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BILL ANALYSIS



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Senate Bill 730 (Substitute S-1 as reported)
Sponsor: Senator John J. Gleason
Committee: Education

Date Completed: 10-18-07

RATIONALE

The term "handicapped" has long been recognized as being offensive to many individuals with disabilities. Although the term has been replaced with more current language in sections of the Michigan Administrative Code dealing with disabled students, references to handicapped individuals or handicappers remain in some sections of the Revised School Code. It has been suggested that those references be changed to reflect present usage.

In another matter, an evaluation of the State's compliance with the Federal Individuals with Disabilities Education Act (IDEA) determined that certain language in the Revised School Code regarding the suspension or expulsion of students was not broad enough to protect all rights of individuals with disabilities under IDEA. That law requires states to ensure that students with disabilities have access to free, appropriate public education in the least restrictive environment possible.

CONTENT

The bill would amend the Revised School Code to replace references to a "handicapped person" with "student with a disability"; and to state that a section of the Code concerning the expulsion or suspension of a pupil would not diminish "any" rights (rather than "due process rights") of a special education pupil under Federal law.

The Code contains references to a "handicapped person", "handicapped pupil", and "handicapper" in certain definitions and other provisions throughout the Code. The

bill would replace those terms with "student with a disability".

"Student with a disability" would mean that term as defined in R 340.1702 of the Administrative Code, i.e., a person who is determined by an individualized education program team or a hearing officer to have one or more of specified impairments that necessitate special education or related services, or both, who is not more than 25 years of age as of September 1 of the school year of enrollment, who has not completed a normal course of study, and who has not graduated from high school.

Under Section 1311 of the Revised School 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 action serves the interest of the school. If there is reason to believe the pupil is handicapped, and the school district had not evaluated the pupil to determine if he or she is handicapped, then the pupil must be evaluated immediately. Section 1311 also 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, or commits arson or criminal sexual conduct in a school building or on school grounds.

If a pupil is expelled under these provisions, Section 1311 allows home instructional services, alternative education, and enrollment in a strict discipline academy, and permits a person to file a petition for reinstatement.

The Code states that Section 1311 does 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. The bill would refer to "any rights", rather than "the due process rights". The bill also would refer to a "student with a disability" rather than "handicapped".

MCL 380.4 et al.

BACKGROUND

The word "handicap" is derived from a 17th century game called "hand in cap," according to the Oxford Dictionary of English. In that game, two participants offered to exchange two articles. A referee could require one of the participants to contribute additional money to the trade to adjust for any difference in the value of the two items. The participants then signaled acceptance or rejection of the trade by withdrawing their hands from their caps simultaneously, either full or empty.

The word came to represent any equaling out of differences, such as in horseracing, in which faster horses are handicapped by the addition of weights to make the race more competitive. In that context, the term was used to describe the weights themselves or any other added impediment, and gradually came to represent any type of impediment. The word was first used to refer to a physical disability in the early 20th century.

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

Many believe that referring to individuals with disabilities as "handicapped" is demeaning, conjuring up images of people begging for money on the street, with cap in hand. Although the term has a different origin, the word continues to carry that negative connotation, despite the fact that many people with disabilities are very independent, living normal lives. In many cases, people use the label without realizing that it is hurtful or offensive. The bill would help to raise awareness of the issue and remove the term from the Revised School

Code, making the language consistent with the Administrative Code.

Supporting Argument

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 a child's individual rights under IDEA. The bill would broaden the language in Section 1311 to include any rights of those individuals, helping to ensure that Michigan law complies with the Federal statute. The State must verify compliance with IDEA in order to remain eligible for Federal special education funds.

Legislative Analyst: Curtis Walker

FISCAL IMPACT

The bill would have no fiscal impact on State or local 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.