



Ohio Legislative Service Commission

Final Analysis

Hannah K. Wann

Sub. H.B. 19

128th General Assembly
(As Passed by the General Assembly)

Reps. Harwood, Brown, Fende, Okey, B. Williams, Garrison, Bolon, Chandler, Phillips, Boyd, Newcomb, S. Williams, Domenick, Pillich, Harris, Murray, Luckie, DeBose, Driehaus, Garland, Lundy, Pryor, Weddington, Celeste, Dodd, Dyer, Foley, Gerberry, Goyal, Hagan, Heard, Hite, Koziura, Mallory, Otterman, Patten, Skindell, Slesnick, Stewart, Szollosi, Ujvagi, Winburn, Yuko

Sens. Cates, Carey, Gibbs, Sawyer, Fedor, Morano, Cafaro, Gillmor, Hughes, Kearney, D. Miller, R. Miller, Turner, Schiavoni, Patton, Wilson, Goodman, Jones

Effective date: March 29, 2010

ACT SUMMARY

- Requires each school district, community school, and STEM school to incorporate violence within a dating relationship into its policy prohibiting student harassment, intimidation, or bullying.
- Directs the State Board of Education to update its model policy prohibiting student harassment, intimidation, or bullying to include dating violence.
- Requires each school district to include dating violence prevention education for grades 7 to 12 within the district's health curriculum.
- Requires each school district, community school, STEM school, and educational service center to provide training in dating violence prevention for certain middle and high school employees.
- Entitles the act the "Tina Croucher Act."
- Directs the Department of Education to reevaluate each community school that was ordered to close at the end of the 2009-2010 school year for poor academic performance to determine whether the school still meets the closure criteria when

* This version updates the effective date of the act.

the report card ratings for its first two years of operation are excluded, and permits each community school that no longer meets the criteria to remain open.

- Revises the criminal offenses that disqualify school bus drivers for employment by making them subject to the same disqualifying offenses that apply to other non-licensed school personnel (rather than those offenses that apply to licensed educators, as in prior law) until the Department of Education amends its existing rule regarding employment of bus drivers with criminal histories.

CONTENT AND OPERATION

Dating violence under school anti-bullying policies

(R.C. 3313.666)

The act requires each school district, community (charter) school, and STEM school to incorporate dating violence into its existing policy prohibiting student harassment, intimidation, or bullying.¹ For this purpose, the act explicitly includes violence within a dating relationship as a form of harassment, intimidation, or bullying. In effect, then, the policy would cover dating violence that occurs on school property or at school-sponsored events. The district or school must update its policy within six months after the act's effective date.

Background

Continuing law requires each school district (including a joint vocational school district), community school, and STEM school to adopt a policy prohibiting student harassment, intimidation, or bullying. The district or school must develop the policy in consultation with parents, school employees, school volunteers, students, and community members.

The policy must prohibit the harassment, intimidation, or bullying of any student on school property or at a school-sponsored activity. It also must define the term "harassment, intimidation, or bullying" in a manner that includes the definition prescribed in statute. In this regard, that term is defined as an intentional written, verbal, or physical act that a student has exhibited toward another particular student more than once and the behavior both (1) causes mental or physical harm to the other

¹ A STEM school is a public science, technology, engineering, and math school that operates under the direction of its own governing body (see R.C. Chapter 3326.). Community schools and STEM schools are required to have anti-harassment policies under R.C. 3314.03(A)(11)(d) and 3326.11, respectively (neither section in the act).

student, and (2) is sufficiently severe, persistent, or pervasive that it creates an intimidating, threatening, or abusive educational environment for the other student.

Each policy also must include the following additional items:

- (1) A procedure for reporting prohibited incidents;
- (2) A requirement that school personnel report prohibited incidents of which they are aware to the school principal or other administrator designated by the principal;
- (3) A requirement that the parents of a student involved in a prohibited incident be notified and, to the extent permitted by state and federal law governing student privacy, have access to any written reports pertaining to the prohibited incident;
- (4) Procedures for documenting, investigating, and responding to a reported incident;
- (5) A requirement that the district or school administration provide semiannual written summaries of all reported incidents to the president of the district's or school's governing body, and post them on the district's or school's web site;
- (6) A strategy for protecting a victim from additional harassment and from retaliation following a report; and
- (7) The disciplinary procedure for a student who is guilty of harassment, intimidation, or bullying.

The policy must be included in student handbooks and in publications that set forth the standards of conduct for schools and students. Employee training materials must also include information on the policy.

Finally, a school employee, student, or volunteer is immune from civil liability for damages that arise from the reporting of an incident of harassment, intimidation, or bullying. A person qualifies for immunity only if the person reports the incident promptly in good faith and in compliance with the procedures specified in the district's or school's policy.

State Board model policy

(Section 4)

To assist school districts and schools in developing their own policies, continuing law requires the State Board of Education to issue a model policy prohibiting

harassment, intimidation, or bullying in schools.² The act directs the State Board to update its model policy, which was approved in July 2007, to include dating violence, within six months after the act's effective date.

Dating violence prevention curricula

(R.C. 3313.60)

Within each school district's health education curriculum, the act requires "age-appropriate instruction in dating violence prevention education" in grades 7 to 12. This instruction must include recognizing warning signs of dating violence and the characteristics of healthy relationships. To help districts develop their curricula, the Department of Education must post links to free dating violence prevention curricula on its web site. If the parent of a student who is younger than 18 submits to the principal of the student's school a written request to examine the school's dating violence prevention instruction materials, the principal must, within a reasonable period of time, allow the parent to examine those materials at the school.

These provisions regarding instruction in dating violence prevention do not apply to community schools or STEM schools.

Staff training in dating violence prevention

(R.C. 3319.073)

The act requires school districts, community schools, STEM schools, and educational service centers (ESCs) to provide training in dating violence prevention for all employees who work in a middle or high school as a teacher, administrator, counselor, nurse, or school psychologist.³ Each district, school, and ESC must develop its own curriculum for the training.

The dating violence prevention training must be part of the in-service training program required for these employees by continuing law. Under that program, employees must receive training in (1) the prevention of child abuse, violence, and substance abuse, (2) school safety, and (3) the promotion of positive youth development. Employees must complete at least four hours of the in-service training within two years after commencing employment and every five years thereafter.

² R.C. 3301.22, not in the act. The State Board's model policy is available at <http://education.ohio.gov/GD/Templates/Pages/ODE/ODEDetail.aspx?Page=3&TopicRelationID=431&ContentID=29246&Content=64104>, visited on 1/5/10.

³ Community schools and STEM schools are subject to the training requirement by R.C. 3314.03(A)(11)(d) and 3326.11, respectively (neither section in the act).

Closure of poorly performing community schools

(R.C. 3314.35)

Background

Under continuing law, community schools that meet statutory criteria for poor academic performance must permanently close.⁴ Am. Sub. H.B. 1 of the 128th General Assembly (the main operating budget for the 2010-2011 biennium) replaced the former closure criteria with new, more stringent criteria, beginning July 1, 2009. The first schools subject to the new performance criteria will close at the end of the 2009-2010 school year. The table below shows the new criteria.

Type of school	Closure criteria
A school that does not offer a grade higher than 3	Has been in academic emergency for three of the four most recent school years
A school that offers any of grades 4 to 8 but no grade higher than 9	(1) Has been in academic emergency for two of the three most recent school years and (2) showed less than one standard year of academic growth in reading or math for at least two of the three most recent school years
A school that offers any of grades 10 to 12	Has been in academic emergency for three of the four most recent school years

H.B. 1 also required the Department of Education to begin issuing report cards and performance ratings for a community school after its first year of operation (rather than after its second year of operation, as under prior law). But it excluded consideration of a school's first two performance ratings in any matter in which those ratings are a factor, including whether the school meets the criteria for closure.⁵

While the new closure criteria took effect July 17, 2009, the changes regarding the report card ratings did not become effective until October 16, 2009. The most recent report cards were published in August 2009. Since the new report card provisions were not yet effective then, it may not have been clear which performance ratings were to be used to determine whether a community school met the closure criteria.

⁴ A community school is exempt from the closure requirement if (1) it operates a dropout prevention and recovery program and has a waiver from the Department of Education or (2) primarily serves disabled children (R.C. 3314.35(A)(3)).

⁵ R.C. 3314.012, not in the act.

The act

The act clarifies this situation by prohibiting the Department of Education from considering a community school's performance ratings for its first two years of operation when determining whether the school meets the new closure criteria enacted by H.B. 1. Furthermore, it directs the Department to reevaluate each community school that was ordered to close at the end of the 2009-2010 school year to determine if the school still meets the closure criteria when those first two performance ratings are excluded. If the school no longer meets the closure criteria, it may remain open after the 2009-2010 school year.

School bus driver employment

(R.C. 3319.39 and 3327.10)

A school bus driver is disqualified for employment with a public or nonpublic school, or with an independent contractor, following a conviction or guilty plea for certain criminal offenses. Under prior law, the offenses that disqualified a school bus driver for employment were the same offenses that prohibited an individual from holding an educator license issued by the State Board of Education. In other words, the disqualifying offenses that applied to teachers, administrators, and other licensed school personnel also applied to bus drivers.⁶ These offenses were permanent bars to school employment.

The act instead makes school bus drivers temporarily subject to the smaller list of disqualifying offenses that apply to other *non-licensed* school personnel, such as clerical staff, janitors, and cafeteria workers. Under continuing law, a person with a conviction or guilty plea for certain of these offenses may still be employed, if the person meets the Department of Education's rehabilitation standards.⁷

In addition, the act directs the Department to amend its existing administrative rule regarding the employment of school bus drivers with criminal histories.⁸ When the new rule takes effect, bus drivers will be subject to the disqualifying offenses and rehabilitation standards specified in the rule. The act does not provide the Department with guidelines for amending its rule, but since the act makes the disqualifying offenses and rehabilitation standards for bus drivers less restrictive than former law, presumably the intent is for the Department's new rule to be less restrictive as well. There is no deadline in the act for the Department's action.

⁶ See R.C. 3319.31(C), not in the act, for the offenses that disqualify a person for an educator license.

⁷ R.C. 3319.39(B) and (E) and Ohio Administrative Code (O.A.C.) 3301-20-03.

⁸ See O.A.C. 3301-83-23. The current version of this rule took effect August 27, 2009.

The following table shows the disqualifying offenses applicable to non-licensed school personnel, including bus drivers temporarily under the act. It also indicates those offenses for which a non-licensed person may qualify to be considered rehabilitated under the Department's existing rehabilitation standards. To qualify for employment, the person must meet all of the Department's conditions for rehabilitation, which include such considerations as the age of the victim, evidence of rehabilitation efforts, and whether employment would jeopardize student welfare.⁹

	Offense	Capable of rehabilitation
Homicide and assault offenses	Aggravated murder	No
	Murder	No
	Voluntary manslaughter	No
	Involuntary manslaughter	No
	Felonious assault	Yes, if committed more than 20 years prior to the date of the person's most recent criminal records check
	Aggravated assault	Yes, if committed more than 20 years prior to the date of the person's most recent criminal records check
	Assault	Yes, if committed more than 5 years prior to the date of the person's most recent criminal records check
	Aggravated menacing	Yes, if committed more than 5 years prior to the date of the person's most recent criminal records check
Kidnapping offenses	Kidnapping	No
	Abduction	No
	Child stealing under former R.C. 2905.04 before July 1, 1996	No
	Interference with custody that would have been child stealing had it occurred before July 1, 1996	No
	Criminal child enticement	No
Sex offenses	Rape	No
	Sexual battery	No

⁹ O.A.C. 3301-20-03(D).

	Offense	Capable of rehabilitation
	Unlawful sexual conduct with a minor	No
	Gross sexual imposition	No
	Sexual imposition	No
	Importuning	No
	Felonious sexual penetration under former R.C. 2907.12	No
	Voyeurism	Yes, if committed more than 5 years prior to the date of the person's most recent criminal records check
	Public indecency	Yes, if committed more than 5 years prior to the date of the person's most recent criminal records check
	Compelling prostitution	No
	Promoting prostitution	No
	Procuring	No
	Prostitution	No
	Disseminating matter harmful to juveniles	No
	Pandering obscenity	No
	Pandering obscenity involving a minor	No
	Pandering sexually oriented matter involving a minor	No
	Illegal use of minor in nudity-oriented material or performance	No
Robbery and burglary offenses	Aggravated robbery	Yes, if committed more than 20 years prior to the date of the person's most recent criminal records check
	Robbery	Yes, if committed more than 20 years prior to the date of the person's most recent criminal records check
	Aggravated burglary	Yes, if committed more than 20 years prior to the date of the person's most recent criminal records check
	Burglary	Yes, if committed more than 10 years prior to the date of the

	Offense	Capable of rehabilitation
		person's most recent criminal records check
Offenses against the family	Unlawful abortion	Yes, if committed more than 20 years prior to the date of the person's most recent criminal records check
	Endangering children	Yes, if (1) the offense involved creating a substantial risk to a child's health or safety by a person who is the parent, guardian, custodian, person having custody or control, or person in loco parentis of the child and (2) the offense was committed more than 5 years prior to the date of the person's most recent criminal records check
	Contributing to unruliness or delinquency of a child	Yes, if committed more than 5 years prior to the date of the person's most recent criminal records check
	Domestic violence	Yes, if committed more than 5 years prior to the date of the person's most recent criminal records check
Weapons offenses	Carrying concealed weapons	Yes, if committed more than 5 years prior to the date of the person's most recent criminal records check
	Having weapons while under disability	Yes, if committed more than 5 years prior to the date of the person's most recent criminal records check
	Improperly discharging firearm at or into a habitation, in a school safety zone, or with intent to cause harm or panic to persons in a school building or at a school function	Yes, if committed more than 20 years prior to the date of the person's most recent criminal records check
Drug offenses	Corrupting another with drugs	Yes, if committed more than 10 years prior to the date of the person's most recent criminal records check
	Aggravated trafficking or trafficking in drugs	Yes, if committed more than 10 years prior to the date of the person's most recent criminal records check

	Offense	Capable of rehabilitation
	Illegal manufacture of drugs or illegal cultivation of marihuana	Yes, if committed more than 10 years prior to the date of the person's most recent criminal records check
	Aggravated funding of drug trafficking, funding of drug trafficking, or funding of marihuana trafficking	Yes, if committed more than 10 years prior to the date of the person's most recent criminal records check
	Illegal administration or distribution of anabolic steroids	Yes, if committed more than 10 years prior to the date of the person's most recent criminal records check
	Possession of controlled substance that is not a minor drug possession offense	Yes, if committed more than 5 years prior to the date of the person's most recent criminal records check
Other offenses	Failing to provide for a functionally impaired person	Yes, if committed more than 5 years prior to the date of the person's most recent criminal records check
	Patient abuse or neglect	Yes, if committed more than 5 years prior to the date of the person's most recent criminal records check
	Placing harmful or hazardous objects in food or confection	Yes, if committed more than 20 years prior to the date of the person's most recent criminal records check

HISTORY

ACTION

DATE

Introduced	02-18-09
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House concurred in Senate amendments (74-22)	12-17-09