

STORAGE NAME: h1963.jud

DATE: March 27, 2000

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
JUDICIARY
ANALYSIS**

BILL #: HB 1963 (PCB EDK 00-01)

RELATING TO: School Safety and Student Discipline

SPONSOR(S): Committee on Education K-12

TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) EDUCATION K-12 YEAS 10 NAYS 0
 - (2) JUDICIARY
 - (3)
-

I. SUMMARY:

HB 1963 addresses a variety of school safety issues, including the following:

- **School Grades** - removes school discipline data from the school grading system.
- **Zero Tolerance Policies** - increases the consequences for weapons possession and firearm possession, expands the definition of a firearm by referencing state law instead of federal law, and adds bomb threats to the policy requiring one year expulsion.
- **Safety Incident Reporting** - requires principals to document all safety-related incidents and use standardized reporting forms to verify the accuracy of the information and requires DOE to develop these forms by December 31, 2000.
- **Best Financial Management Practices (BFMP)** - requires the Office of Program Policy Analysis and Governmental Accountability (OPPAGA) to include a review of a school district's compliance with safety and security measures required by law in the BFMP audit.
- **Suspension of students** - removes out-of-school suspension and codifies federal law outlining provisions for the suspension of students with disabilities.
- **Teacher Empowerment** - allows teachers to remove disruptive students immediately from the classroom while reducing unnecessary and burdensome paperwork requirements.
- **Teacher Liability Protection** - provides additional liability protection for teachers who remove disruptive students from the classroom or identify and refer students for evaluation by a mental health or other professional.
- **Emergency planning** - requires the district school board to adopt policies for emergency management that include, but are not limited to fires, natural disasters, and bomb threats.
- **Coordination with law enforcement** - requires district superintendents, community college presidents, and the Board of Regents to provide a copy of the design documents for each of their educational facilities to the appropriate law enforcement agency and fire department.
- **School size** - requires schools not under contract by July 1, 2003, to be constructed to "small school" standards defined by law unless operated as a school-within-a-school and requires school boards to adopt policies that require all schools that do not meet the small school definition to operate on a school-within-a-school concept beginning in the 2001-2002 school year.
- **Truancy** - closes a loophole by prohibiting a student who is referred to a child study team for exhibiting a pattern of nonattendance from enrolling in a home education program until the following regular school year, unless approved by the child study team or through an appeals process; strengthens the role of state attorneys in enforcing truancy laws, and provides contempt powers to the truancy court.

The bill does not appear to have any significant fiscal impact to the State.

This bill provides for an effective date of July 1, 2000.

STORAGE NAME: h1963.jud

DATE: March 27, 2000

PAGE 2

SEE COMMENTS FOR COMMITTEE ON JUDICIARY ANALYSIS

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |

B. PRESENT SITUATION:

Definition of Suspension

Section 228.041(25), F.S., defines suspension as both out-of-school and in-school suspension. Out-of-school suspension is defined as the temporary removal of a student from all classes of instruction on public school grounds and all other school sponsored activities, except as authorized by the principal or the principal's designee, for a period not to exceed 10 school days. In-school suspension is defined as the temporary removal of a student from a student's regular program and placement in an alternative program under the supervision of school district personnel for a period not to exceed 10 days.

School Grading System

In 1999, the Legislature passed the A+ Education Plan (Chapter 99-398, Laws of Florida). This legislation requires the grading of schools by letter grades (A-F). A school's grade is determined by student performance or student learning gains as measured by the FCAT and other performance data, including the attendance rate, dropout rate, *school discipline data*, and student readiness for college.

In December of 1999, the State Board of Education adopted revisions to Rule 6A-1.09981, F.A.C., to implement the school grading system. The rule uses student suspension data in the calculation of a school's grade to meet the school discipline data requirement of the law.

Student Code of Conduct

Section 230.23, F.S., requires district school boards to adopt a student code of conduct for elementary and secondary schools. Each code must include, but is not limited to: policies on alcohol usage, controlled substance possession and usage, procedures for corporal punishment, notice of violation of transportation policies, notice of violation of sexual harassment policies, and *notice that any student who is determined to have brought a firearm, as defined by 18 U.S.C. s. 921, to school will be expelled, with or without continuing educational services for a period of not less than one full year.* Superintendents may consider the expulsion requirement on a case-by-case basis and request that the district school board modify the requirement if it is in the best interest of the student and the school system.

The 1994 Guns Free School Act (20 U.S.C. s. 8921) requires each state receiving federal funds to mandate in state law the one year expulsion of students who bring weapons to school. Further, state law must also allow the chief administrative officer of each local educational agency to modify the expulsion requirement on a case-by-case basis. In addition, these provisions of federal law must be consistent with the procedural safeguards in the federal Individuals with Disabilities Education Act.

Emergency Planning

Section 235.14, F.S., requires school boards to adopt policies for emergency drills for all K-12 schools.

Safety Incident Reporting

In Florida, the School Environmental Safety Incident Report (SESIR) system records current performance measures for the state's school safety goals. It is used to collect data on criminal, violent, or disruptive incidents on school grounds, during transportation to and from school, and at school-sponsored events, in any 24-hour period for the entire calendar year. Incidents are supposed to be reported even if the offender is unknown or if persons other than students are involved.

Information is collected on all public schools at the elementary, middle, and high school levels, as well as for exceptional schools; however, the four laboratory schools are not included. School board personnel submit automated incident records to the Department of Education (DOE). Using SESIR definitions, seventeen types of incidents must be reported through SESIR and these are expected to be reported to law enforcement. According to DOE, incidents involving fighting, sexual harassment, certain sexual offenses, and tobacco must be reported to SESIR but may not need to be reported to law enforcement, since age and developmentally appropriate behavior are taken into consideration. Disciplinary actions are included as a part of the SESIR system.

There are limitations on the interpretation and application of current SESIR data, including inaccurate applications of the state incident definitions and different reporting formats among districts. In particular, the Florida Department of Education cautions against making comparisons between schools in a single district and across districts, due to variations in the personnel making the reports and differences in the frequency of reporting. The Florida Safe Learning Environment Institute (FSLEI) is currently working with the Department of Education and the school districts to improve SESIR data. FSLEI has identified a need for a statewide uniform reporting form to assist in improving the accuracy and tracking of the data.

Best Financial Management Practices

Section 230.23025, F.S., directs the Office of Program Policy Analysis and Governmental Accountability (OPPAGA) and the Office of the Auditor General to develop a system for reviewing the financial management practices of school districts. The Best Financial Management Practices (BFMP) review must include, at a minimum, four specific areas:

- Efficient use of resources, use of lottery proceeds, student transportation and food services operations, management structures, and personnel systems and benefits.
- Compliance with generally accepted accounting principles and state and federal laws relating to financial management.
- Performance accountability systems, including performance measurement reports.
- Cost control systems, including asset, risk, and financial management, purchasing, and information system controls.

The best financial management practices review compares the district's management and operations to the state-adopted best practices. Best financial management practice reviews are done only if requested by unanimous vote of a district school board. A district may request a complete review or a review of components of the best financial management practices. The Director for OPPAGA has discretion to contract with private consulting firms to perform part or all of a review of any school district. Each participating school district must pay 50 percent of the cost of a full review, unless the entire cost is specifically provided by a legislative

appropriation. If a district opts to have one or more components reviewed (rather than a full review), the district pays 75 percent of the review costs.

Zero Tolerance Policies

Section 230.235, F.S., requires each school district to adopt a “zero tolerance” policy for crime and substance abuse, including reporting delinquent acts and crimes occurring whenever and wherever students are under the jurisdiction of the school district. Each school district must enter into an agreement with local law enforcement to ensure that felonies and misdemeanors committed by a student or adult are reported to law enforcement.

Rule 6A-1.0404, F.A.C., addresses zero tolerance by requiring each district to review its code of student conduct and amend it, as needed, to ensure that students who have committed certain offenses (including possession, use, or sale of firearms and explosive devices) must receive the most severe consequences provided for by the district school board policy. Prior to taking any action against a student, the district school board must ensure that due process is followed and school personnel must follow certain procedures if students are disabled and participate in an exceptional student program.

Suspension of Students with Disabilities

Section 232.26(4), F.S., requires that any recommendation made by a principal for the expulsion of handicapped students must be made in accordance with state board rule.

On June 4, 1997, the Congress amended and reauthorized the Individuals with Disabilities Education Act (IDEA) [Pub. L. 105-17], which had remained virtually unchanged since its initial enactment in 1975 as the Education for All Handicapped Children Act. Part B of the IDEA conditions federal funding to states upon compliance with federal guidelines which ensure that all students with disabilities, aged 3 through 21, are provided a free appropriate education in the least restrictive environment. A free appropriate public education (FAPE) is “special education” and related services provided at no cost to the parents of the student with a disability. The least restrictive environment (LRE) is a place that is closest to the home of a student with a disability with minimal segregation from non-disabled students.

The revised IDEA requires states to keep data on suspension and expulsion rates to determine if there are discrepancies among disabled students as compared to non-disabled students. Florida currently collects most of this data and, according to DOE, its implementation plan revises reporting procedures to conform to IDEA requirements.

The IDEA and its federal regulations allow suspension of students with disabilities for up to 10 days without provision of special education services, so long as the behavior is not a manifestation of the student’s disability. After an initial 10-day suspension in any school year, states may suspend such students for additional behavior violations that are not caused by, or the result of the disability; but, the student’s special education services must be continued. Expulsions are also allowed provided that the behavior is determined not to be a manifestation of the disability. Furthermore, the IDEA regulations subject students with disabilities who bring drugs or weapons to school to *automatic removal* to an alternate educational environment without notice or an advance individualized education program (IEP) meeting for up to 45 days. Florida Statutes have *not codified* the changes in federal law regarding the discipline of disabled students.

Teacher Empowerment

Section 232.27, F.S., provides a teacher with the authority to establish classroom rules; establish consequences for infractions of classroom rules; *have violent, abusive, uncontrollable, or disruptive students temporarily removed from the classroom*; assist in

enforcing school rules; receive information as to the disposition of any referrals to the administration for violations of classroom or school rules; receive immediate assistance in classroom management; receive training and other assistance to improve skills in classroom management; press charges if a crime has been committed against the teacher; use reasonable force to protect him or herself; and use corporal punishment in accordance with district school board policy.

Section 232.271(2), F.S., provides a teacher the authority to remove from class students who have been *documented* by the teacher to *repeatedly* interfere with the teacher's ability to communicate effectively with the students in the class; and whose behavior the teacher determines is so unruly, disruptive, or abusive that it *seriously* interferes with the teacher's ability to communicate effectively.

Teacher Liability Protection

Section 232.275, F.S., provides that except in the case of excessive force or cruel and unusual punishment, a teacher, principal, or bus driver is not civilly or criminally liable for any action carried out in conformity with the state board and district school board rules regarding the control, discipline, suspension, and expulsion of students.

Coordination with Law Enforcement

According to several district school boards, copies of blueprints or related documents are currently provided to law enforcement agencies on a regular basis. In other instances, the documents are available to law enforcement agencies upon request. The Florida Department of Law Enforcement (FDLE) does not routinely access school blueprints. However, FDLE has recently assisted local agencies in obtaining and placing into an electronic format blueprints of local schools for use in developing school critical incident response plans.

School Size/School-Within-a-School

In DOE Florida Information Note 99-20F, according to the most recent data published by the National Center for Education Statistics (NCES), Florida's public elementary and secondary schools have the highest average enrollment in the nation. For the 1996-97 school year, Florida averaged 801 students per elementary school, substantially higher than the second ranked state, Georgia, which averaged 661 students per elementary school. By comparison, Texas averaged 556, and New York averaged 614. The national average was 483.

Average enrollment for Florida's secondary schools, 1,612 students per school, was also the nation's highest. Texas's average was 815 and New York's was 990. The national average was 777. Florida high schools' populations range from less than 100 to *over 5,000* students per school.

Nationally, the NCES Fast Facts "Class Size" reported that public school teachers from large schools (750 or more students) had larger average class sizes than those teachers from small schools (less than 150 students) at both the elementary and secondary levels (26 versus 18 students and 25 versus 15 students, respectively).

The 1998 Institute for Education and Social Policy in "The Effects of Size of Student Body on School Costs and Performance in New York City High Schools" reported the following:

- "The literature on the relationship between the size of a school's student body and school outputs is unambiguous - smaller schools show better outputs than schools of other sizes."
- "We find that size of the student body is an important factor in relation to costs and outputs and that small academic and articulated alternative high schools cost among the least per

graduate of all New York City high schools. Though these smaller schools have somewhat higher costs per student, their much higher graduation rates and lower dropout rates produce among the lowest cost per graduate in the entire New York City system.”

- “The research literature indicates that small schools are better places for disadvantaged youth, particularly poor students of color in urban districts. The small additional budgeted amounts per student this study finds invested in small schools seem well worth the improved outputs, particularly the low costs per graduate, that these small schools demonstrate.”

The 1992 Public Education Association in “Small School’s Operating Costs: Reversing the Assumptions About Economies of Scale” reported the following:

- “The premise that small schools are more expensive to operate has always been false. Research in an educational setting has specifically disproved the economy-of-scale argument at all but a very limited range of school sizes. And no research evidence supports a claim that the large school size in New York City (e.g., 1500-4000 or more) achieves operational-cost scale efficiencies significant enough to justify their existence or to offset size-related, educationally damaging inefficiencies.”
- “On the contrary, studies show dis-economies of scale in large schools. Difficult to manage efficiently and safely, large schools require a disproportionate increase in management; an extra ‘layer’ of managers -- subject supervisors, assistant principals, deans, additional secretaries -- separate principals and teachers.”
- “In small schools the whole school environment changes, yielding advantages and economies derived from increased collaboration among staff, reduced supervisory needs, and increased efficiencies. The complexity of administrative tasks is reduced, whether in planning a schedule, the curriculum, evaluation, or coping with student problems. Face-to-face interaction substitutes for generating and responding to memos.”

There are no current laws in Florida governing the maximum student enrollment in any given school or requiring districts to operate schools on a “school-within-a-school” concept.

Truancy

Enforcement of School Attendance

Section 232.17, F.S., requires that if a student has 5 unexcused absences or absences for which the reason is unknown in a calendar month or 10 in 90-calendar days, the student’s teacher must report a pattern of nonattendance to the principal. The principal must, unless there is clear evidence that the absences are *not* a pattern of nonattendance, refer the case to the child study team. If the child study team finds that a pattern of nonattendance is developing, a meeting must be scheduled with the parent to identify potential remedies. If the parent of the child refuses to participate in the remedial strategies, the parent may appeal to the school board. The school board may provide a hearing officer to make a recommendation for final action. If the school board’s final determination is that the strategies of the child study team are appropriate, and the parent still refuses to participate, the superintendent may seek criminal prosecution for noncompliance with compulsory school attendance.

DOE reports that some parents, in order to avoid meeting with the child study team or to avoid criminal prosecution, have enrolled their child in a home education program.

Truancy Petition/CINS Petition

Section 232.19, F.S., authorizes the superintendent to file a truancy petition, as defined in section 984.03, F.S., when a student has had more than 15 unexcused absences in a 90-calendar-day period. Section 984.151, F.S. provides the process, prosecution, and form of a petition. Importantly, the petition is to be filed in the circuit court in the circuit in which the student resides. The court must hold a hearing on the petition within 30 days of its filing, and the student and his or her parent or legal guardian must attend the hearing. The court may order sanctions or services which the student and his or her parent or guardian must participate in. If the student fails to complete the sanctions, or if the superintendent chooses not to file a truancy petition, the school may file a child-in-need-of-services (CINS) petition, which is a separate process governed by s. 984.16, F.S.

Authority to take a Child into Custody

Section 984.13, F.S., authorizes a law enforcement officer to take a child into custody when the officer has reasonable grounds to believe that the child has run away from his or her parents, or when the officer has reasonable grounds to believe that the child is absent from school without authorization. Currently the law does not provide for officers to take a child into custody who has been suspended or expelled without continuing educational services, because these children are *not* considered absent from school without authorization.

Penalty for Non-Compliance

Current law provides no penalties for non-compliance with provisions regarding driver's license attendance requirements, outlined in section 232.19, F.S., by superintendents or district school board members.

Learnfare

The Work and Gain Economic Self-Sufficiency (WAGES) Act, created in chapter 414, F.S., provides temporary cash assistance to needy families through the use of federal, state, or commingled funds. Recipients must comply with numerous standards to continue to receive financial assistance. Section 414.125, F.S., provides that the Department of Children & Families (DCF) must reduce the temporary cash assistance to recipients whose child has accumulated a number of unexcused absences from school *sufficient to jeopardize the student's academic progress*. DCF has defined jeopardized academic progress in Rule 65A.4.213, F.A.C., to be a failing report card grade during any grading period. Therefore, the parent of a child who had been an "A" student and because of unexcused absences slips to become a "C" student, would not lose their temporary cash assistance even though the student's academic progress had been jeopardized by the absences.

Learnfare also requires each WAGES participant to confer with the appropriate school official during *each grading period* to assure that the participant is involved in the child's educational progress. Grading periods vary from district to district (6-week periods, 9-week periods, or semesters).

C. EFFECT OF PROPOSED CHANGES:

Definition of Suspension

The bill redefines and limits suspension to only in-school suspension during regular school hours. The bill also conforms other sections of statute to conform to this change.

School Grading System

HB 1963 removes school discipline data from the school grading system.

Student Code of Conduct

HB 1963 broadens the definition of firearms for which students will be expelled by referencing state law (Chapter 790) instead of federal law (18 U.S.C. s. 921). In addition, the bill requires school boards to modify the mandatory expulsion requirement for violation of the firearm or weapon possession provision by assigning the student to a disciplinary program or second chance school, if it is determined to be in the best interest of the student. The bill removes a provision of notice in the code of student conduct for the possession of an item which can be used as a weapon.

The bill adds a provision in the student code of conduct that requires school boards to notice that any student who makes a bomb threat or false report, as defined by sections 790.162 and 790.163, F.S., involving school property, school personnel's property, school transportation, or a school-sponsored activity will be expelled with or without continuing educational services for not less than one year. The bill authorizes the superintendent to recommend to the school board that the student be assigned to a disciplinary program or second chance school during the one year expulsion period, if it is determined to be in the best interest of the student.

Emergency Planning

HB 1963 moves section 235.14, F.S., from the facilities chapter to section 230.23, F.S., under school board duties and requires school boards to adopt policies for emergency planning that include actual emergencies, including, but not limited to, fires, natural disasters, and bomb threats.

Teacher Support

The bill requires district school boards to address the availability of substance abuse or mental health counselors to support teachers who identify students with potential problems. The bill authorizes the district school board to address the availability of these counselors through the use of in-school or local private providers.

Safety Incident Reporting

The bill requires kindergarten through grade 12 principals within each school district to document all public school grounds, public school student, and public school staff-related incidents of crime, delinquency, disorder, and disruption.

Subject to mutual agreement between school districts and their local sheriff's offices and local police, the bill requires that arrests of students or staff which occur off of school property must be reported to the principal of the appropriate school.

The bill requires each school in every district to report all documented incidents to the appropriate school district personnel responsible for collecting and disseminating school safety data.

The bill requires principals to ensure *standardized forms* prescribed by the department are used to report the data and to develop a plan to verify the accuracy of reported incidents.

The bill requires the Department of Education to develop a statewide uniform safety reporting form by December 31, 2000.

Best Financial Management Practices

HB 1963 requires the Office of Program Policy Analysis and Government Accountability (OPPAGA) and the Office of the Auditor General to include, in the best financial management practices audit, a review of the school district's compliance with safety and security requirements provided by law.

Zero Tolerance Policies

HB 1963 requires students who have been found to have committed one of the following offenses to be expelled, with or without continuing educational services, for not less than one year:

- (a) bringing a firearm or weapon, as defined by Florida Statute Chapter 790, to school, to any school function, or onto any school-sponsored transportation; and
- (b) making a bomb threat or false report, as defined in sections 790.162, and 790.163, F.S., involving school property, school personnel's property, school transportation, or a school-sponsored activity.

Prior to taking such action, district school boards must ensure that appropriate due process procedures are followed. If a student with a disability, as defined in section 228.041(18), F.S., commits any of the above offenses, school personnel must follow appropriate procedures pursuant to law and state board rule.

Suspension of Students with Disabilities

Section 232.251, F.S., is created, in accordance with the federal Individuals with Disabilities Education Act Amendments of 1997, in order to codify federal law regarding the suspension of students with disabilities. Procedures for compliance with the determination that the student's behavior was not a manifestation of a disability, parental appeals process, placement during appeals, protection for students not yet eligible for special education and related services, and referral to and action by law enforcement and judicial authorities must be made pursuant to federal law.

Teacher Empowerment

The bill strengthens the authority of teachers to remove disruptive students from the classroom by broadening the definition of those students who can be removed to include *disobedient and disrespectful* students. The bill also removes requirements for documentation of *repeated interference and seriously disruptive and abusive* behavior.

Teacher Liability Protection

The bill provides additional liability protection for teachers, principals, and school bus drivers for any action carried out in conformity with state board and school board rules, including the exercise of authority regarding the removal of a student from the classroom. The bill also adds civil and criminal liability protection for identification and referral of students for evaluation by mental health personnel, law enforcement, or other appropriate personnel.

Coordination with Law Enforcement

The bill requires that beginning October 1, 2000, each district superintendent, each community college president, and the Board of Regents must provide the law enforcement agency and fire department that has jurisdiction over each of their educational facilities a copy of the construction design documents for each educational facility in the district.

School Size/School-Within-a-School

The bill establishes a legislative finding that a small school size correlates directly to reduced discipline problems and crime, reduced truancy rates, improved teacher and student attitudes, improved student self-perception, improved student academic achievement, and increased parental involvement without increasing administrative or construction costs.

The bill defines small schools as:

- Elementary schools with a student population of not more than 500 students.
- Middle schools with a student population of not more than 700 students.
- High schools with a student population of not more than 900 students.
- K-8 schools with a student population of not more than 700 students.
- K-12 schools with a student population of not more than 900 students.

The bill requires that beginning July 1, 2003, all plans for new educational facilities within a school district and reflected in the 5-year school district facilities work plan must be plans for small schools. The bill requires that small schools comply with all laws, rules and court orders relating to race and does not apply to facilities already under architectural contract on July 1, 2003.

Schools that operate as a school-within-a-school are considered as meeting the small school requirements, if each smaller unit located on the single campus meets the small school definition.

The bill requires district school boards to adopt policies effective for the 2001-2002 school year and thereafter, to require schools that do not meet the definition of a small school to operate as a "school-within-a-school." The bill defines "school-within-a-school" as an operational program that uses flexible scheduling, team planning, and curricular and instructional innovation to organize groups of students with groups of teachers as smaller units, so as to functionally operate as a smaller school.

Truancy

Enforcement of School Attendance

The bill prohibits students who have 5 unexcused absences in a calendar month, or 10 unexcused absences in a 90-day-calendar period and are referred to a child study team for exhibiting a pattern of nonattendance from enrolling in a home education program until the following regular academic year, unless:

- the child study team determines a pattern of nonattendance is *not* developing; or
- the enrollment in a home education program is approved after an appeals process provided by law.

The bill provides that the parent or guardian of a referred child who wishes to enroll in a home education program may appeal to the district school board. The board must provide an impartial hearing officer who must review the case and make recommendation to the board. If the school board's final determination is to allow the child to enroll in a home education program, the district school board must outline specific time frames for review of the portfolio in order to determine compliance with the home education laws.

Habitual Truant

The bill amends the definition of a habitual truant in section 984.03(29), F.S., to correct cross references and delete obsolete language.

Truancy Petition

The bill allows the superintendent to pursue earlier options in filing a truancy petition. The superintendent may file a truancy petition when a child has had *at least five unexcused absences, or absences for which the reasons are unknown, within a calendar month or 10 unexcused absences, or absences for which the reasons are unknown, within a 90-calendar-day period, or more than 15 unexcused absences in a 90-calendar-day period.*

Authority to take a Child into Custody

The bill authorizes a law enforcement officer to take into custody a child who is suspended or expelled and is not in the presence of a parent or legal guardian. The bill also expands the definition of the areas where the child is to be delivered to include *an approved alternative to a suspension or expulsion program*. If the student is suspended or expelled from the alternative school placement, the officer must deliver the child to the parent or legal guardian or to a designated truancy interdiction site until the parent or guardian can be located.

Truancy Court

The bill requires the clerk of the circuit court to issue a summons upon the filing of a petition, which, if true, would constitute a child being declared a truant.

The bill authorizes the attorney representing the school system, upon a plea of no contest, to set the case before the court for a disposition hearing. The bill requires the court, if there is a change of plea at the disposition hearing, to grant a continuance to the attorney representing the school system for the preparation and presentation of the case.

The bill authorizes the school system to enter into a written agreement with the state attorney's office for representation of the school system in this proceeding.

The bill requires the attorney representing the school system or, upon written agreement, the state attorney's office to represent the state in any proceeding in which a truancy petition has been filed and the party denies the allegations and contests the petition.

The bill requires the parent, guardian or legal custodian to participate with court-ordered sanctions and services and authorizes the court to use its contempt powers to enforce its orders.

Penalties for Non-Compliance

The bill requires that the district school board, when notified by the Department of Education that the school superintendent has failed to provide required student information to the Department of Highway Safety and Motor Vehicles, withhold the salary of that superintendent until the Department of Education notifies the district school board that the information has been provided. The bill subjects members of the district school board to suspension and removal if the member is responsible for the violations of the truancy provision.

Learnfare

The bill requires DCF to reduce the temporary cash assistance to Learnfare participants whose child has been identified as a *habitual truant*, pursuant to section 228.041(28), F.S. The bill also changes the participants conference requirements with their child's school official to a *semester* rather than grading period.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 228.041, F.S., relating to the definition of suspension, to remove out-of-school suspension.

Section 2: Amends s. 229.57, F.S., relating to the school grading system, to remove school discipline data used to determine a school's grade.

Section 3: Amends s. 230.23, F.S., relating to the student code of conduct, to revise information required to be included in the student code of conduct, combine and clarify provisions relating to student possession of a weapon, require the district code of student conduct to include certain notice relating to expulsion for making a bomb threat or false report,

define the term "school-within-a-school," and require school boards to adopt policies to operate large schools on a school-within-a-school concept, requires district school boards to address the availability of substance abuse and mental health counselors.

Redesignates and amends s. 235.14, F.S., as s. 230.23(6)(f), F.S., relating to emergency drills, to specify the types of drills and emergencies for which district school boards are required to develop procedures.

Section 4: Creates s. 230.23003, F.S., relating to safety incident reporting, to provide requirements relating to school safety incident data collection and reporting and require each school principal to ensure that standardized forms are used to report school safety and discipline data, and require the Department of Education to develop a standardized reporting form by December 31, 2000.

Section 5: Amends s. 230.23015, F.S., relating to disciplinary action for violation of s. 784.081, F.S., to provide a cross reference to s. 232.251, F.S., relating to disciplinary actions against students with disabilities.

Section 6: Amends s. 230.23025, F.S., relating to best financial management practices, to require OPPAGA to review the school district's compliance with school safety and security provisions required by law.

Section 7: Amends s. 230.2316, F.S., relating to dropout prevention and academic intervention programs, to conform to changes to the definition of suspension.

Section 8: Amends s. 230.235, F.S., relating to zero tolerance policies, to specify offenses for which a student will be expelled for one year under district school board zero tolerance for crime policies.

Section 9: Amends s. 232.17, F.S., relating to enforcement of school attendance, to provide a prohibition and appeals process for students referred to a child study team for exhibiting a pattern of nonattendance to enroll in a home education program.

Section 10: Amends s. 232.19, F.S., relating to court procedures and penalties, to provide penalties for non-compliance with provisions regarding driver's license attendance requirements.

Section 11: Amends s. 232.25, F.S., relating to control of pupils, to provide a cross reference to s. 232.251, F.S., relating to disciplinary actions against students with disabilities.

Section 12: Creates s. 232.251, F.S., relating to disciplinary actions against students with disabilities, to codify federal requirements of the Individuals with Disabilities Education Act Amendments of 1997.

Section 13: Amends s. 232.26, F.S., relating to the authority of the principal, to specify that suspension of a student with a disability must be made pursuant to s. 232.251, F.S., and state board rule.

Section 14: Amends s. 232.27, F.S., relating to the authority of the teacher, to authorize teachers or other instructional personnel to have disobedient and disruptive students temporarily removed from the classroom.

Section 15: Amends s. 232.271, F.S., relating to removal by the teacher, to revise the definition of student behavior considered to be cause for teacher removal from the classroom and remove obsolete language relating to a study and a report.

Section 16: Amends s. 232.275, F.S., relating to liability of a teacher or principal, to prohibit certain school personnel from being held civilly or criminally liable for the identification and referral of students for evaluation.

Section 17: Creates s. 235.192, F.S., relating to coordination of school safety information, to require the provision of copies of educational facility construction design documents to appropriate law enforcement agencies and fire departments.

Section 18: Creates s. 235.2157, F.S., relating to small schools requirements, to provide legislative findings, define the term "small schools," require the construction of only small schools after July 1, 2003, require small schools to comply with racial balance requirements, and provide an exception.

Section 19: Amends s. 984.03, F.S., relating to definitions of "habitually truant" and "truancy petition," to revise the definition of both terms.

Section 20: Amends s. 984.13, F.S., relating to taking a child into custody, to enable law enforcement to take into custody suspended or expelled students who are not in the presence of their parent or guardian and revise the definition of "school system."

Section 21: Amends s. 984.151, F.S., relating to truancy petition, to revise requirements for filing a truancy petition and provide contempt powers to truancy court.

Section 22: Amends s. 414.125, F.S., relating to Learnfare, to revise the criteria for reduction of temporary cash assistance.

Section 23: Providing an effective date of July 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

OPPAGA estimates that the increased cost to add a safety and security review to the best financial management practices audit would be: \$15,000 for a small district, \$20,000 for a medium district, \$50,000 for a large district, and \$60,000 for a very large district. There are 67 separate school districts in Florida.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Currently each school district that chooses to participate in a BFMP review must pay 50 percent of the cost of a full OPPAGA review, unless the entire cost is specifically provided by a legislative appropriation. If a district opts to have one or more components reviewed (rather than a full review), the district pays 75 percent of the review costs. Any increase in the cost to OPPAGA may be passed on proportionally to the school district.

Some districts, community colleges, and the Board of Regents may incur costs for providing facility blueprints to local law enforcement and fire departments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

If state attorneys enter into agreements with district school boards to represent the boards in truancy petition matters, the state will bear the costs of such representation. This cost has not been estimated however.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

COMMENTS BY STAFF OF COMMITTEE ON JUDICIARY

Section 4 of the bill requires principals to report on all incidents of crime, delinquency, disorder, and disruption involving public school students, staff, or grounds. The bill requires that these reports be made available to school district personnel responsible for collecting and “disseminating” school safety data, and requires the Department of Education to prepare a form for such reports. The bill does not make it clear how specific the reports will be, whether they will identify any students or staff involved in any reportable incidents, or whether any reports will be included with the permanent files of the students who may be involved in an incident. This raises questions relating to the impact of the dissemination of identifying information of staff or students who may be involved in a reportable incident. Moreover, it is unclear whether a staff person or student will have the right to access and review reports containing identifying information or have the right to challenge the information contained in the reports.

Section 9 of the bill contains language relating to child study teams that appears to be contradictory. On page 20, line 23, the bill states that a student is referred to a child study team for “exhibiting a pattern of nonattendance...” This section prohibits such a student from registering in a home education program until the beginning of the next school year unless the child study team “determines that a pattern of nonattendance is not developing...” In order for a child to be referred to a child study team, he or she must exhibit a pattern of nonattendance. In order to be able to register in a home education program, the child must be found not to be developing a pattern of nonattendance. This apparent contradiction is unexplained.

Section 9 of the bill also allows the parent or guardian of a child to appeal to the district school board to review a child’s eligibility for home education in the wake of being referred to a child study team for evaluation of truancy. This appeals provision simply provides that the board shall appoint an impartial hearing officer who shall make a recommendation to the board. This section does not reference chapter 120 or provide for an appeal of the board’s decision by the parent or guardian of the child. It is not clear whether the board’s decision is a final order for purposes of chapter 120 subject to review by a district court of appeal.

Section 13 uses the term “substantial evidence,” defining it to mean evidence that is beyond a preponderance of the evidence. The Florida Supreme Court has defined the term to mean “such relevant evidence as a reasonable mind would accept as adequate to support a conclusion.” DeGroot v. Sheffield, 95 So.2d 912, 916 (Fla. 1957). The evidentiary standard beyond a preponderance of the evidence is the “clear and convincing” evidence standard, which has been defined as “more proof than a preponderance of the evidence, but less proof than beyond and to the exclusion of a reasonable doubt.” In re Ford-Kaus, 730 So.2d 269, 276 (Fla. 1999). It is not clear whether the committee intended the clear and convincing evidence standard to apply with respect to the disciplinary decisions involving a disabled student. The use of the term “substantial evidence” appears not to adopt this standard, however the definition appears to nearly meet this standard.

Section 16 provides immunity from civil or criminal liability for a teacher, member of the instructional staff, a principal or his or her designee, or a bus driver who identifies or refers a

student for evaluation by “mental health personnel, law enforcement, or other appropriate personnel.” It is not clear how the identification or referral process works, to whom the person is identified and/or referred, and under what circumstances. This section does not address the context of the referral or apply a good faith standard to the identification or referral. Moreover, it is not clear what liabilities might attach and whether a broad immunity from all liability is necessary. For instance, in cases where a teacher maliciously identifies a student as a “problem,” should that student have a right of action in defamation? This section’s breadth raises concerns about the balance between the teachers’ responsibilities and the students’ rights.

Section 21 creates a modified truancy petition process under s. 984.151, F.S. This section is unclear and appears to restate provisions of law that currently apply. The summons language of page 39, lines 1-5 appears to be drawn from s. 984.16, F.S. However, the language in the bill is ambiguous. It is not clear to whom the summons is issued and what the summons shall require in the way of appearance. Moreover, the following paragraph (4)(a) creates a “disposition hearing” that appears not to be the same as a hearing on the truancy petition. If so, the summons needs to be drawn to the correct hearing. Finally, it is not clear why a summons is necessary given that current law requires the attendance of the parent and child at a truancy hearing. See s. 984.151(6), F.S. The parents and the student should be notified by a copy of the petition and by a subsequent order setting a hearing.

Paragraph (4)(a) appears unnecessary in light of s. 984.151(5), F.S., which requires that the truancy hearing to occur within 30 days of the filing of the petition. In such a case, the hearing could easily be dispositive of the entire matter if the parent and child admit to the allegations in the petition. As such, there does not appear to be a need for a “disposition hearing.” The final hearing should serve as a disposition hearing. Moreover, the parties should ordinarily be prepared to argue their cases at this hearing, regardless of the admission of the parent or child. Under current law, a party to that hearing should be able to request a continuance for good cause.

It is also unclear how the state attorney may represent the school board on a noncriminal truancy petition. Moreover, if the state attorney represented the school, it is not clear who would bear the cost of such representation. This may have a financial impact on state expenditures. This language allows the state attorney or private counsel to represent the “state” in a contested truancy matter. This appears to be incorrect. The applicable party should be the school board, not the state. Moreover, this language contains a reference to s. 984.151, which is the same section. The correct reference should be to “this section.”

Finally, Section 21 requires the participation of the parent and child in any court-ordered sanctions or services, and gives the court contempt power to enforce its order. Section 984.151(7), F.S., spells out the sanctions or services, and makes clear that the parent and/or child shall participate in such services. Moreover, as jurisdiction for truancy petitions lies in circuit court, the court has contempt power. It is unclear why the bill restates what appears to be requirements and powers already provided for in general law.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

STORAGE NAME: h1963.jud

DATE: March 27, 2000

PAGE 18

VII. SIGNATURES:

COMMITTEE ON EDUCATION K-12:

Prepared by:

Staff Director:

Thomas N. Palermo

Patricia W. Levesque

AS REVISED BY THE COMMITTEE ON JUDICIARY:

Prepared by:

Staff Director:

Michael W. Carlson, J.D.

P.K. Jameson, J.D.