAEP. If the districts and juvenile board were unable to reach agreements, they would be required to enter into a binding arbitration process.

Expulsion

Thousands of students are still being expelled to the streets, despite the Legislature's goal to replace suspension and expulsion with alternative programs to educate disruptive students. This practice is continuing for a variety of reasons. Small counties usually do not have the resources to voluntarily create a JJAEP for the relatively small number of students who are expelled for committing serious crimes. More significantly, the current law does not require counties of any size to educate students who are expelled for serious and persistent misbehavior but not arrested for a crime.

Pending legislation would address this problem through a compulsory attendance law requiring that

every expelled student attend some sort of education program. As part of the required memorandum of understanding, counties and school districts would determine how and where every student would be served.

Supporters say that adopting a compulsory attendance requirement would ensure that every student in Texas could attend some sort of educational program. 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. It is the student in danger of being expelled who would benefit most from individual attention provided in an alternative education setting.

Opponents say that the Legislature should not enact compulsory attendance laws without providing sufficient funding to operate programs for every student who is expelled. In small counties that do not operate JJAEPs, schools may be forced to keep violent or disruptive students just because there is nowhere else for the student to go. In large counties, the increased cost of providing for expelled students would probably fall on the county governments, since the Legislature has not committed to giving the counties the funding it would take to provide for all of the additional students that the JJAEP would have to serve.

Due Process

In the two years since the Safe Schools Act was enacted, numerous school districts have been taken to court by students who said they were not apprised of

accusations against them. Recently, in a case filed in San Marcos (*Nevaras v. San Marcos Consolidated Independent School District, et. al.*) a federal judge ruled that a student who is placed in an AEP is denied due process because the Education Code does not require a hearing when a student is removed from regular classes and placed in an AEP for engaging in conduct punishable as a felony.

Pending legislation would change the current language to require a hearing within three days of a student's being removed from the classroom by a teacher, a principal, or other appropriate administrator. This provision is meant to clarify that students are entitled to a hearing anytime they are removed from a classroom for placement in an AEP.

Supporters say this measure would correct a problem in current law that may have been an oversight, but is nevertheless affecting many Texas students who have been removed from the classroom and placed in an AEP. In some cases, such as when a student is arrested for an offense that did not take place at school, principals are not required to hold a hearing or review

before placing the student in an AEP. The law should be revised to ensure that whenever students are placed in an AEP, they have a right to a hearing or conference in which their point of view can be represented.

Opponents say the current law already contains a number of provisions to protect a student's due process rights. For example, a hearing is required if a student will be placed in an AEP for a semester or more. If the quality of education provided in an AEP is comparable to that of a regular classroom, principals and other administrators should not have to go through an elaborate hearing process every time they want to remove a student from a classroom for disruptive behavior.

“ . . . students placed in an AEP [should] have a right to a hearing or a conference in which their point of view can be represented.”

“ . . . administrators should not be required to go through an elaborate hearing process every time they want to remove a student from a classroom for disruptive behavior.”

Zero Tolerance Policies

Current law does not allow schools to expel students for such offenses as possession of drugs or alcohol or assaulting a teacher. Before the Safe Schools Act was enacted, many districts had a "zero tolerance" policy of expelling students for this behavior. The Senate recently passed SB 136 by Bivins, which would allow schools to expel a student for possessing or using any amount of alcohol or drugs on school property or at a school-sponsored event.

Supporters say school districts should be allowed to have a true zero tolerance approach to drugs, alcohol and firearms in order to eliminate these dangers from school property and school functions. Students who come to school or school-sponsored events with even a small amount of alcohol or drugs should be automatically expelled. This would send a clear message to all students that schools are serious about ridding campuses of alcohol and drugs.

Opponents say that if this "one strike" policy were adopted, a student could be expelled and placed in a JJAEP just for being caught with a can of beer at a school-sponsored event. Such an inflexible 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 be required to spend months in a JJAEP alongside juveniles accused or convicted of far more serious crimes. JJAEPs, which are designed to deal with serious offenders, would have to educate students who would be better served in the regular school environment.

Some school districts are already being too zealous in enforcing the current law regarding possession of alcohol, drugs and weapons at school. In recent months, there have been a number of reports of students being placed in AEPs for such "offenses" as

bringing subscription allergy medicines to school. The proposed zero tolerance policy is too harsh in that it would give school districts the authority to expel students for behavior that might not warrant such extreme punishment.

Quality of Education

A major concern about AEPs and JJAEPs is with the quality of the education they provide. Some critics say these programs often are not comparable to regular classes and that, as a result, students in AEPs and JJAEPs fall further behind in their studies. Seniors may miss the chance to graduate with their class because they have not been able to meet the academic requirements for graduation. Many of the students who are sent to AEPs are behind academically anyway — a fact that is often directly related to the behavior problems that propelled them to the AEP.

Many people are also concerned that if AEPs are not held to the same educational standards and expectations as regular schools, they will become "dumping grounds" for the difficult to educate.

Pending legislation would require that AEPs and JJAEPs offer a comparable education program staffed by certified teachers and subject to the same testing requirements as regular school programs. School officials, working with the student and parents, would be required to regularly review each student's academic progress and develop a specific graduation plan.

Supporters say students who are placed in AEPs and JJAEP should be assured of receiving an education comparable to that provided in regular schools. These students should not be allowed to fall even further behind academically by being in an AEP

“. . . a true zero tolerance approach . . . would send a clear message . . . that schools are serious about ridding campuses of drugs and weapons.”

“The proposed zero tolerance policy is too harsh in that it would give school districts the authority to expel students for behavior that might not warrant such extreme punishment.”

or JJAEP offering a substandard educational program.

If alternative programs are not required to offer a comparable education, their lower operating costs could create an incentive for school districts to save money by "dumping" students in AEPs or JJAEPs.

Opponents say the cost of educating students in AEPs and JJAEPs can be significantly higher than the cost of educating students in a regular classroom. Yet under the current funding arrangement for AEPs, schools receive the same per student allotment whether that student is in the regular classroom or in an AEP or JJAEP.

Without additional funding for students in AEPs, it may be difficult to provide a comparable education in AEPs without somehow taking away funding for students in regular classrooms. Siphoning money

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away from regular programs to pay for AEPs and JJAEPs would unfairly reward problem students at the expense of students who are not disruptive.

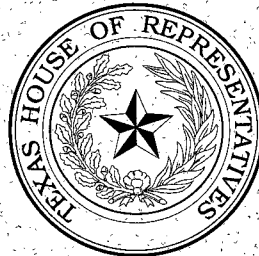
Other opponents say AEPs and JJAEPs should offer more than just the basic curriculum that is currently required by law. Stiffer zero tolerance policies, if enacted, would make it likely that many more

students, including some currently enrolled in honors courses, could be placed in JJAEPs, often for an entire semester or more. These students should not be derailed from advanced course work while they are in an AEP or JJAEP, but should be provided with the opportunity to keep up their studies so that they are not at a disadvantage when they return to school.

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