

1 SB79
2 215575-2
3 By Senator Smitherman
4 RFD: Education Policy
5 First Read: 13-JAN-22

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 Relating to K-12 public education; to amend Section
12 16-1-14, Code of Alabama 1975; to provide legislative
13 findings; to provide a uniform system of procedural due
14 process protections for students facing suspension or
15 expulsion for violating the student code of conduct or state
16 law; and to require the State Board of Education to adopt
17 rules to implement this act.

18 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

19 Section 1. The Legislature finds and declares all of
20 the following:

21 (1) Alabama schools rely heavily on suspensions and
22 expulsions to discipline children, and the out-of-school
23 suspension rate in the state exceeds the national average.

24 (2) Removing students from the classroom is costly,
25 ineffective, and increases the likelihood that Alabama youth
26 will end up in the juvenile or adult justice system.

1 (3) Schools with high suspension and expulsion rates
2 negatively impact the safety, well-being, and academic success
3 of all students, not just those facing disciplinary action.

4 (4) Zero tolerance policies have not been shown to
5 improve school climate or school safety and lead to higher
6 rates of exclusionary disciplinary action.

7 (5) Absent statutory guidance, each local board of
8 education in the state develops independent policies and
9 procedures for students facing exclusionary discipline,
10 resulting in disparate processes across the state and students
11 being unfairly and mistakenly excluded from school without
12 just cause.

13 (6) A fair and uniform statewide system of
14 procedural due process protections is necessary for students
15 facing exclusionary discipline.

16 Section 2. Section 16-1-14 of the Code of Alabama
17 1975, is amended to read as follows:

18 "§16-1-14.

19 "(a) As used in this section, the following terms
20 shall have the following meanings:

21 "(1) EXPULSION. The exclusion of a student from his
22 or her regular school environment for more than 90, and less
23 than 180, school days for disciplinary purposes.

24 "(2) LONG-TERM SUSPENSION. The exclusion of a
25 student from his or her regular school environment for more
26 than 10, and less than 90, school days for disciplinary
27 purposes.

1 "(b) Each local board of education Any city, county,
2 ~~or other local public school board shall~~, consistent with
3 Section 16-28-12, ~~prescribe~~ shall adopt rules ~~and regulations~~
4 with respect to behavior and discipline of ~~pupils~~ students
5 enrolled in the schools under its jurisdiction and, in order
6 to enforce ~~such the~~ rules ~~and regulations~~, may remove,
7 isolate, or separate ~~pupils~~ students who create disciplinary
8 problems in any classroom or other school activity and whose
9 presence in the class may be detrimental to the best interest
10 and welfare of the ~~pupils~~ students of ~~such the~~ class as a
11 whole. Any rules ~~and regulations~~ adopted pursuant to this
12 section shall be approved by the State Board of Education.

13 "(c) Any such removal, isolation, or separation
14 authorized under this section may not deprive such pupils a
15 student of their his or her full right to an equal and
16 adequate education.

17 "(d) (1) A student in pre-K through fifth grade may
18 not be suspended or expelled from a public school, unless the
19 behavior of the student endangers the physical safety of other
20 students or school personnel.

21 "(2) A student in any grade may not be suspended or
22 expelled from a public school for truancy or tardiness
23 violations of the code of student conduct or state law.

24 "(e) Following an alleged student disciplinary
25 incident or infraction, the principal, or his or her designee,
26 shall consider all of the following factors before

1 recommending or initiating disciplinary action against a
2 student:

3 "(1) The age of the student.

4 "(2) The disciplinary history of the student.

5 "(3) The seriousness of the violation or behavior.

6 "(4) Whether a lesser intervention could
7 appropriately address the behavior of the student.

8 "(f) Following an alleged violation of the code of
9 student conduct or state law that results in a recommendation
10 for long-term suspension or expulsion of a student, the local
11 board of education shall ensure, at a minimum, that all of the
12 following procedures are followed:

13 "(1) The student shall be afforded an opportunity
14 for a disciplinary hearing before a local board of education,
15 or a neutral designee of the local board of education who is
16 agreed to by both parties, to determine whether the alleged
17 violation of the code of conduct or state law has occurred.

18 "(2) The student shall receive reasonable written
19 notice of the disciplinary hearing, delivered to him or her
20 personally or by mail. The notice shall be given to all
21 parties and to the parent or guardian of each student
22 involved, and shall include all of the following:

23 "a. A statement of the time, place, and nature of
24 the hearing.

25 "b. A short and plain statement detailing the
26 alleged conduct and the code of student conduct provision or
27 state law allegedly violated.

1 "c. The names of any witnesses who may participate
2 in the hearing.

3 "d. A statement outlining the rights of the student
4 at the hearing.

5 "(3) The disciplinary hearing shall occur within 10
6 school days after the initial suspension from school.

7 "(4) The student may be represented at the hearing
8 by legal counsel or another advocate of the student's choice,
9 at the student's expense.

10 "(5) The student, parent or guardian, and the
11 representative of the student, at least five days before the
12 hearing, may review any audio or video recording of the
13 incident and, consistent with federal and state student
14 records laws and regulations, any records, documents, or other
15 information that may be presented as evidence at the hearing,
16 including written statements made by witnesses related to the
17 alleged incident leading to the suspension or expulsion.

18 "(6) Representatives from the school seeking the
19 proposed disciplinary action shall offer substantial evidence
20 at the hearing that the student violated the code of student
21 conduct or state law, including evidence of the student's
22 intent at the time of the incident underlying the alleged
23 violation.

24 "(7) The student, parent or guardian, or the
25 representative of the student may present a defense, question
26 adverse witnesses, and offer evidence, including oral
27 testimony from supporting witnesses, written statements or

1 other documentary evidence, and audio or video recordings at
2 the hearing.

3 "(8) Each party to the hearing, upon request, shall
4 receive an electronic or written record of the hearing from
5 the local board of education.

6 "(9) The student and parent or guardian shall
7 receive a written decision from the local board of education
8 or its neutral designee within five school days after the
9 hearing. The written decision shall include, but not be
10 limited to, all of the following information:

11 "a. The basis for the decision, including a
12 reference to the code of student conduct provision or state
13 law that the student is accused of violating, and the evidence
14 relied on by the local board of education or its neutral
15 designee in reaching the decision.

16 "b. A statement detailing what information will be
17 included in the official record of the student.

18 "c. A statement detailing the right of the student
19 to appeal the decision pursuant to the code of student conduct
20 of the local board of education and Section 12-15-115, and
21 notice of the procedures necessary to file an appeal.

22 "(g) The State Board of Education shall adopt rules
23 addressing:

24 "(1) The factors a local board of education or its
25 neutral designee shall consider when determining whether
26 long-term suspension or expulsion is an appropriate
27 disciplinary measure commensurate with the disciplinary

1 incident or infraction committed, except as otherwise provided
2 in Sections 16-1-24.1 and 16-1-24.3. These factors shall
3 include the intent of the student, the culpability of the
4 student, any relevant extenuating circumstances, and the
5 impact of the alleged behavior on the school environment.

6 "(2) Any other issue the board deems relevant and
7 necessary to implement this section.

8 "(h) Nothing in this section shall be construed to
9 infringe on any right provided to students pursuant to the
10 federal Individuals with Disabilities Education Act, Section
11 504 of the Rehabilitation Act of 1973, or the Americans with
12 Disabilities Act of 1990."

13 Section 3. This act shall become effective on the
14 first day of the third month following its passage and
15 approval by the Governor, or its otherwise becoming law.

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Senate

Read for the first time and referred to the Senate
committee on Education Policy..... 13-JAN-22

Read for the second time and placed on the calen-
dar 1 amendment..... 09-FEB-22

Read for the third time and passed as amended 16-FEB-22

Yeas 24
Nays 8

Patrick Harris,
Secretary.