

1 SB70
2 209543-1
3 By Senator Smitherman
4 RFD: Judiciary
5 First Read: 11-JAN-22

SYNOPSIS: Under existing law, each local board of education is required to annually adopt and distribute a code of student conduct that details specific grounds and procedures for addressing student disciplinary actions.

This bill would provide a uniform statewide system of procedural due process protections relating to the suspension and expulsion of public school students for violating the student code of conduct or state law.

This bill would also provide for the annual training of impartial hearing officers by the State Department of Education, for the duties of those hearing officers, and for the adoption of any necessary rules to implement this act by the State Board of Education.

A BILL
TO BE ENTITLED
AN ACT

1
2 Relating to K-12 public education; to amend Section
3 16-1-14, Code of Alabama 1975; to provide legislative
4 findings; to provide a uniform system of procedural due
5 process protections for students facing suspension or
6 expulsion for violating the student code of conduct or state
7 law; to provide for the training of impartial hearing officers
8 by the State Department of Education; and to require the State
9 Board of Education to adopt rules to implement this act.

10 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

11 Section 1. The Legislature finds and declares all of
12 the following:

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

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

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

22 (4) Absent statutory guidance, each local board of
23 education in the state develops independent policies and
24 procedures for students facing exclusionary discipline,
25 resulting in disparate processes across the state and students
26 being unfairly and mistakenly excluded from school without
27 just cause.

1 (5) A fair and uniform statewide system of
2 procedural due process protections is necessary for students
3 facing exclusionary discipline.

4 Section 2. Section 16-1-14 of the Code of Alabama
5 1975, is amended to read as follows:

6 "§16-1-14.

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

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

12 "(2) IMPARTIAL HEARING OFFICER. An independent,
13 neutral arbiter who is appointed by a local board of education
14 to conduct disciplinary hearings.

15 "(3) LONG-TERM SUSPENSION. The exclusion of a
16 student from his or her regular school environment for more
17 than 10, and less than 90, school days for disciplinary
18 purposes.

19 "(b) Each local board of education ~~Any city, county,~~
20 ~~or other local public school board shall,~~ consistent with
21 Section 16-28-12, ~~prescribe~~ shall adopt rules ~~and regulations~~
22 with respect to behavior and discipline of ~~pupils~~ students
23 enrolled in the schools under its jurisdiction and, in order
24 to enforce ~~such the rules and regulations,~~ may remove,
25 isolate, or separate ~~pupils~~ students who create disciplinary
26 problems in any classroom or other school activity and whose
27 presence in the class may be detrimental to the best interest

1 and welfare of the ~~pupils~~ students of ~~such~~ the class as a
2 whole. Any rules ~~and regulations~~ adopted pursuant to this
3 section shall be approved by the State Board of Education.

4 "(c) Any ~~such~~ removal, isolation, or separation
5 authorized under this section may not deprive ~~such pupils~~ a
6 student of ~~their~~ his or her full right to an equal and
7 adequate education.

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

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

15 "(e) (1) Each local board of education shall qualify
16 individuals to serve as impartial hearing officers under
17 subdivision (2), pursuant to rules adopted by the State Board
18 of Education, which shall include, but not be limited to,
19 minimum qualifications for serving as an impartial hearing
20 officer and required annual training. Training of impartial
21 hearing officers shall include, but not be limited to, the
22 procedures, duties, and restrictions set forth in this
23 subsection and the short-term and long-term effects of
24 exclusionary discipline on students.

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

1 recommending or initiating disciplinary action against a
2 student:

3 "a. The age of the student.

4 "b. The disciplinary history of the student.

5 "c. The seriousness of the violation or behavior.

6 "d. 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 local board of education shall appoint a
14 qualified impartial hearing officer to hold a disciplinary
15 hearing.

16 "(2) The student shall be afforded an opportunity
17 for a disciplinary hearing after reasonable written notice has
18 been delivered to him or her personally or by mail. The notice
19 shall be given to all parties and to the parent or guardian of
20 each student involved, and shall include all of the following:

21 "a. A statement of the time, place, and nature of
22 the hearing.

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

26 "c. The names of any witnesses who may participate
27 in the hearing.

1 "d. A statement outlining the rights of the student
2 at the hearing.

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

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

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

17 "(6) The local board of education shall offer
18 substantial evidence at the hearing that the student violated
19 the code of student conduct or state law.

20 "(7) The student, parent or guardian, or the
21 representative of the student may present a defense, question
22 adverse witnesses, and offer evidence including oral testimony
23 from supporting witnesses, written statements or other
24 documentary evidence, and audio or video recordings at the
25 hearing.

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

4 "(9) The student and parent or guardian shall
5 receive a written decision from the impartial hearing officer
6 within five school days after the hearing. The written
7 decision shall include, but not be limited to, all of the
8 following information:

9 "a. The basis for the decision, including a
10 reference to the code of student conduct provision or state
11 law that the student is accused of violating, and the evidence
12 relied on by the impartial hearing officer in reaching the
13 decision.

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

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

20 "(g) The State Board of Education shall adopt rules
21 addressing all of the following:

22 "(1) Restrictions on communications between
23 impartial hearing officers and school personnel, members of
24 local boards of education, students, and other individuals in
25 order for impartial hearing officers to maintain their
26 impartiality.

1 "(2) Except as otherwise provided in Sections
2 16-1-24.1 and 16-1-24.3, the factors a hearing officer shall
3 consider when determining whether long-term suspension or
4 expulsion is an appropriate disciplinary measure commensurate
5 with the disciplinary incident or infraction committed.

6 "(3) Criteria for the State Department of Education
7 to follow in providing annual training to impartial hearing
8 officers, to ensure each impartial hearing officer is an
9 independent, neutral arbiter who is well-versed in state and
10 federal law pertaining to school discipline.

11 "(4) Any other issue the board deems relevant and
12 necessary to implement this section.

13 "(h) Nothing in this section shall be construed to
14 infringe on any right provided to students pursuant to the
15 federal Individuals with Disabilities Education Act, Section
16 504 of the Rehabilitation Act of 1973, or the Americans with
17 Disabilities Act of 1990."

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