Aida Montano *Legislative Service Commission*

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(As Introduced)

Reps. Terwilleger, Callender, Taylor, Tiberi, Opfer, Pringle, DePiero, Damschroder, Winkler, Young

BILL SUMMARY

- Permits public school teachers to engage in certain types of conduct for any of specified purposes associated with maintaining decorum, discipline, and order and preserving the learning environment in the teacher's classroom and promoting student respect for the teacher.

- Provides that the permissible types of teacher conduct added by the bill do not affect certain types of disciplinary measures available to public school teachers and administrators under existing law.

- Confers upon public school teachers who engage in permissible conduct for a specified purpose absolute immunity from liability in damages for injury, death, or loss to person or property allegedly sustained by the student involved or another person.

- Confers upon the public school district or educational service center that employs a teacher who engages in permissible conduct for a specified purpose absolute immunity from liability in damages for injury, death, or loss to person or property allegedly sustained by the student involved or another person.

- Permits a public school teacher to engage in permissible conduct for a specified purpose notwithstanding any rules adopted by a school district board under its broad authority to manage and control schools in its district.

- Provides that a public school teacher's contract may not be terminated and that such teacher may not be subject to other disciplinary action

because the teacher engaged in permissible conduct for a specified purpose.

- Specifies that the bill does not preclude the criminal prosecution of a public school teacher for the offense of endangering children if the teacher engaged in permissible conduct in a manner that would constitute such offense.

- Provides that a collective bargaining agreement may not supersede or negate any provision in the bill.

- Provides for the prospective operation of the bill's provisions conferring absolute immunity from tort liability upon public school teachers who engage in permissible conduct for a specified purpose and the school districts that employ them.

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Background law

The Political Subdivision Sovereign Immunity (PSSI) Law focuses upon the circumstances under which a political subdivision has or does not have potential tort liability in damages in a civil action for injury, death, or loss to person or property allegedly caused by an act or omission of the political subdivision or an employee of the political subdivision in connection with a governmental or proprietary function (sec. 2744.02, not in the bill). The PSSI Law does not specify the circumstances under which an employee of a political subdivision has potential tort liability in damages for injury, death, or loss to person or property allegedly caused by an act or omission of the employee in connection with a governmental

or proprietary function. The circumstances under which an employee of a political subdivision may have tort liability and the nature of the theories of tort liability that may be asserted against an employee of a political subdivision are determined under Ohio common law.

Although the PSSI Law does not specify the circumstances of tort liability of employees of political subdivisions, it confers upon employees *qualified immunity* from tort liability arising under Ohio common law. Under the PSSI Law, an employee of a political subdivision is immune from tort liability unless: (a) the employee's acts or omissions were manifestly outside the scope of the employee's employment or official responsibilities, (b) the employee's acts or omissions were with malicious purpose, in bad faith, or in a wanton or reckless manner, or (c) liability is expressly imposed upon the employee by a section of the Revised Code. Liability is not construed to exist under another section of the Revised Code merely because that section imposes a responsibility or mandatory duty upon an employee, because of a general authorization in that section that an employee may sue and be sued, or because the section uses the term "shall" in a provision pertaining to an employee. This qualified immunity from liability applies in circumstances *not* covered by existing statutory immunities or defenses (see **COMMENT** 1). (Sec. 2744.03(A)(6).)

Operation of the bill

Permissible teacher conduct

The bill specifies that a teacher (see **COMMENT** 2) may engage in specified types of permissible conduct (hereafter, "permissible conduct") for any of the following purposes (hereafter, "specified purpose"): (a) to maintain decorum, discipline, and order in the teacher's classroom, (b) to preserve the teacher's classroom as a learning environment for all students assigned to the classroom, (c) to eliminate from that learning environment disruptive and distracting influences, and (d) to promote student respect for the teacher. The types of teacher conduct permitted by the bill include all of the following (sec. 3313.474(A)(1) to (7)):

(1) Verbally disciplining a student;

(2) Physically isolating a student within the teacher's classroom;

(3) Withholding one or more privileges from a student;

(4) Using physically harmless props to discipline a student;

(5) Temporarily or permanently removing a student from the teacher's classroom;

(6) Exercising disciplinary measures that are not listed in (1) to (5), above, that do not rise to the level of corporal punishment and are reasonably calculated to maintain decorum, discipline, or order in the teacher's classroom;

(7) Refusing to admit or readmit a student into the teacher's classroom if the teacher determines that the student has an unreformed history of behavior that has disrupted or otherwise distracted from the learning environment of the teacher's or another's classroom.

Other disciplinary actions not affected by the bill

The bill specifically leaves unaltered the current law regarding certain other disciplinary actions that can be taken against a student by teachers and other school officials. These actions are the following (sec. 3313.474(B)):

(1) A teacher's ability to use corporal punishment, if the school district board has adopted a resolution permitting corporal punishment (sec. 3319.41(A) to (F), not in the bill);

(2) A teacher's ability to use and apply reasonable force or restraint, other than corporal punishment, necessary to suppress a disturbance that threatens physical injury to others; to take from students weapons or dangerous objects; for self-defense; "or for the protection of persons or property" (sec. 3319.41(G), not in the bill);

(3) A teacher's ability to remove from curricular and extracurricular activities a student whose presence poses a continuing danger to persons or property or an ongoing threat of disrupting the "academic process" in the teacher's classroom (sec. 3313.66(C), not in the bill);

(4) A superintendent's, principal's, or assistant principal's ability to suspend, expel, or remove a student for misconduct (sec. 3313.66 in total, not in the bill) (see **COMMENT** 3);

(5) A superintendent's ability to recommend to the board of education that the board request that the Superintendent of Public Instruction permanently exclude the student from the state's public schools (sec. 3313.662, not in the bill) (see **COMMENT** 4);

(6) A superintendent's ability under board-adopted guidelines to require a pupil to perform community service in conjunction with or in place of a suspension or expulsion, other than an expulsion imposed for bringing a firearm to school (sec. 3313.661(B), not in the bill);

(7) A principal's ability to conduct lawful locker searches (sec. 3313.20(B)).

Teacher's authority in classroom takes precedence over some school board policies

School district boards are vested with broad authority to manage and control the schools in their respective districts (sec. 3313.47, not in the bill). In addition, district boards are given specific authority to make any rules necessary for the governance of the schools or premises under their charge (sec. 3313.20(A)). The bill provides that this rule-making authority is subject to a teacher's exercise of permissible disciplinary measures under the bill (sec. 3313.20(A)). The bill permits a teacher to engage in any permissible conduct for a specified purpose notwithstanding any rules adopted by the district board pursuant to its broad authority and even if such conduct conflicts with any such rule. (Sec. 3313.474(C)(1).)

Current law provides that a teacher's contract may be terminated, upon prior notice and hearing, for, among other things, persistent violations of reasonable district regulations (sec. 3319.16, not in the bill). The bill, however, states that a teacher's contract may not be terminated because the teacher has engaged in any permissible conduct for a specified purpose. Under the bill, a teacher also may not be subject to any other disciplinary action because the teacher engaged in such conduct. (Sec. 3313.474(C)(2).)

Civil immunities

The bill confers upon a teacher who engages in any permissible conduct for a specified purpose *absolute immunity* from liability in damages to the student involved or any other person in a civil action for injury, death, or loss to person or property allegedly sustained by the student or other person as a result of the teacher's engaging in the permissible conduct for the specified purpose. When a teacher is entitled to absolute immunity from civil liability conferred by the bill, the qualified employee immunity that applies to teachers under the existing PSSI Law does not apply to that teacher. The bill states that the grant of absolute immunity from civil liability does not create a new cause of action or substantive legal right against a teacher and does not affect any immunity from civil liability or defense established under the PSSI Law or another statute or available at common law to which a teacher may be entitled under circumstances that are *not* covered by the absolute immunity provisions of the bill. (Secs. 3313.475(A) and 2744.03(A)(6).)

The bill specifies in uncodified law that the absolute immunity from civil liability granted to teachers applies prospectively (Section 3). (See **COMMENT** 5.)

The bill also confers upon the city, exempted village, local, or joint vocational school district or educational service center that employs a teacher who engages in any permissible conduct for a specified purpose *absolute immunity* from liability in damages to the student involved or any other person in a civil action for injury, death, or loss to person or property that the student or other person allegedly sustains as a result of the teacher's engaging in the permissible conduct for the specified purpose. The bill states that the grant of absolute immunity from civil liability does not create a new cause of action or substantive legal right against a city, exempted village, local, or joint vocational school district or educational service center and does not affect any immunity from civil liability or defense established under the PSSI Law or another statute or available at common law to which the school district or educational service center may be entitled under circumstances that are *not* covered by the absolute immunity provisions of the bill. (Sec. 3313.475(B).)

The bill specifies in uncodified law that the absolute immunity from civil liability granted to a city, exempted village, local, or joint vocational school district or educational service center that employs a teacher who engages in any permissible conduct for a specified purpose applies prospectively (Section 4). (See **COMMENT** 6.)

The bill specifically excludes the absolute immunity from tort liability conferred upon a teacher who engages in permissible conduct for a specified purpose from the application of the PSSI Law's qualified immunity from tort liability of employees of political subdivisions (sec. 2744.03(A)(6)).

Allowable criminal prosecutions

The bill states that its provisions do not preclude the criminal prosecution of a teacher for the criminal offense of endangering children if the teacher engages in any permissible conduct in a manner that is prohibited by the Endangering Children Law (sec. 3313.476). (See **COMMENT** 7.)

Miscellaneous provisions

The bill states that none of its provisions is intended to affect the duties of a board of education, governing board of an educational service center, or any employee of such board or governing board to comply with the Constitution or the statutes of the United States (sec. 3313.476).

The bill provides that a collective bargaining agreement entered into under the existing Public Employees' Collective Bargaining Law may not supersede or otherwise negate the effect of any provision in the bill (sec. 3313.477).

COMMENT

1. These statutory immunities are:

(a) A political subdivision, and an employee who is a county prosecuting attorney, city director of law, village solicitor, or similar chief legal officer of a political subdivision, an assistant of any such person, or a judge of an Ohio court is entitled to any defense or immunity available at common law or established by the Revised Code (sec. 2744.03(A)(7)).

(b) A sponsor of a community school and the officers, directors, or employees of such a sponsor are not liable in damages in a tort or other civil action for harm allegedly arising from either (i) a failure of the community school or any of its officers, directors, or employees to perform any statutory or common law duty or responsibility or any other legal obligation or (ii) an action or omission of the community school or any of its officers, directors, or employees that results in harm (sec. 3314.07(D), not in the bill).

(c) Certain types of persons, state agencies, political subdivisions, or public utilities engaged in specified voluntary action or performing specified work in places where voluntary action is conducted or any of their officers or employees are not liable in a tort action resulting from the presence of hazardous substances or petroleum at, or the release of hazardous substances or petroleum from, property where voluntary action is being or has been conducted under the Voluntary Cleanup of Contaminated Property Law unless an action or omission of the person, state agency, political subdivision, or public utility, or an officer or employee constitutes willful or wanton misconduct or intentionally tortious conduct. (Sec. 3746.24(B), not in the bill.)

2. The bill defines "teacher" for purposes of the new law it enacts as an individual who a city, exempted village, local, or joint vocational school district or an educational service center employs as a teacher and who has been assigned to a classroom (sec. 3313.473).

3. Each district board of education must adopt a policy regarding suspension, expulsion, removal, and permanent exclusion that specifies the types of misconduct that warrant such discipline (sec. 3313.661(A)). Under the district's policy, the district superintendent and school principals may suspend students for misconduct for up to ten days. If at the time the suspension is imposed there are

less than ten days left in the school year, the superintendent, and only the superintendent, may apply part or all of the period of the suspension to the following school year. Prior to suspending a student, the superintendent or principal must provide the student with written notice of the intention to suspend the student and an opportunity for an informal hearing to challenge the reasons for the intended suspension or to explain the student's actions. (Sec. 3313.66(A).)

Only a district superintendent may expel a student. For misconduct that does *not* involve conveying or possessing a firearm or knife at school or on other school property, the superintendent may expel a student for up to the greater of 80 days or for the number of days remaining in the semester or term. If at the time the expulsion is imposed there are less than 80 days left in the school year, the superintendent may apply part or all of the period of the suspension to the following school year. (Sec. 3313.66(B)(1).) Any student who is expelled must be removed from the regular school setting, but the district is permitted to provide that student with educational services in an alternative setting (sec. 3313.66(I)).

A district superintendent *must* expel for a period of one year any student who has brought a firearm to school or onto other property owned or controlled by the school district. The superintendent may reduce the expulsion period on a "case-by-case basis" pursuant to the policy adopted by the district board. Any such expulsion *must* extend as necessary into the school year following the school year in which the incident took place that gave rise to the expulsion. (Sec. 3313.66(B)(2).)

The law also permits a district board to adopt a resolution authorizing the superintendent to expel for up to one year any student who has brought a knife to school or onto other school property or who has possessed either a firearm or knife at school or on other school property when the knife or firearm was brought there by another person. The resolution may authorize the district superintendent to extend these expulsions, as necessary, into the school year following the school year in which the incident involving a knife or firearm takes place. The resolution also must specify any reasons for which the district superintendent may reduce any required expulsion period on a case-by-case basis. (Secs. 3313.66(B)(3) and 3313.661(A).)

Any expulsion requires written notice to the pupil and the pupil's parent, guardian, or custodian and an opportunity to appear before the superintendent to explain the pupil's actions (sec. 3313.66(B)(5)). Further, the pupil has a right to representation at such appearance, the right to appeal the superintendent's decision to the district board, and a right to appeal the board's decision to the court of common pleas (sec. 3313.66(D) to (E)).

The superintendent or principal or assistant principal may remove a student from curricular *or* extracurricular activities (or a teacher may remove a student from such activities which are under the teacher's supervision) without the prior notice and hearing requirements when the student's presence poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process taking place either within a classroom or elsewhere on the school premises. However, when a student is immediately removed from such settings, notice must be provided as soon as practicable prior to the hearing, which must be held within three school days from the time the initial removal of the student is ordered. (Sec. 3313.66(C).) In addition, a district extracurricular activity suspension policy may authorize the district superintendent or other district administrative personnel to suspend a student from all or any particular extracurricular activities of the district or a school of the district for a period of time as provided in the district's policy (sec. 3313.664).

4. A superintendent may recommend that the district board adopt a resolution requesting the state Superintendent of Public Instruction to permanently exclude a student from the public schools. A student may be subject to permanent exclusion only if the Superintendent determines and documents that the student's attendance poses a danger to the health and safety of others in the school and that the student has been convicted of (or adjudicated a delinquent child for committing) when the student was at least 16 years of age any of certain specified violations of law. These violations are (sec. 3313.662(A)):

(a) Illegal conveyance or possession of a deadly weapon or dangerous ordnance on school premises (sec. 2923.122);

(b) Carrying concealed weapons on property owned or controlled by a school district board or at an activity held under the auspices of a school district board (sec. 2923.12);

(c) Drug trafficking offenses on property owned or controlled by a school district board or at an activity held under the auspices of a school district board (sec. 2925.03);

(d) Drug possession offenses, except for a minor drug possession offense, on property owned or controlled by a school district board or at an activity held under the auspices of a school district board (sec. 2925.11);

(e) Aggravated murder, murder, voluntary manslaughter, involuntary manslaughter, felonious assault, aggravated assault, rape, gross sexual imposition, and the former crime of felonious sexual penetration on property owned or controlled by the school district board or at an activity held under the auspices of a

school district board, if the victim at the time the act was committed was an employee of the board (secs. 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2907.02, and 2907.05, and former sec. 2907.12);

(f) Complicity in any of the above violations regardless of whether the act of complicity was committed on property owned or controlled by a school district board or at an activity held under the auspices of a school district board.

The Superintendent must provide written notice to the student and the student's parents, guardian, or custodian that the Superintendent intends to recommend that the student be excluded from the state's public schools. Within 14 days after the district board receives the Superintendent's recommendation, the board must consider the matter. If the board adopts a resolution requesting the student's exclusion, the board immediately must forward that resolution along with the student's school record and other pertinent information to the Superintendent of Public Instruction. The board also must forward a copy of the resolution to the student and the student's parents, guardian, or custodian. The Superintendent of Public Instruction must promptly conduct a formal hearing and issue an order either approving or disapproving the student's permanent exclusion. (Secs. 3301.121 and 3313.662(C) and (D).)

A student who is permanently excluded from the public schools may under certain conditions apply for probationary admission to a public school. In addition, a district board upon its Superintendent's recommendation may adopt a resolution requesting that the student's permanent exclusion be revoked because the student's attendance no longer poses a danger to others. Upon receipt of such a resolution, the Superintendent of Public Instruction must issue an order revoking the student's permanent exclusion. (Sec. 3313.662(F).)

(None of the R.C. sections referenced in this **COMMENT** are in the bill.)

5. Section 3 of the bill also provides that the liability of, and the immunities from liability or defenses available to, a teacher who engaged in any permissible conduct for a specified purpose prior to the act's effective date is determined as if the bill's absolute immunity provision had not been enacted and in accordance with Ohio law, including the PSSI Law, that was in effect at the time the teacher engaged in the permissible conduct.

6. Section 4 of the bill also provides that the liability of, and the immunities from liability or defenses available to, a city, exempted village, local, or joint vocational school district or an educational service center in connection with a teacher who engaged in any permissible conduct for a specified purpose prior to the act's effective date is determined as if the bill's absolute immunity provision

had not been enacted and in accordance with Ohio law, including the PSSI Law, that was in effect at the time the teacher engaged in the permissible conduct.

7. Sec. 2919.22, not in the bill, is the Endangering Children Law. Division (A) of that section prohibits any person, who is the parent, guardian, custodian, person having custody or control, or person in loco parentis of a child under 18 years of age or a mentally or physically handicapped child under 21 years of age, from creating a substantial risk to the health or safety of the child, by violating a duty of care, protection, or support. It is not a violation of a duty of care, protection, or support when the parent, guardian, custodian, or person having custody or control of a child treats the physical or mental illness or defect of the child by spiritual means through prayer alone, in accordance with the tenets of a recognized religious body.

Division (B) of sec. 2919.22 prohibits any person from doing any of the following to a child under 18 years of age or a mentally or physically handicapped child under 21 years of age:

> (1) Abusing the child;
>
> (2) Torturing or cruelly abusing the child;
>
> (3) Administering corporal punishment or other physical disciplinary measure, or physically restraining the child in a cruel manner or for a prolonged period, which punishment, discipline, or restraint is excessive under the circumstances and creates a substantial risk of serious physical harm to the child;
>
> (4) Repeatedly administering unwarranted disciplinary measures to the child, when there is a substantial risk that such conduct, if continued, will seriously impair or retard the child's mental health or development;
>
> (5) Enticing, coercing, permitting, encouraging, compelling, hiring, employing, using, or allowing the child to act, model, or in any other way participate in, or be photographed for, the production, presentation, dissemination, or advertisement of any material or performance that the offender knows or reasonably should know is obscene, is sexually oriented matter, or is nudity-oriented matter.

HISTORY

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