

SECOND REGULAR SESSION

# HOUSE BILL NO. 2105

100TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE MACKEY.

3415H.011

DANA RADEMAN MILLER, Chief Clerk

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## AN ACT

To repeal sections 160.261, 167.161, and 167.171, RSMo, and to enact in lieu thereof three new sections relating to suspension of students.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Sections 160.261, 167.161, and 167.171, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 160.261, 167.161, and 167.171, to read as follows:

160.261. 1. The local board of education of each school district shall clearly establish a written policy of discipline, including the district's determination on the use of corporal punishment and the procedures in which punishment will be applied. **Each district's discipline policy shall prohibit the suspension of students in kindergarten or in any grade not higher than the third grade.** A written copy of the district's discipline policy and corporal punishment procedures, if applicable, shall be provided to the pupil and parent or legal guardian of every pupil enrolled in the district at the beginning of each school year and also made available in the office of the superintendent of such district, during normal business hours, for public inspection. All employees of the district shall annually receive instruction related to the specific contents of the policy of discipline and any interpretations necessary to implement the provisions of the policy in the course of their duties, including but not limited to approved methods of dealing with acts of school violence, disciplining students with disabilities and instruction in the necessity and requirements for confidentiality.

2. The policy shall require school administrators to report acts of school violence to all teachers at the attendance center and, in addition, to other school district employees with a need to know. For the purposes of this chapter or chapter 167, "need to know" is defined as school

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 personnel who are directly responsible for the student's education or who otherwise interact with  
18 the student on a professional basis while acting within the scope of their assigned duties. As  
19 used in this section, the phrase "act of school violence" or "violent behavior" means the exertion  
20 of physical force by a student with the intent to do serious physical injury as defined in section  
21 556.061 to another person while on school property, including a school bus in service on behalf  
22 of the district, or while involved in school activities. The policy shall at a minimum require  
23 school administrators to report, as soon as reasonably practical, to the appropriate law  
24 enforcement agency any of the following crimes, or any act which if committed by an adult  
25 would be one of the following crimes:

- 26 (1) First degree murder under section 565.020;
- 27 (2) Second degree murder under section 565.021;
- 28 (3) Kidnapping under section 565.110 as it existed prior to January 1, 2017, or  
29 kidnapping in the first degree under section 565.110;
- 30 (4) First degree assault under section 565.050;
- 31 (5) Rape in the first degree under section 566.030;
- 32 (6) Sodomy in the first degree under section 566.060;
- 33 (7) Burglary in the first degree under section 569.160;
- 34 (8) Burglary in the second degree under section 569.170;
- 35 (9) Robbery in the first degree under section 569.020 as it existed prior to January 1,  
36 2017, or robbery in the first degree under section 570.023;
- 37 (10) Distribution of drugs under section 195.211 as it existed prior to January 1, 2017,  
38 or manufacture of a controlled substance under section 579.055;
- 39 (11) Distribution of drugs to a minor under section 195.212 as it existed prior to January  
40 1, 2017, or delivery of a controlled substance under section 579.020;
- 41 (12) Arson in the first degree under section 569.040;
- 42 (13) Voluntary manslaughter under section 565.023;
- 43 (14) Involuntary manslaughter under section 565.024 as it existed prior to January 1,  
44 2017, involuntary manslaughter in the first degree under section 565.024, or involuntary  
45 manslaughter in the second degree under section 565.027;
- 46 (15) Second degree assault under section 565.060 as it existed prior to January 1, 2017,  
47 or second degree assault under section 565.052;
- 48 (16) Rape in the second degree under section 566.031;
- 49 (17) Felonious restraint under section 565.120 as it existed prior to January 1, 2017, or  
50 kidnapping in the second degree under section 565.120;
- 51 (18) Property damage in the first degree under section 569.100;
- 52 (19) The possession of a weapon under chapter 571;

53 (20) Child molestation in the first degree pursuant to section 566.067 as it existed prior  
54 to January 1, 2017, or child molestation in the first, second, or third degree pursuant to section  
55 566.067, 566.068, or 566.069;

56 (21) Sodomy in the second degree pursuant to section 566.061;

57 (22) Sexual misconduct involving a child pursuant to section 566.083;

58 (23) Sexual abuse in the first degree pursuant to section 566.100;

59 (24) Harassment under section 565.090 as it existed prior to January 1, 2017, or  
60 harassment in the first degree under section 565.090; or

61 (25) Stalking under section 565.225 as it existed prior to January 1, 2017, or stalking in  
62 the first degree under section 565.225;

63

64 committed on school property, including but not limited to actions on any school bus in service  
65 on behalf of the district or while involved in school activities. The policy shall require that any  
66 portion of a student's individualized education program that is related to demonstrated or  
67 potentially violent behavior shall be provided to any teacher and other school district employees  
68 who are directly responsible for the student's education or who otherwise interact with the  
69 student on an educational basis while acting within the scope of their assigned duties. The policy  
70 shall also contain the consequences of failure to obey standards of conduct set by the local board  
71 of education, and the importance of the standards to the maintenance of an atmosphere where  
72 orderly learning is possible and encouraged.

73 3. The policy shall provide that any student who is on suspension for any of the offenses  
74 listed in subsection 2 of this section or any act of violence or drug-related activity defined by  
75 school district policy as a serious violation of school discipline pursuant to subsection 9 of this  
76 section shall have as a condition of ~~[his or her]~~ **the student's** suspension the requirement that  
77 such student is not allowed, while on such suspension, to be within one thousand feet of any  
78 school property in the school district where such student attended school or any activity of that  
79 district, regardless of whether or not the activity takes place on district property unless:

80 (1) Such student is under the direct supervision of the student's parent, legal guardian,  
81 or custodian and the superintendent or the superintendent's designee has authorized the student  
82 to be on school property;

83 (2) Such student is under the direct supervision of another adult designated by the  
84 student's parent, legal guardian, or custodian, in advance, in writing, to the principal of the school  
85 which suspended the student and the superintendent or the superintendent's designee has  
86 authorized the student to be on school property;

87 (3) Such student is enrolled in and attending an alternative school that is located within  
88 one thousand feet of a public school in the school district where such student attended school;  
89 or

90 (4) Such student resides within one thousand feet of any public school in the school  
91 district where such student attended school in which case such student may be on the property  
92 of ~~[his or her]~~ **such student's** residence without direct adult supervision.

93 4. Any student who violates the condition of suspension required pursuant to subsection  
94 3 of this section may be subject to expulsion or further suspension pursuant to the provisions of  
95 sections 167.161, 167.164, and 167.171. In making this determination consideration shall be  
96 given to whether the student poses a threat to the safety of any child or school employee and  
97 whether such student's unsupervised presence within one thousand feet of the school is disruptive  
98 to the educational process or undermines the effectiveness of the school's disciplinary policy.  
99 Removal of any pupil who is a student with a disability is subject to state and federal procedural  
100 rights. This section shall not limit a school district's ability to:

101 (1) Prohibit all students who are suspended from being on school property or attending  
102 an activity while on suspension;

103 (2) Discipline students for off-campus conduct that negatively affects the educational  
104 environment to the extent allowed by law.

105 5. The policy shall provide for a suspension for a period of not less than one year, or  
106 expulsion, for a student who is determined to have brought a weapon to school, including but  
107 not limited to the school playground or the school parking lot, brought a weapon on a school bus  
108 or brought a weapon to a school activity whether on or off of the school property in violation of  
109 district policy, except that:

110 (1) The superintendent or, in a school district with no high school, the principal of the  
111 school which such child attends may modify such suspension on a case-by-case basis; ~~and~~

112 (2) This section shall not prevent the school district from providing educational services  
113 in an alternative setting to a student suspended under the provisions of this section; **and**

114 **(3) The policy shall prohibit the suspension of students in kindergarten or in any**  
115 **grade not higher than the third grade.**

116 6. For the purpose of this section, the term "weapon" shall mean a firearm as defined  
117 under 18 U.S.C. Section 921 and the following items, as defined in section 571.010: a blackjack,  
118 a concealable firearm, an explosive weapon, a firearm, a firearm silencer, a gas gun, a knife,  
119 knuckles, a machine gun, a projectile weapon, a rifle, a shotgun, a spring gun or a switchblade  
120 knife; except that this section shall not be construed to prohibit a school board from adopting a  
121 policy to allow a Civil War reenactor to carry a Civil War era weapon on school property for  
122 educational purposes so long as the firearm is unloaded. The local board of education shall

123 define weapon in the discipline policy. Such definition shall include the weapons defined in this  
124 subsection but may also include other weapons.

125           7. All school district personnel responsible for the care and supervision of students are  
126 authorized to hold every pupil strictly accountable for any disorderly conduct in school or on any  
127 property of the school, on any school bus going to or returning from school, during  
128 school-sponsored activities, or during intermission or recess periods.

129           8. Teachers and other authorized district personnel in public schools responsible for the  
130 care, supervision, and discipline of schoolchildren, including volunteers selected with reasonable  
131 care by the school district, shall not be civilly liable when acting in conformity with the  
132 established policies developed by each board, including but not limited to policies of student  
133 discipline or when reporting to his or her supervisor or other person as mandated by state law  
134 acts of school violence or threatened acts of school violence, within the course and scope of the  
135 duties of the teacher, authorized district personnel or volunteer, when such individual is acting  
136 in conformity with the established policies developed by the board. Nothing in this section shall  
137 be construed to create a new cause of action against such school district, or to relieve the school  
138 district from liability for the negligent acts of such persons.

139           9. Each school board shall define in its discipline policy acts of violence and any other  
140 acts that constitute a serious violation of that policy. "Acts of violence" as defined by school  
141 boards shall include but not be limited to exertion of physical force by a student with the intent  
142 to do serious bodily harm to another person while on school property, including a school bus in  
143 service on behalf of the district, or while involved in school activities. School districts shall for  
144 each student enrolled in the school district compile and maintain records of any serious violation  
145 of the district's discipline policy. Such records shall be made available to teachers and other  
146 school district employees with a need to know while acting within the scope of their assigned  
147 duties, and shall be provided as required in section 167.020 to any school district in which the  
148 student subsequently attempts to enroll.

149           10. Spanking, when administered by certificated personnel and in the presence of a  
150 witness who is an employee of the school district, or the use of reasonable force to protect  
151 persons or property, when administered by personnel of a school district in a reasonable manner  
152 in accordance with the local board of education's written policy of discipline, is not abuse within  
153 the meaning of chapter 210. The provisions of sections 210.110 to 210.165 notwithstanding, the  
154 children's division shall not have jurisdiction over or investigate any report of alleged child abuse  
155 arising out of or related to the use of reasonable force to protect persons or property when  
156 administered by personnel of a school district or any spanking administered in a reasonable  
157 manner by any certificated school personnel in the presence of a witness who is an employee of  
158 the school district pursuant to a written policy of discipline established by the board of education

159 of the school district, as long as no allegation of sexual misconduct arises from the spanking or  
160 use of force.

161           11. If a student reports alleged sexual misconduct on the part of a teacher or other school  
162 employee to a person employed in a school facility who is required to report such misconduct  
163 to the children's division under section 210.115, such person and the superintendent of the school  
164 district shall report the allegation to the children's division as set forth in section 210.115.  
165 Reports made to the children's division under this subsection shall be investigated by the division  
166 in accordance with the provisions of sections 210.145 to 210.153 and shall not be investigated  
167 by the school district under subsections 12 to 20 of this section for purposes of determining  
168 whether the allegations should or should not be substantiated. The district may investigate the  
169 allegations for the purpose of making any decision regarding the employment of the accused  
170 employee.

171           12. Upon receipt of any reports of child abuse by the children's division other than  
172 reports provided under subsection 11 of this section, pursuant to sections 210.110 to 210.165  
173 which allegedly involve personnel of a school district, the children's division shall notify the  
174 superintendent of schools of the district or, if the person named in the alleged incident is the  
175 superintendent of schools, the president of the school board of the school district where the  
176 alleged incident occurred.

177           13. If, after an initial investigation, the superintendent of schools or the president of the  
178 school board finds that the report involves an alleged incident of child abuse other than the  
179 administration of a spanking by certificated school personnel or the use of reasonable force to  
180 protect persons or property when administered by school personnel pursuant to a written policy  
181 of discipline or that the report was made for the sole purpose of harassing a public school  
182 employee, the superintendent of schools or the president of the school board shall immediately  
183 refer the matter back to the children's division and take no further action. In all matters referred  
184 back to the children's division, the division shall treat the report in the same manner as other  
185 reports of alleged child abuse received by the division.

186           14. If the report pertains to an alleged incident which arose out of or is related to a  
187 spanking administered by certificated personnel or the use of reasonable force to protect persons  
188 or property when administered by personnel of a school district pursuant to a written policy of  
189 discipline or a report made for the sole purpose of harassing a public school employee, a  
190 notification of the reported child abuse shall be sent by the superintendent of schools or the  
191 president of the school board to the law enforcement in the county in which the alleged incident  
192 occurred.

193 15. The report shall be jointly investigated by the law enforcement officer and the  
194 superintendent of schools or, if the subject of the report is the superintendent of schools, by a law  
195 enforcement officer and the president of the school board or such president's designee.

196 16. The investigation shall begin no later than forty-eight hours after notification from  
197 the children's division is received, and shall consist of, but need not be limited to, interviewing  
198 and recording statements of the child and the child's parents or guardian within two working days  
199 after the start of the investigation, of the school district personnel allegedly involved in the  
200 report, and of any witnesses to the alleged incident.

201 17. The law enforcement officer and the investigating school district personnel shall  
202 issue separate reports of their findings and recommendations after the conclusion of the  
203 investigation to the school board of the school district within seven days after receiving notice  
204 from the children's division.

205 18. The reports shall contain a statement of conclusion as to whether the report of alleged  
206 child abuse is substantiated or is unsubstantiated.

207 19. The school board shall consider the separate reports referred to in subsection 17 of  
208 this section and shall issue its findings and conclusions and the action to be taken, if any, within  
209 seven days after receiving the last of the two reports. The findings and conclusions shall be  
210 made in substantially the following form:

211 (1) The report of the alleged child abuse is unsubstantiated. The law enforcement officer  
212 and the investigating school board personnel agree that there was not a preponderance of  
213 evidence to substantiate that abuse occurred;

214 (2) The report of the alleged child abuse is substantiated. The law enforcement officer  
215 and the investigating school district personnel agree that the preponderance of evidence is  
216 sufficient to support a finding that the alleged incident of child abuse did occur;

217 (3) The issue involved in the alleged incident of child abuse is unresolved. The law  
218 enforcement officer and the investigating school personnel are unable to agree on their findings  
219 and conclusions on the alleged incident.

220 20. The findings and conclusions of the school board under subsection 19 of this section  
221 shall be sent to the children's division. If the findings and conclusions of the school board are  
222 that the report of the alleged child abuse is unsubstantiated, the investigation shall be terminated,  
223 the case closed, and no record shall be entered in the children's division central registry. If the  
224 findings and conclusions of the school board are that the report of the alleged child abuse is  
225 substantiated, the children's division shall report the incident to the prosecuting attorney of the  
226 appropriate county along with the findings and conclusions of the school district and shall  
227 include the information in the division's central registry. If the findings and conclusions of the  
228 school board are that the issue involved in the alleged incident of child abuse is unresolved, the

229 children's division shall report the incident to the prosecuting attorney of the appropriate county  
230 along with the findings and conclusions of the school board, however, the incident and the names  
231 of the parties allegedly involved shall not be entered into the central registry of the children's  
232 division unless and until the alleged child abuse is substantiated by a court of competent  
233 jurisdiction.

234 21. Any superintendent of schools, president of a school board or such person's designee  
235 or law enforcement officer who knowingly falsifies any report of any matter pursuant to this  
236 section or who knowingly withholds any information relative to any investigation or report  
237 pursuant to this section is guilty of a class A misdemeanor.

238 22. In order to ensure the safety of all students, should a student be expelled for bringing  
239 a weapon to school, violent behavior, or for an act of school violence, that student shall not, for  
240 the purposes of the accreditation process of the Missouri school improvement plan, be  
241 considered a dropout or be included in the calculation of that district's educational persistence  
242 ratio.

167.161. 1. The school board of any district, after notice to parents or others having  
2 custodial care and a hearing upon charges preferred, may suspend or expel a pupil for conduct  
3 which is prejudicial to good order and discipline in the schools or which tends to impair the  
4 morale or good conduct of the pupils. In addition to the authority granted in section 167.171,  
5 a school board may authorize, by general rule, the immediate removal of a pupil upon a finding  
6 by the principal, superintendent, or school board that the pupil poses a threat of harm to such  
7 pupil or others, as evidenced by the prior conduct of such pupil. Prior disciplinary actions shall  
8 not be used as the sole basis for removal, suspension or expulsion of a pupil. Removal of any  
9 pupil who is a student with a disability is subject to state and federal procedural rights. At the  
10 hearing upon any such removal, suspension or expulsion, the board shall consider the evidence  
11 and statements that the parties present and may consider records of past disciplinary actions,  
12 criminal court records or juvenile court records consistent with other provisions of the law, or  
13 the actions of the pupil which would constitute a criminal offense. The board may provide by  
14 general rule not inconsistent with this section for the procedure and conduct of such hearings.  
15 After meeting with the superintendent or ~~his~~ **the superintendent's** designee to discuss the  
16 expulsion, the parent, custodian or the student, if at least eighteen years of age, may, in writing,  
17 waive any right to a hearing before the board of education.

18 2. The school board of any district, after notice to parents or others having custodial care  
19 and a hearing upon the matter, may suspend a pupil upon a finding that the pupil has been  
20 charged, convicted or pled guilty in a court of general jurisdiction for the commission of a felony  
21 criminal violation of state or federal law. At a hearing required by this subsection, the board



22 shall consider statements that the parties present. The board may provide for the procedure and  
23 conduct of such hearings.

24 3. The school board shall make a good-faith effort to have the parents or others having  
25 custodial care present at any such hearing. Notwithstanding any other provision of law to the  
26 contrary, student discipline hearings or proceedings related to the rights of students to attend  
27 school or to receive academic credit shall not be required to comply with the requirements  
28 applicable to contested case hearings as provided in chapter 536, provided that appropriate due  
29 process procedures shall be observed which shall include the right for a trial de novo by the  
30 circuit court.

31 **4. Notwithstanding the provisions of subsections 1 and 2 of this section, the school**  
32 **board of a district shall not suspend any student in kindergarten or in any grade not higher**  
33 **than the third grade.**

167.171. 1. The school board in any district, by general rule and for the causes provided  
2 in section 167.161, may authorize the summary suspension of pupils, **other than pupils in**  
3 **kindergarten or in any grade not higher than the third grade**, by principals of schools for  
4 a period not to exceed ten school days and by the superintendent of schools for a period not to  
5 exceed one hundred and eighty school days. In case of a suspension by the superintendent for  
6 more than ten school days, the pupil, the pupil's parents or others having such pupil's custodial  
7 care may appeal the decision of the superintendent to the board or to a committee of board  
8 members appointed by the president of the board which shall have full authority to act in lieu of  
9 the board. Any suspension by a principal shall be immediately reported to the superintendent  
10 who may revoke the suspension at any time. In event of an appeal to the board, the  
11 superintendent shall promptly transmit to it a full report in writing of the facts relating to the  
12 suspension, the action taken by the superintendent and the reasons therefor and the board, upon  
13 request, shall grant a hearing to the appealing party to be conducted as provided in section  
14 167.161.

15 2. No pupil shall be suspended unless:

16 (1) The pupil shall be given oral or written notice of the charges against such pupil;

17 (2) If the pupil denies the charges, such pupil shall be given an oral or written  
18 explanation of the facts which form the basis of the proposed suspension;

19 (3) The pupil shall be given an opportunity to present such pupil's version of the  
20 incident; and

21 (4) In the event of a suspension for more than ten school days, where the pupil gives  
22 notice that such pupil wishes to appeal the suspension to the board, the suspension shall be  
23 stayed until the board renders its decision, unless in the judgment of the superintendent of  
24 schools, or of the district superintendent, the pupil's presence poses a continuing danger to

25 persons or property or an ongoing threat of disrupting the academic process, in which case the  
26 pupil may be immediately removed from school, and the notice and hearing shall follow as soon  
27 as practicable.

28           3. No school board shall readmit or enroll a pupil properly suspended for more than ten  
29 consecutive school days for an act of school violence as defined in subsection 2 of section  
30 160.261 regardless of whether or not such act was committed at a public school or at a private  
31 school in this state, provided that such act shall have resulted in the suspension or expulsion of  
32 such pupil in the case of a private school, or otherwise permit such pupil to attend school without  
33 first holding a conference to review the conduct that resulted in the expulsion or suspension and  
34 any remedial actions needed to prevent any future occurrences of such or related conduct. The  
35 conference shall include the appropriate school officials including any teacher employed in that  
36 school or district directly involved with the conduct that resulted in the suspension or expulsion,  
37 the pupil, the parent or guardian of the pupil or any agency having legal jurisdiction, care,  
38 custody or control of the pupil. The school board shall notify in writing the parents or guardians  
39 and all other parties of the time, place, and agenda of any such conference. Failure of any party  
40 to attend this conference shall not preclude holding the conference. Notwithstanding any  
41 provision of this subsection to the contrary, no pupil shall be readmitted or enrolled to a regular  
42 program of instruction if:

43           (1) Such pupil has been convicted of; or

44           (2) An indictment or information has been filed alleging that the pupil has committed  
45 one of the acts enumerated in subdivision (4) of this subsection to which there has been no final  
46 judgment; or

47           (3) A petition has been filed pursuant to section 211.091 alleging that the pupil has  
48 committed one of the acts enumerated in subdivision (4) of this subsection to which there has  
49 been no final judgment; or

50           (4) The pupil has been adjudicated to have committed an act which if committed by an  
51 adult would be one of the following:

52           (a) First degree murder under section 565.020;

53           (b) Second degree murder under section 565.021;

54           (c) First degree assault under section 565.050;

55           (d) Forcible rape under section 566.030 as it existed prior to August 28, 2013, or rape  
56 in the first degree under section 566.030;

57           (e) Forcible sodomy under section 566.060 as it existed prior to August 28, 2013, or  
58 sodomy in the first degree under section 566.060;

59           (f) Statutory rape under section 566.032;

60           (g) Statutory sodomy under section 566.062;

61 (h) Robbery in the first degree under section 569.020 as it existed prior to January 1,  
62 2017, or robbery in the first degree under section 570.023;

63 (i) Distribution of drugs to a minor under section 195.212 as it existed prior to January  
64 1, 2017, or delivery of a controlled substance under section 579.020;

65 (j) Arson in the first degree under section 569.040;

66 (k) Kidnapping or kidnapping in the first degree, when classified as a class A felony  
67 under section 565.110.

68

69 Nothing in this subsection shall prohibit the readmittance or enrollment of any pupil if a petition  
70 has been dismissed, or when a pupil has been acquitted or adjudicated not to have committed any  
71 of the above acts. This subsection shall not apply to a student with a disability, as identified  
72 under state eligibility criteria, who is convicted or adjudicated guilty as a result of an action  
73 related to the student's disability. Nothing in this subsection shall be construed to prohibit a  
74 school district which provides an alternative education program from enrolling a pupil in an  
75 alternative education program if the district determines such enrollment is appropriate.

76 4. If a pupil is attempting to enroll in a school district during a suspension or expulsion  
77 from another in-state or out-of-state school district including a private, charter or parochial  
78 school or school district, a conference with the superintendent or the superintendent's designee  
79 may be held at the request of the parent, court-appointed legal guardian, someone acting as a  
80 parent as defined by rule in the case of a special education student, or the pupil to consider if the  
81 conduct of the pupil would have resulted in a suspension or expulsion in the district in which the  
82 pupil is enrolling. Upon a determination by the superintendent or the superintendent's designee  
83 that such conduct would have resulted in a suspension or expulsion in the district in which the  
84 pupil is enrolling or attempting to enroll, the school district may make such suspension or  
85 expulsion from another school or district effective in the district in which the pupil is enrolling  
86 or attempting to enroll. Upon a determination by the superintendent or the superintendent's  
87 designee that such conduct would not have resulted in a suspension or expulsion in the district  
88 in which the student is enrolling or attempting to enroll, the school district shall not make such  
89 suspension or expulsion effective in its district in which the student is enrolling or attempting  
90 to enroll.

✓