

BILL ANALYSIS

C.S.H.B. 3459
By: Paxton
Public Education
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Disciplinary Alternative Education Programs (DAEP's) were created in the 74th Legislature to move children causing discipline problems out of the regular classrooms. Chapter 37, Education Code, stipulates that criminal activity committed while in school on the part of a student results in mandatory DAEP placement. Discretionary DAEP placement is based on the local school districts' code of conduct. Currently a clear majority of the total number of DAEP students have received discretionary placement. Since districts set their own codes of conduct, they have virtually unlimited discretion to refer students to DAEP's which can have a dramatic effect on a student's performance. Students assigned to DAEP's have been shown to have lower scores on the TAKS test and drop out more frequently than students not in DAEP's.

Currently, under Chapter 37, if a student is assigned to a DAEP, it is discretionary with a school district whether to allow an appeal of a placement decision to the school board. Unless provided by school district policy, a student or a student's parents have no right to request a hearing to appeal the disciplinary measure, inadequate due process, and no ability to be represented by parents or counsel at an appeal hearing. This bill will give students and parents of students assigned to DAEP's similar rights as those afforded when students are expelled from public schools with respect to appeals, hearings, notification, representation, and due process.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

Note: Unless otherwise specified, statutory references in this BILL ANALYSIS are to the Education Code.

This bill relates to the placement of a student in a disciplinary alternative education program. The bill amends Section 37.0081, Education Code, by adding Subsection (a-1) to provide that at the hearing under Subsection (a), the student is entitled to due process and representation as provided by Section 37.009(a).

The bill amends Section 37.009(a), Education Code, by adding certain provisions. The bill provides that, not later than the first school day after the conference, the principal or the principal's designee shall deliver to the student and the student's parent or guardian a copy of the order placing the student in a disciplinary alternative education program and a notice of the student's right to appeal. A student may appeal the decision of the principal or the principal's designee placing the student in a disciplinary alternative education program to the board of trustees or the board's designee. The appeal hearing must be held not later than the 15th business day after the date of the conference. At the hearing, the student is entitled to due process as required under the federal constitution and to be represented by the student's parent or guardian or another adult who can provide counsel to the student and who is not an employee of the school district.

The bill also amends current Section 37.009(a) by changing "valid attempts to require the person's attendance" to "good faith attempts to require the person's attendance."

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The bill makes minor or nonsubstantive changes to certain provisions of Chapter 37 in accordance with Legislative Council drafting guidelines.

The bill provides that Section 37.009(b), Education Code, is repealed.

The bill provides that the Act applies beginning with the 2007-2008 school year.

EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The original provided that the appeal hearing must be held not later than the fifth class day after the date of the conference. The substitute provides that the appeal hearing must be held not later than the 15th business day after the date of the conference.