



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bill 950 (Substitute S-1 as passed by the Senate)
 Sponsor: Senator Glenn D. Steil
 Committee: Education

Date Completed: 7-16-96

RATIONALE

The Revised School Code requires the State Board of Education to develop a State plan for the delivery of special education programs and services designed to develop the maximum potential of every handicapped person. For some children with learning disabilities, however, obtaining an education through the traditional public education system apparently can be a frustrating experience that only inhibits their educational development. Consequently, some people believe that the needs of these children could best be met in public school academies established solely to provide a specialized environment for learning disabled children.

CONTENT

The bill would amend the Revised School Code to permit a public school academy to limit enrollment only to special education pupils, if it were stated in the authorizing contract that the academy was established specifically for enrolling pupils whose primary disability had been determined to be a specific learning disability or another particular characteristic or set of characteristics recognized under special education rules of the State Board of Education. Currently, a public school academy may not discriminate in its pupil admissions policies or practices on the basis of intellectual or athletic ability, measures of achievement or aptitude, status as a handicapped person, or any other basis that would be illegal if used by a school district. A public school academy, however, may limit admission to pupils who are within a particular range of age or grade level, or on any other basis that would be legal if used by a school district.

MCL 380.504 & 380.514

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Great Lakes Academy, in Grand Rapids, is a private school designed for students who have been diagnosed as learning disabled due to dyslexia, which causes an impairment in reading ability. The school last year enrolled 45 students in kindergarten through the 12th grade. Officials at the school believe that additional children, who have difficulty learning due to this disability, could benefit from the school's educational program. Since the Revised School Code, however, prohibits a public school academy from limiting enrollment to students with special needs, schools like Great Lakes Academy cannot receive a contract to organize and operate as a public school academy. The bill would change that and allow academies to limit enrollment to students with specific disabilities. Some students require an educational program focused on a particular disability and would benefit from being educated with other students who have the same condition, rather than being placed in classrooms with students who have different or no learning disabilities. This type of educational program cannot be found in traditional special education settings.

Response: The Revised School Code specifies that in order to ensure that a handicapped person enrolled in a public school academy is provided with special education programs and services, the academy is considered to be a local school district. Under these provisions, an academy that is not designed specifically for disabled students, but has enrolled

handicapped students, must adhere to provisions in the Code as well as extensive administrative rules governing special education programs, including rules specific to learning disability programs. Presumably, academies established under the bill would be subject to the same regulations. Although the Revised School Code permits a public school academy, as well as a school district, university school, or intermediate school district, to apply for a waiver from a State Board or Department rule interpreting or implementing a provision of the Code, the State Board may grant a waiver only if one these entities demonstrates that it can address the intent of the rule in a more effective, efficient, or economical manner or that the waiver is necessary to stimulate improved pupil performance. Thus, an academy could seek a waiver of a State special education rule. If the State Board waived a special education rule, however, some people believe that the academy still would be subject to the Federal regulations upon which the State rule is based.

Opposing Argument

The emphasis on exclusivity and the refusal to enroll students with dissimilar disabilities or no disabilities at all are at the heart of the concerns about the bill. Prohibiting these students from enrolling in an academy that was limited to learning disabled pupils could violate certain Federal and State civil rights and education laws. The Michigan Handicappers' Civil Rights Act, for example, prohibits an educational institution from discriminating "in any manner in the full utilization of or benefit from the institution, or the services provided and rendered by the institution to an individual because of a handicap that is unrelated to the individual's ability to utilize and benefit from the institution or its services, or because of the use by an individual of adaptive devices or aids". Thus, a public school academy that was established to provide educational services to a student population with a particular disability to the exclusion of students with other disabilities could be discriminatory to students who would be ineligible to apply based on their particular disability. In addition, two Federal statutes, the Americans with Disabilities Act (ADA) and provisions of the Rehabilitation Act, prohibit discrimination and exclusion of qualified disabled persons. The ADA provides that "...no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." In addition, implementing regulations for the Rehabilitation

Act, it has been pointed out, prohibit a qualified handicapped person from being excluded from participation in, being denied the benefits of, or being subjected to discrimination under any program or activity that receives or benefits from Federal financial assistance.

Opposing Argument

The issues of inclusion and the appropriate education for a learning disabled child are central to the question of whether the development of public school academies that restricted enrollment could jeopardize Federal funds that the State receives for special education. Currently, the State must meet certain eligibility requirements in order to receive Federal funds for special education. Under Federal law, a state must demonstrate that it has established "procedures to assure that, to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily..." (20 USC 1412). Furthermore, it is important that children are educated with a diverse group of classmates. Inclusive education provides an opportunity for children to learn about other children who may have abilities different than their own and helps break down barriers among children. If the bill allowed all students to enroll in an academy established for students with learning difficulties, including nondisabled students who also could benefit from this kind of instructional program, the issue of discrimination could be resolved.

Response: Public school academies for learning disabled students, established under the bill, would comply with Federal law because these academies would be to the maximum extent appropriate for these children. Education in regular classes, even with the use of supplementary aids and services, would not result in a satisfactory education for these children. Furthermore, many of the academy's students could return to a regular classroom setting as they adapted to their learning disability. The bill aims to give parents of learning disabled children a choice of the most appropriate school and educational program for their children.

Legislative Analyst: L. Arasim

FISCAL IMPACT

The bill could have a fiscal impact on State and local government. In FY 1995-96, the State will receive approximately \$70,000,000 in Federal funds for special education. Most of this revenue is distributed by the State to local and intermediate districts to fund a portion of special education costs. The State School Aid Act provides, however, that up to \$3,000,000 of these funds may be used by the Michigan Department of Education for competitive grants designed to improve special education statewide.

The State must meet eligibility requirements to receive the Federal funds. In particular, 20 USCA 1412 provides that:

In order to qualify for assistance under this subchapter in any fiscal year, a State shall demonstrate to the Secretary that the following conditions are met: ...The State has established...procedures to assure that, to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily...

If a public school academy with enrollment restricted to a certain special education population opened pursuant to the bill, it is possible that Michigan's compliance with Federal special education law could come under review. A determination by the U.S. Department of Education that the State did not comply with the requirement described above, could make the State ineligible for Federal special education funding.

Fiscal Analyst: E. Pratt

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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.