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BILL ANALYSIS



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Senate Bill 827 (as introduced 2-15-18)
Sponsor: Senator Rick Jones
Committee: Judiciary

Date Completed: 2-20-18

CONTENT

The bill would amend the Revised School Code to do the following:

- **Require the administrator of a public or nonpublic school who received a copy of a do-not-resuscitate (DNR) order executed on behalf of a minor pupil to ensure that the order was made a part of the child's individualized education program (IEP), or was placed in a file specifically for DNR orders, as applicable.**
- **Require the administrator of a public or nonpublic school who received a copy of a comfort or care plan to ensure that the plan was made a part of the child's IEP, or was placed in a file specifically for a comfort or care plan, as applicable.**
- **Require a school administrator who received actual notice of the revocation of a DNR order or a comfort or care plan to make the revocation part of the pupil's IEP, or place it in the order-specific or plan-specific file, as applicable.**
- **Specify that a school administrator, teacher, or other school employee who in good faith administered a comfort or care measure to a pupil would not be criminally or civilly liable, if certain conditions were satisfied.**
- **Specify entities and individuals who would not be liable for damages in a civil action for injury, death, or loss to an individual or property allegedly arising from an individual acting under the bill's comfort or care provisions.**
- **State that the sections the bill would enact could not be construed to create a right to an individualized education program.**

The bill is tie-barred to Senate Bill 784. (That bill would amend the Michigan Do-Not-Resuscitate Act to allow a parent to execute a DNR order on behalf of his or her minor child; require the parent to maintain possession of the order and have it accessible at the child's residence or, if applicable, give a copy of it to the administrator of the child's school or the facility where the child was a patient or resident; allow the guardian of a minor ward to execute a DNR order on the ward's behalf; require the guardian to give a copy of the order to the administrator of the ward's school or the facility where the ward was a patient or resident; and enact related provisions.)

Senate Bill 827 would take effect 90 days after its enactment.

Filing of DNR Order; Schools

The bill would require the administrator of a public or nonpublic school, or his or her designee, who received a copy of a DNR order executed by the guardian of a ward or the parent of a minor child under the Michigan Do-Not-Resuscitate Procedure Act to ensure that, for a pupil with an individualized education program, the order would be made part of his or her IEP in the same manner as other medical information regarding the pupil. For a pupil without an individualized education program, the administrator would have to ensure that both of the following were met:

- The DNR order would have to be placed in a file created specifically for DNR orders and that file would have to be stored in all of the locations in which an IEP was stored.
- All parties that received notice of an individualized education program would have to receive notice of a DNR order for a pupil without an IEP.

An administrator of a public or nonpublic school who received actual notice that a DNR order had been revoked would have to make the revocation part of the pupil's individualized education program in the same manner as other medical information regarding the pupil or place the revocation in the DNR order-specific file, as applicable. All parties entitled to notice of an individualized education program would have to receive notice of the revocation, regardless of whether it pertained to a pupil with an IEP.

For the purposes of the bill, "do-not-resuscitate order" or "order" would mean that term as defined in the Michigan Do-Not-Resuscitate Procedure Act. ("Do-not-resuscitate order" or "order" means a document executed under the Act directing that, if an individual suffers cessation of both spontaneous respiration and circulation in a setting outside of a hospital, resuscitation will not be initiated. Except as otherwise provided, "resuscitate" means perform cardiopulmonary resuscitation (CPR) or a component of CPR. The term does not include the Heimlich maneuver or a similar procedure used to expel an obstruction from a declarant's throat.)

(Under the Code, "individualized education program" means the term as defined in 20 USC 1414: a written statement for each child with a disability that is developed, reviewed, and revised in accordance with that section and that includes a number of components, such as statements of the child's present level of academic achievement, measurable annual goals, and the special education and related services to be provided to the child.)

Comfort or Care Plans

The bill would require the administrator of a public or nonpublic school, or his or her designee, who received a copy of a comfort or care plan from a parent or guardian to ensure that, for a pupil with an individualized education program, the plan would be made part of his or her IEP in the same manner as other medical information regarding the pupil. For a pupil without an individualized education program, the administrator would have to ensure that both of the following were met:

- The plan would have to be placed in a file created specifically for a comfort or care plan and that file would have to be stored in all of the locations in which an IEP was stored.
- All parties that received notice of an IEP would have to receive notice of a comfort or care plan for a pupil without an IEP.

An administrator of a public or nonpublic school who received actual notice that a comfort or care plan had been revoked would have to make the revocation part of the pupil's IEP in the same manner as other medical information regarding the pupil or place the revocation in the comfort or care plan-specific file, as applicable. All parties entitled to notice of an individualized education program would have to receive notice of the revocation, regardless of whether the revocation pertained to a pupil with an IEP.

Immunity from Liability

Under the bill, a school administrator, teacher, or other school employee designated by the administrator, who in good faith administered a comfort or care measure to a pupil in the presence of another adult or in an emergency that threatened the life or health of the pupil, pursuant to written permission of the pupil's parent or guardian, and in compliance with the instructions of a physician, physician's assistant, or certified nurse practitioner, would not be liable in a criminal action or for civil damages as a result of an act or omission in the

administration of the comfort or care measure, except for an act or omission amounting to gross negligence or willful and wanton misconduct.

If a school employee were a licensed registered professional nurse, this provision would apply to that employee regardless of whether the comfort or care measure was administered in the presence of another adult

"Comfort or care measure" would mean treatment of a pupil to ensure the pupil's mental or physical comfort. The term would not include treatment that attempts to prolong a pupil's life.

A school district, public school academy (PSA), nonpublic school, member of a school board, or director or officer of a PSA or nonpublic school would not be liable for damages in a civil action for injury, death, or loss to an individual or property allegedly arising from an individual acting under the bill's comfort or care provisions.

Proposed MCL 380.1180 & 380.1181

Legislative Analyst: Jeff Mann

FISCAL IMPACT

The bill would have no fiscal impact on the State, and minimal or no impact on local units of government. Schools that received do-not-resuscitate order or comfort and care plan would have to create files for pupils without an individualized education program. For pupils with an IEP, schools would need only to update the information in the pupils' files. Due to uncertainty in the number, location, and IEP status of pupils who would have a do-not-resuscitate order or comfort and care plan, an exact cost is difficult to estimate, but would likely be negligible.

Fiscal Analyst: Cory Savino

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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.