



February 6, 2009

HOUSE BILL No. 1462

DIGEST OF HB 1462 (Updated February 5, 2009 8:08 am - DI 109)

Citations Affected: IC 10-13; IC 20-24; IC 20-28; IC 20-33; IC 34-30.

Synopsis: Criminal history checks. Exempts a postsecondary educational institution from paying a fee for a limited criminal history record of a student in the institution's school of education before the student begins the student's field or classroom experience. Requires an expanded criminal history background check for a person seeking to obtain or renew a teaching license or certificate. Gives civil immunity for certain school employees for certain acts or omissions during the course of their employment. Adds possession of child pornography to the list of felonies to be reported.

Effective: Upon passage; July 1, 2009; January 1, 2010.

Kersey, Porter, Behning, Barnes

January 14, 2009, read first time and referred to Committee on Education.
February 5, 2009, amended, reported — Do Pass. Referred to Committee on Ways and Means pursuant to Rule 127.

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HB 1462—LS 7424/DI 109+



February 6, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

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HOUSE BILL No. 1462

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 10-13-3-36, AS AMENDED BY P.L.2-2007,
2 SECTION 147, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JANUARY 1, 2010]: Sec. 36. (a) The department may
4 not charge a fee for responding to a request for the release of a limited
5 criminal history record if the request is made by a nonprofit
6 organization:
7 (1) that has been in existence for at least ten (10) years; and
8 (2) that:
9 (A) has a primary purpose of providing an individual
10 relationship for a child with an adult volunteer if the request
11 is made as part of a background investigation of a prospective
12 adult volunteer for the organization;
13 (B) is a home health agency licensed under IC 16-27-1;
14 (C) is a community mental retardation and other
15 developmental disabilities center (as defined in IC 12-7-2-39);
16 (D) is a supervised group living facility licensed under
17 IC 12-28-5;

HB 1462—LS 7424/DI 109+



- 1 (E) is an area agency on aging designated under IC 12-10-1;
- 2 (F) is a community action agency (as defined in
- 3 IC 12-14-23-2);
- 4 (G) is the owner or operator of a hospice program licensed
- 5 under IC 16-25-3; or
- 6 (H) is a community mental health center (as defined in
- 7 IC 12-7-2-38).

8 (b) Except as provided in subsection (d), the department may not
 9 charge a fee for responding to a request for the release of a limited
 10 criminal history record made by the department of child services or the
 11 division of family resources if the request is made as part of a
 12 background investigation of an applicant for a license under IC 12-17.2
 13 or IC 31-27.

14 (c) The department may not charge a fee for responding to a request
 15 for the release of a limited criminal history if the request is made by a
 16 school corporation, special education cooperative, or nonpublic school
 17 (as defined in IC 20-18-2-12) as part of a background investigation of
 18 a prospective or current employee or a prospective or current adult
 19 volunteer for the school corporation, special education cooperative, or
 20 nonpublic school.

21 (d) As used in this subsection, "state agency" means an authority, a
 22 board, a branch, a commission, a committee, a department, a division,
 23 or another instrumentality of state government, including the executive
 24 and judicial branches of state government, the principal secretary of the
 25 senate, the principal clerk of the house of representatives, the executive
 26 director of the legislative services agency, a state elected official's
 27 office, or a body corporate and politic, but does not include a state
 28 educational institution. The department may not charge a fee for
 29 responding to a request for the release of a limited criminal history if
 30 the request is made:

- 31 (1) by a state agency; and
- 32 (2) through the computer gateway that is administered by the
- 33 office of technology established by IC 4-13.1-2-1.

34 (e) The department may not charge a fee for responding to a request
 35 for the release of a limited criminal history record made by the Indiana
 36 professional licensing agency established by IC 25-1-5-3 if the request
 37 is:

- 38 (1) made through the computer gateway that is administered by
- 39 the office of technology; and
- 40 (2) part of a background investigation of a practitioner or an
- 41 individual who has applied for a license issued by a board (as
- 42 defined in IC 25-1-9-1).

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1 (f) The department may not charge a church or religious society a
2 fee for responding to a request for the release of a limited criminal
3 history record if:

4 (1) the church or religious society is a religious organization
5 exempt from federal income taxation under Section 501 of the
6 Internal Revenue Code;

7 (2) the request is made as part of a background investigation of a
8 prospective or current employee or a prospective or current adult
9 volunteer; and

10 (3) the employee or volunteer works in a nonprofit program or
11 ministry of the church or religious society, including a child care
12 ministry registered under IC 12-17.2-6.

13 **(g) The department may not charge the school of education of**
14 **a public or private postsecondary educational institution a fee for**
15 **responding to a request for the release of a limited criminal history**
16 **record if the request is made as part of a background investigation**
17 **of a student before or after the student begins the student's field or**
18 **classroom experience.**

19 SECTION 2. IC 20-24-8-5, AS AMENDED BY P.L.2-2006,
20 SECTION 111, IS AMENDED TO READ AS FOLLOWS
21 [EFFECTIVE JULY 1, 2009]: Sec. 5. The following statutes and rules
22 and guidelines adopted under the following statutes apply to a charter
23 school:

24 (1) IC 5-11-1-9 (required audits by the state board of accounts).

25 (2) IC 20-39-1-1 (unified accounting system).

26 (3) IC 20-35 (special education).

27 (4) IC 20-26-5-10 and ~~IC 20-28-5-9~~ **IC 20-28-5-9.3** (criminal
28 history).

29 (5) IC 20-26-5-6 (subject to laws requiring regulation by state
30 agencies).

31 (6) IC 20-28-7-14 (void teacher contract when two (2) contracts
32 are signed).

33 (7) IC 20-28-10-12 (nondiscrimination for teacher marital status).

34 (8) IC 20-28-10-14 (teacher freedom of association).

35 (9) IC 20-28-10-17 (school counselor immunity).

36 (10) For conversion charter schools only, IC 20-28-6, IC 20-28-7,
37 IC 20-28-8, IC 20-28-9, and IC 20-28-10.

38 (11) IC 20-33-2 (compulsory school attendance).

39 (12) IC 20-33-3 (limitations on employment of children).

40 (13) IC 20-33-8-19, IC 20-33-8-21, and IC 20-33-8-22 (student
41 due process and judicial review).

42 (14) IC 20-33-8-16 (firearms and deadly weapons).

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- 1 (15) IC 20-34-3 (health and safety measures).
- 2 (16) IC 20-33-9 (reporting of student violations of law).
- 3 (17) IC 20-30-3-2 and IC 20-30-3-4 (patriotic commemorative
- 4 observances).
- 5 (18) IC 20-31-3, IC 20-32-4, IC 20-32-5, IC 20-32-6, IC 20-32-8,
- 6 or any other statute, rule, or guideline related to standardized
- 7 testing (assessment programs, including remediation under the
- 8 assessment programs).
- 9 (19) IC 20-33-7 (parental access to education records).
- 10 (20) IC 20-31 (accountability for school performance and
- 11 improvement).

12 SECTION 3. IC 20-28-1-6.2 IS ADDED TO THE INDIANA CODE
 13 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
 14 JANUARY 1, 2010]: **Sec. 6.2. "Expanded criminal history check"**
 15 **means a criminal history background check of an individual that**
 16 **includes:**

17 (1) a:

- 18 (A) search of the records maintained by all counties in
- 19 Indiana in which the individual who is the subject of the
- 20 background check resided during the seven (7) years
- 21 preceding the date of the background check;
- 22 (B) search of the records maintained by all counties or
- 23 similar governmental units in another state, if the
- 24 individual who is the subject of the background check
- 25 resided in another state during the seven (7) years
- 26 preceding the date of the background check; and
- 27 (C) check of:
 - 28 (i) sex offender registries in all fifty (50) states; or
 - 29 (ii) the National Sex Offender Registry maintained by
 - 30 the United States Department of Justice; or

31 (2) a:

- 32 (A) national criminal history background check (as defined
- 33 in IC 10-13-3-12); and
- 34 (B) check of:
 - 35 (i) sex offender registries in all fifty (50) states; or
 - 36 (ii) the National Sex Offender Registry maintained by
 - 37 the United States Department of Justice.

38 SECTION 4. IC 20-28-4-11, AS ADDED BY P.L.150-2006,
 39 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 40 JULY 1, 2009]: Sec. 11. (a) This section applies only to:

- 41 (1) a school corporation; or
- 42 (2) a subject area;

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1 that is designated by the state board as having an insufficient supply of
2 licensed teachers.

3 (b) The governing body of a school corporation or the appointing
4 authority of an accredited nonpublic school may employ a program
5 participant if the program participant is hired to teach in a subject area
6 or a school corporation to which this section applies.

7 (c) Before employing a program participant under subsection (b),
8 the superintendent of the school corporation must make a
9 determination that one (1) of the following conditions exists:

10 (1) There is no fully certified and highly qualified teacher
11 available for the position.

12 (2) The program participant is the best qualified candidate for the
13 position.

14 (d) A program participant who is employed under this section is
15 eligible to receive a transition to teaching permit. The transition to
16 teaching permit is valid for three (3) years, and may not be renewed.
17 ~~IC 20-28-5-9~~ IC 20-28-5-9.3 applies to a program participant who
18 applies for a transition to teaching permit.

19 (e) A program participant who is employed under this section:

20 (1) shall enter into either:

21 (A) a regular teacher's contract under IC 20-28-6-5; or

22 (B) a temporary teacher's contract under IC 20-28-6-6, if
23 replacing a teacher on a leave of absence;

24 (2) is eligible to participate in a mentor teacher program; and

25 (3) satisfies the field or classroom experience component of the
26 program under section 4(3) of this chapter.

27 (f) The state board:

28 (1) shall review; and

29 (2) may renew;

30 the designation of a school corporation or a subject area as having an
31 insufficient supply of licensed teachers not more than two (2) years
32 following the initial designation under subsection (a).

33 SECTION 5. IC 20-28-5-8, AS AMENDED BY P.L.151-2006,
34 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
35 JULY 1, 2009]:Sec. 8. (a) This section applies when a prosecuting
36 attorney knows that a licensed employee of a public school or a
37 nonpublic school has been convicted of an offense listed in subsection
38 (c). The prosecuting attorney shall immediately give written notice of
39 the conviction to the following:

40 (1) The state superintendent.

41 (2) Except as provided in subdivision (3), the superintendent of
42 the school corporation that employs the licensed employee or the

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1 equivalent authority if a nonpublic school employs the licensed
 2 employee.
 3 (3) The presiding officer of the governing body of the school
 4 corporation that employs the licensed employee, if the convicted
 5 licensed employee is the superintendent of the school corporation.
 6 (b) The superintendent of a school corporation, presiding officer of
 7 the governing body, or equivalent authority for a nonpublic school shall
 8 immediately notify the state superintendent when the individual knows
 9 that a current or former licensed employee of the public school or
 10 nonpublic school has been convicted of an offense listed in subsection
 11 (c), **or when the governing body or equivalent authority for a**
 12 **nonpublic school takes any final action in relation to an employee**
 13 **who engaged in any offense listed in subsection (c).**
 14 (c) The department, after holding a hearing on the matter, shall
 15 permanently revoke the license of a person who is known by the
 16 department to have been convicted of any of the following felonies:
 17 (1) Kidnapping (IC 35-42-3-2), if the victim is less than eighteen
 18 (18) years of age.
 19 (2) Criminal confinement (IC 35-42-3-3), if the victim is less than
 20 eighteen (18) years of age.
 21 (3) Rape (IC 35-42-4-1), if the victim is less than eighteen (18)
 22 years of age.
 23 (4) Criminal deviate conduct (IC 35-42-4-2), if the victim is less
 24 than eighteen (18) years of age.
 25 (5) Child molesting (IC 35-42-4-3).
 26 (6) Child exploitation (IC 35-42-4-4(b)).
 27 (7) Vicarious sexual gratification (IC 35-42-4-5).
 28 (8) Child solicitation (IC 35-42-4-6).
 29 (9) Child seduction (IC 35-42-4-7).
 30 (10) Sexual misconduct with a minor (IC 35-42-4-9).
 31 (11) Incest (IC 35-46-1-3), if the victim is less than eighteen (18)
 32 years of age.
 33 (12) Dealing in or manufacturing cocaine or a narcotic drug
 34 (IC 35-48-4-1).
 35 (13) Dealing in methamphetamine (IC 35-48-4-1.1).
 36 (14) Dealing in a schedule I, II, or III controlled substance
 37 (IC 35-48-4-2).
 38 (15) Dealing in a schedule IV controlled substance
 39 (IC 35-48-4-3).
 40 (16) Dealing in a schedule V controlled substance (IC 35-48-4-4).
 41 (17) Dealing in a counterfeit substance (IC 35-48-4-5).
 42 (18) Dealing in marijuana, hash oil, or hashish

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(IC 35-48-4-10(b)).

(19) Possession of child pornography (IC 35-42-4-4(c)).

(d) A license may be suspended by the state superintendent as specified in IC 20-28-7-7.

(e) The department shall develop a data base of information on school corporation employees who have been reported to the department under this section.

SECTION 6. IC 20-28-5-9.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 9.3. Before employing a potential employee to fill any position in a school corporation, the superintendent must conduct an expanded criminal history check as described under IC 20-28-1-6.2.**

SECTION 7. IC 20-33-8-9, AS ADDED BY P.L.1-2005, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. (a) This section applies to an individual who:

- (1) is a teacher or other school staff member; and
- (2) has students under the individual's charge.

(b) An individual may take any action that is reasonably necessary to carry out or to prevent an interference with an educational function that the individual supervises.

(c) Subject to rules of the governing body and the administrative staff, an individual may remove a student for a period that does not exceed five (5) school days from an educational function supervised by the individual or another individual who is a teacher or other school staff member.

(d) If an individual removes a student from class for violent or disruptive behavior, or an ongoing pattern of classroom procedure violations under subsection (c), the principal may place the student into another appropriate classroom or placement, or into inschool suspension. The principal may not return the student to that teacher's class until the principal has met with the:

- (1) student;**
- (2) student's teacher; and**
- (3) student's parent;**

to determine an appropriate behavior plan for the student. If the meeting under this section does not take place within a reasonable period of time, the student may be moved to another classroom at the principal's discretion.

(e) A school counselor may act on behalf of the student's parent to develop an appropriate behavior plan if the parent does not participate in the meeting under subsection (d).

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1 SECTION 8. IC 20-33-8-9.5 IS ADDED TO THE INDIANA CODE
2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: **Sec. 9.5. (a) A teacher may take any action
4 concerning the teacher's school of employment or at a school
5 activity of the teacher's school of employment that is reasonably
6 necessary to carry out or prevent an interference with an
7 educational function or school purpose.**

8 **(b) A teacher is immune from civil liability for acts or omissions
9 when carrying out or preventing an interference with an
10 educational function or school purpose under this section.**

11 **(c) Subject to rules of the governing body and the administrative
12 staff, a teacher may remove a student for a period that does not
13 exceed five (5) school days from an educational function supervised
14 by the teacher or another individual who is a school staff member.**

15 SECTION 9. IC 20-33-8-10, AS ADDED BY P.L.1-2005,
16 SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
17 UPON PASSAGE]: **Sec. 10. (a) A principal may take action
18 concerning the principal's school or a school activity within the
19 principal's jurisdiction that is reasonably necessary to carry out or
20 prevent interference with an educational function or school purposes.**

21 **(b) Subsection (a) allows a principal to write regulations that govern
22 student conduct.**

23 **(c) A principal is immune from civil liability for acts or
24 omissions when carrying out or preventing an interference with an
25 educational function or school purpose.**

26 SECTION 10. IC 20-33-8-11, AS ADDED BY P.L.1-2005,
27 SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
28 UPON PASSAGE]: **Sec. 11. (a) A:**

- 29 (1) superintendent; or
30 (2) member of the superintendent's administrative staff, with the
31 superintendent's approval;
32 may take any action with respect to all schools within the
33 superintendent's jurisdiction that is reasonably necessary to carry out
34 or prevent interference with an educational function or school
35 purposes.

36 **(b) An individual described in subsection (a) is immune from
37 civil liability for acts or omissions when carrying out or preventing
38 an interference with an educational function or school purposes.**

39 SECTION 11. IC 34-30-2-84.7 IS ADDED TO THE INDIANA
40 CODE AS A NEW SECTION TO READ AS FOLLOWS:
41 [EFFECTIVE UPON PASSAGE]: **Sec. 84.7. IC 20-33-8-9.5 and
42 IC 20-33-8-10 (Concerning acts and omissions by school teachers**

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1 **and principals when carrying out or preventing interference with**
2 **an educational function or school purpose).**

3 SECTION 12. IC 20-28-5-9 IS REPEALED [EFFECTIVE JULY 1,
4 2009].

5 SECTION 13. **An emergency is declared for this act.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Education, to which was referred House Bill 1462, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 3, between lines 18 and 19, begin a new paragraph and insert:

"SECTION 2. IC 20-24-8-5, AS AMENDED BY P.L.2-2006, SECTION 111, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. The following statutes and rules and guidelines adopted under the following statutes apply to a charter school:

- (1) IC 5-11-1-9 (required audits by the state board of accounts).
- (2) IC 20-39-1-1 (unified accounting system).
- (3) IC 20-35 (special education).
- (4) IC 20-26-5-10 and ~~IC 20-28-5-9~~ IC 20-28-5-9.3 (criminal history).
- (5) IC 20-26-5-6 (subject to laws requiring regulation by state agencies).
- (6) IC 20-28-7-14 (void teacher contract when two (2) contracts are signed).
- (7) IC 20-28-10-12 (nondiscrimination for teacher marital status).
- (8) IC 20-28-10-14 (teacher freedom of association).
- (9) IC 20-28-10-17 (school counselor immunity).
- (10) For conversion charter schools only, IC 20-28-6, IC 20-28-7, IC 20-28-8, IC 20-28-9, and IC 20-28-10.
- (11) IC 20-33-2 (compulsory school attendance).
- (12) IC 20-33-3 (limitations on employment of children).
- (13) IC 20-33-8-19, IC 20-33-8-21, and IC 20-33-8-22 (student due process and judicial review).
- (14) IC 20-33-8-16 (firearms and deadly weapons).
- (15) IC 20-34-3 (health and safety measures).
- (16) IC 20-33-9 (reporting of student violations of law).
- (17) IC 20-30-3-2 and IC 20-30-3-4 (patriotic commemorative observances).
- (18) IC 20-31-3, IC 20-32-4, IC 20-32-5, IC 20-32-6, IC 20-32-8, or any other statute, rule, or guideline related to standardized testing (assessment programs, including remediation under the assessment programs).
- (19) IC 20-33-7 (parental access to education records).
- (20) IC 20-31 (accountability for school performance and improvement)."

Page 4, between lines 2 and 3, begin a new paragraph and insert:

HB 1462—LS 7424/DI 109+



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"SECTION 6. IC 20-28-4-11, AS ADDED BY P.L.150-2006, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 11. (a) This section applies only to:

- (1) a school corporation; or
- (2) a subject area;

that is designated by the state board as having an insufficient supply of licensed teachers.

(b) The governing body of a school corporation or the appointing authority of an accredited nonpublic school may employ a program participant if the program participant is hired to teach in a subject area or a school corporation to which this section applies.

(c) Before employing a program participant under subsection (b), the superintendent of the school corporation must make a determination that one (1) of the following conditions exists:

- (1) There is no fully certified and highly qualified teacher available for the position.
- (2) The program participant is the best qualified candidate for the position.

(d) A program participant who is employed under this section is eligible to receive a transition to teaching permit. The transition to teaching permit is valid for three (3) years, and may not be renewed. ~~IC 20-28-5-9~~ IC 20-28-5-9.3 applies to a program participant who applies for a transition to teaching permit.

(e) A program participant who is employed under this section:

- (1) shall enter into either:
 - (A) a regular teacher's contract under IC 20-28-6-5; or
 - (B) a temporary teacher's contract under IC 20-28-6-6, if replacing a teacher on a leave of absence;
- (2) is eligible to participate in a mentor teacher program; and
- (3) satisfies the field or classroom experience component of the program under section 4(3) of this chapter.

(f) The state board:

- (1) shall review; and
- (2) may renew;

the designation of a school corporation or a subject area as having an insufficient supply of licensed teachers not more than two (2) years following the initial designation under subsection (a)."

Page 4, delete line 18.

Page 4, line 24, delete "." and insert ", or when the governing body or equivalent authority for a nonpublic school takes any final action in relation to an employee who engaged in any offense listed in subsection (c)."

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Page 5, delete lines 16 through 42, begin a new paragraph and insert:

"(e) The department shall develop a data base of information on school corporation employees who have been reported to the department under this section.

SECTION 7. IC 20-28-5-9.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 9.3. Before employing a potential employee to fill any position in a school corporation, the superintendent must conduct an expanded criminal history check as described under IC 20-28-1-6.2."**

Page 6, delete lines 1 through 9, begin a new paragraph and insert:
"SECTION 8. IC 20-33-8-9, AS ADDED BY P.L.1-2005, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. (a) This section applies to an individual who:

- (1) is a teacher or other school staff member; and
- (2) has students under the individual's charge.

(b) An individual may take any action that is reasonably necessary to carry out or to prevent an interference with an educational function that the individual supervises.

(c) Subject to rules of the governing body and the administrative staff, an individual may remove a student for a period that does not exceed five (5) school days from an educational function supervised by the individual or another individual who is a teacher or other school staff member.

(d) If an individual removes a student from class for violent or disruptive behavior, or an ongoing pattern of classroom procedure violations under subsection (c), the principal may place the student into another appropriate classroom or placement, or into inschool suspension. The principal may not return the student to that teacher's class until the principal has met with the:

- (1) student;**
- (2) student's teacher; and**
- (3) student's parent;**

to determine an appropriate behavior plan for the student. If the meeting under this section does not take place within a reasonable period of time, the student may be moved to another classroom at the principal's discretion.

(e) A school counselor may act on behalf of the student's parent to develop an appropriate behavior plan if the parent does not participate in the meeting under subsection (d)."

Page 7, between lines 11 and 12, begin a new paragraph and insert:

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"SECTION 10. IC 20-28-5-9 IS REPEALED [EFFECTIVE JULY 1, 2009]."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1462 as introduced.)

PORTER, Chair

Committee Vote: yeas 12, nays 0.

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