



Joann Saul

Bill Analysis

Legislative Service Commission

H.B. 276

126th General Assembly
(As Introduced)

Reps. J. Stewart, Miller, Carano, Hartnett, C. Evans, Perry, Allen, Taylor, Peterson

BILL SUMMARY

- Requires each school district board to adopt a policy prohibiting harassment, intimidation, or bullying of any student on school property or at a school-sponsored activity.
- Requires the Department of Education to develop a model policy prohibiting student harassment, intimidation, or bullying.
- Requires a school district to report to EMIS the number of incidents of harassment by students against other students that violate the district's anti-harassment policy.
- Requires the Department of Education to include in a school district's report card the number of incidents of harassment by students against other students that violate the district's anti-harassment policy.
- Requires the Auditor of State, when conducting an audit of a school district, to determine whether the district has adopted an anti-harassment policy and to include that determination in the audit report.
- Provides school district employees, students, and volunteers with qualified civil immunity for damages arising from reporting an incident of student harassment, intimidation, or bullying.
- Authorizes school districts to form bullying prevention initiatives and requires school districts to provide training and education on student harassment, intimidation, or bullying if funds are appropriated for that purpose.

CONTENT AND OPERATION

School district policies to prohibit harassment, intimidation, or bullying

(R.C. 3313.666(A) to (D))

The bill directs the board of education of each city, local, exempted village, and joint vocational school district to adopt a policy prohibiting student harassment, intimidation, or bullying. The board must develop the policy in consultation with parents, school employees, school volunteers, students, and community members. Each district board must submit a copy of its policy to the state Superintendent of Public Instruction within nine months after the bill's effective date.

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, at a minimum, the definition prescribed in the bill. In this regard, the bill defines that term as an intentional gesture or intentional written, verbal, or physical act or threat that a student has exhibited toward another student more than once and the behavior both (1) has the effect of harming a student, damaging a student's property, or placing a student in reasonable fear of harm to the student's person or damage to the student's property, and (2) is sufficiently severe, persistent, or pervasive that it creates an intimidating, threatening, or abusive educational environment for a student.

The 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;
- (3) A requirement that the parents or guardians 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 (see **COMMENT 1**);
- (4) Procedures for documenting, investigating, and responding to a reported incident;
- (5) A strategy for protecting a victim from additional harassment and to protect the student from retaliation following a report; and

(6) The disciplinary procedure for a student who is guilty of harassment, intimidation, or bullying. (See **COMMENT 2.**)

These items form a framework for districts to use in developing their policies. Many of the details, such as to whom incidents are to be reported, are left to the districts to determine. The bill permits the policies to include additional requirements.

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

Department of Education's model policy

(R.C. 3301.41)

To assist school districts in developing their own policies, the bill requires the Department of Education to develop a model policy to prohibit harassment, intimidation, or bullying in schools. The Department must issue this policy within six months after the bill's effective date. (See **COMMENT 3.**)

Reporting to EMIS

(R.C. 3301.0714)

Under continuing law, the Department of Education maintains the Education Management Information System (EMIS), which serves as a database of information on school districts and schools. The data compiled by EMIS includes information on student academic performance, personnel, classroom enrollment, discipline, and fiscal expenditures.

The bill requires a school district to include in its report of data to EMIS the number of incidents of harassment by students against other students that violate the anti-harassment policy adopted by the school district.

Statistics on district report cards

(R.C. 3302.03)

Under current law, the Department of Education is required to issue an annual report card for each school district, for each school building in a district, and for the state as a whole that includes data reflecting (1) performance indicators established by the State Board, including any changes from the previous year, (2) the performance index score, (3) adequate yearly progress, and (4) other pertinent information relating to the condition and academic progress of a school district.

The bill requires the Department of Education to include on a school district's report card the number of incidents of harassment by students against other students that violate the anti-harassment policy adopted by the school district. The Department is directed to obtain the information from the EMIS data submitted by a school district.

Auditor of State identification of harassment policy

(R.C. 117.53)

Beginning one year after its effective date, the bill requires the Auditor of State, when conducting an audit of a city, local, exempted village, or joint vocational school district, to identify whether the district has adopted an anti-harassment policy. This determination must be recorded in the audit report.

Incident reports are not a public record

(R.C. 3313.666(E))

The bill specifies that, with the exception of parental notification and the aggregate data reported to EMIS, the state Public Records Law (codified in R.C. 143.49, not in the bill), requiring disclosure upon request of most government records, does not apply to data collected or maintained regarding a reported incident of student harassment, intimidation, or bullying. Therefore, a district generally may not be compelled to make these reports available for public inspection or copying. (See **COMMENT 1.**)

Immunity from civil liability

(R.C. 3313.666(F) and (G))

The bill provides that a school district 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 policy. The bill specifies that, except for the qualified immunity provided to persons who report incidents, nothing in its provisions prohibits a victim of harassment, intimidation, or bullying from seeking redress for harm under statutory and common law.

Bullying prevention initiatives

(R.C. 3313.667)

The bill authorizes school districts to form bullying prevention task forces, programs, and other initiatives involving volunteers, parents, law enforcement, and community members. In addition, to the extent that state or federal funds are appropriated for these purposes, school districts are required (1) to provide training, workshops, or courses on the district's bullying policy to school employees and volunteers who have direct contact with students, which must apply toward any state- or district-mandated continuing education requirements, and (2) to develop a process for educating students about the policy.

COMMENT

1. State and federal laws prohibit the release of student educational records to most persons, other than educational and law enforcement personnel, unless the student's parent, or the student if at least 18 years old, consents to the release. (R.C. 3319.321 (not in the bill) and the federal Family Educational Rights and Privacy Act (FERPA) 20 U.S.C.1232g.) Student disciplinary records appear to be subject to these laws and in most cases cannot be released without the consent of the student or student's parent.

Case law on this issue, however, is somewhat divided. In 1997, the Supreme Court of Ohio held that student disciplinary records were not educational records under the federal law because they were not academic in nature. Thus, those records, according to the Court, were subject to disclosure under the state Public Records Law.¹ The request for records in that case did not seek information that linked a student to a particular act.²

In a related case involving some of the same Ohio parties where personally identifiable information *was* requested, the U.S. District Court for the Southern

¹ *State ex rel. The Miami Student v. Miami University* (1997), 79 Ohio St.3d 168, cert. denied, 522 U.S. 1022 (1997).

² At least one state appeals court from another state has distinguished the case on those grounds and held that disciplinary records that do link a student to a particular act may not be released under FERPA (*Publishing Corp. v. University of North Carolina*, 128 N.C. App. 534, 540-42 (1998)). Also, one dissenting justice in the Ohio case pointed out that a Georgia decision relied on by the majority predates the 1995 amendments to rule implementing FERPA. According to the dissent, the 1995 rules "clarify" that disciplinary records are always education records (79 Ohio St. at 175-75, Lundberg Stratton, J., dissenting).

District of Ohio and the U.S. Court of Appeals for the 6th Circuit held that disciplinary records are educational records under the federal law and may not be released without consent. Accordingly, their release cannot be compelled under the state Public Records Law, since it does not apply to records that may not be released under federal or state law.³

2. A school district board is required under continuing law to adopt a code of conduct for the schools of the district and policies for the enforcement of that code (R.C. 3313.661, not in the bill). The district superintendent or school principal may "suspend" a student for up to ten days for minor violations of the district's code. The district superintendent (and not a principal) may "expel" a student for up to the greater of 80 days or the remainder of the school term for serious violations of that code. In addition, the superintendent must expel a student for one full year for *carrying* a firearm to school and, depending upon board policy, may expel a student for one full year for possessing a firearm or knife at school or a school-sponsored activity, for causing serious physical harm to persons or property at school or a school-sponsored activity, or making a bomb threat to a school or school-sponsored activity. (R.C. 3313.66(A) and (B), not in the bill.) The law also provides for due process procedures that must be followed in the case of these disciplinary actions. In general, suspensions and expulsions require notice to the student and student's parent and an opportunity for the student to explain the student's actions, and may be appealed to the district board of education. (R.C. 3313.66(D) and (E).)

The act of a student harassing, intimidating, or bullying another student likely would violate district policies relating to student conduct. If district or school officials have sufficient evidence of those acts, they may be able to discipline a student under these policies. Whether any suspension or expulsion is imposed, and its duration, would depend on the nature and severity of the acts.

3. On October 12, 2004, the State Board of Education on its own initiative adopted an "Anti-Harassment and Bullying Policy" in which the Board states, among other things, that it "believes that Ohio schools should be physically safe and emotionally secure environments for all students and staff." In that policy, the State Board directed the Ohio Department of Education to provide schools with model policies and strategies that promote safe and secure learning environments,

³ *United States v. Miami University*, 91 F. Supp.2d 1132 (S.D. Ohio 2000), 292 F.3d 797 (6th Cir. 2002). In that case, the Appeals Court noted that the federal district court was not bound by the interpretation of federal law by the Ohio Supreme Court. The federal case originally was brought by the U. S. Department of Education which had advised two universities that disciplinary records are educational records and that they could lose federal funds if they released records on the basis of the Ohio Supreme Court's decision.

to disseminate information and provide professional development in regard to the models, and to design a plan and process to evaluate the effects the State Board's policy.

HISTORY

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