

By: Hughes, Creighton

S.B. No. 1072

A BILL TO BE ENTITLED

1 AN ACT
2 relating to local school health advisory councils and instruction
3 regarding human sexuality, sexual orientation, and gender identity
4 provided by public schools.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 12.104(b), Education Code, as amended by
7 Chapters 542 (S.B. 168), 887 (S.B. 1697), 915 (H.B. 3607), 974 (S.B.
8 2081), and 1046 (S.B. 1365), Acts of the 87th Legislature, Regular
9 Session, 2021, is reenacted and amended to read as follows:

- 10 (b) An open-enrollment charter school is subject to:
- 11 (1) a provision of this title establishing a criminal
12 offense;
- 13 (2) the provisions in Chapter 554, Government Code;
14 and
- 15 (3) a prohibition, restriction, or requirement, as
16 applicable, imposed by this title or a rule adopted under this
17 title, relating to:
- 18 (A) the Public Education Information Management
19 System (PEIMS) to the extent necessary to monitor compliance with
20 this subchapter as determined by the commissioner;
- 21 (B) criminal history records under Subchapter C,
22 Chapter 22;
- 23 (C) reading instruments and accelerated reading
24 instruction programs under Section 28.006;

- 1 (D) accelerated instruction under Section
2 [28.0211](#);
- 3 (E) high school graduation requirements under
4 Section [28.025](#);
- 5 (F) special education programs under Subchapter
6 [A](#), Chapter [29](#);
- 7 (G) bilingual education under Subchapter [B](#),
8 Chapter [29](#);
- 9 (H) prekindergarten programs under Subchapter E
10 or E-1, Chapter [29](#), except class size limits for prekindergarten
11 classes imposed under Section [25.112](#), which do not apply;
- 12 (I) extracurricular activities under Section
13 [33.081](#);
- 14 (J) discipline management practices or behavior
15 management techniques under Section [37.0021](#);
- 16 (K) health and safety under Chapter [38](#);
- 17 (L) the provisions of Subchapter [A](#), Chapter [39](#);
- 18 (M) public school accountability and special
19 investigations under Subchapters [A](#), [B](#), [C](#), [D](#), [F](#), [G](#), and [J](#), Chapter
20 [39](#), and Chapter [39A](#);
- 21 (N) the requirement under Section [21.006](#) to
22 report an educator's misconduct;
- 23 (O) intensive programs of instruction under
24 Section [28.0213](#);
- 25 (P) the right of a school employee to report a
26 crime, as provided by Section [37.148](#);
- 27 (Q) bullying prevention policies and procedures

1 under Section 37.0832;

2 (R) the right of a school under Section 37.0052
3 to place a student who has engaged in certain bullying behavior in a
4 disciplinary alternative education program or to expel the student;

5 (S) the right under Section 37.0151 to report to
6 local law enforcement certain conduct constituting assault or
7 harassment;

8 (T) a parent's right to information regarding the
9 provision of assistance for learning difficulties to the parent's
10 child as provided by Sections 26.004(b)(11) and 26.0081(c) and (d);

11 (U) establishment of residency under Section
12 25.001;

13 (V) school safety requirements under Sections
14 37.108, 37.1081, 37.1082, 37.109, 37.113, 37.114, 37.1141, 37.115,
15 37.207, and 37.2071;

16 (W) the early childhood literacy and mathematics
17 proficiency plans under Section 11.185;

18 (X) the college, career, and military readiness
19 plans under Section 11.186; ~~and~~

20 (Y) ~~(X)~~ parental options to retain a student
21 under Section 28.02124; and

22 (Z) establishing a local school health advisory
23 council in which members are appointed by the governing body of the
24 school and health education instruction complies with Section
25 28.004.

26 SECTION 2. Section 12A.004(a), Education Code, is amended
27 to read as follows:

1 (a) A local innovation plan may not provide for the
2 exemption of a district designated as a district of innovation from
3 the following provisions of this title:

4 (1) a state or federal requirement applicable to an
5 open-enrollment charter school operating under Subchapter D,
6 Chapter 12;

7 (2) Subchapters A, C, D, and E, Chapter 11, except that
8 a district may be exempt from Sections 11.1511(b)(5) and (14) and
9 Section 11.162;

10 (3) state curriculum and graduation requirements
11 adopted under Chapter 28; ~~and~~

12 (4) Section 28.004; and

13 (5) academic and financial accountability and
14 sanctions under Chapters 39 and 39A.

15 SECTION 3. Section 28.004, Education Code, is amended by
16 amending Subsection (c) and adding Subsections (r), (s), (t), (u),
17 and (v) to read as follows:

18 (c) The local school health advisory council's duties
19 include recommending:

20 (1) the number of hours of instruction to be provided
21 in:

22 (A) health education in kindergarten through
23 grade eight; and

24 (B) if the school district requires health
25 education for high school graduation, health education, including
26 physical health education and mental health education, in grades 9
27 through 12;

1 (2) policies, procedures, strategies, and curriculum
2 appropriate for specific grade levels designed to prevent physical
3 health concerns, including obesity, cardiovascular disease, Type 2
4 diabetes, and mental health concerns, including suicide, through
5 coordination of:

6 (A) health education, which must address
7 physical health concerns and mental health concerns to ensure the
8 integration of physical health education and mental health
9 education;

10 (B) physical education and physical activity;

11 (C) nutrition services;

12 (D) parental involvement;

13 (E) instruction on substance abuse prevention;

14 (F) school health services, including mental
15 health services;

16 (G) a comprehensive school counseling program
17 under Section [33.005](#);

18 (H) a safe and healthy school environment; and

19 (I) school employee wellness;

20 (3) appropriate grade levels and methods of
21 instruction for human sexuality instruction;

22 (4) strategies for integrating the curriculum
23 components specified by Subdivision (2) with the following elements
24 in a coordinated school health program for the district:

25 (A) school health services, including physical
26 health services and mental health services, if provided at a campus
27 by the district or by a third party under a contract with the

1 district;

2 (B) a comprehensive school counseling program
3 under Section 33.005;

4 (C) a safe and healthy school environment; and

5 (D) school employee wellness;

6 (5) if feasible, joint use agreements or strategies
7 for collaboration between the school district and community
8 organizations or agencies;

9 (6) strategies to increase parental awareness
10 regarding:

11 (A) risky behaviors and early warning signs of
12 suicide risks and behavioral health concerns, including mental
13 health disorders and substance use disorders; and

14 (B) available community programs and services
15 that address risky behaviors, suicide risks, and behavioral health
16 concerns;

17 (7) appropriate grade levels and curriculum for
18 instruction regarding opioid addiction and abuse and methods of
19 administering an opioid antagonist, as defined by Section 483.101,
20 Health and Safety Code; ~~and~~

21 (8) appropriate grade levels and curriculum for
22 instruction regarding child abuse, family violence, dating
23 violence, and sex trafficking, including likely warning signs that
24 a child may be at risk for sex trafficking, provided that the local
25 school health advisory council's recommendations under this
26 subdivision do not conflict with the essential knowledge and skills
27 developed by the State Board of Education under this subchapter;

1 and

2 (9) the communication policy described by Subsection
3 (r) for approval by the board of trustees of the school district.

4 (r) Subject to the restriction imposed by Section 28.0043
5 and using the procedure described by Subsection (e-1), the board of
6 trustees shall adopt a written policy regarding communication
7 outside of a course dedicated to human sexuality instruction
8 between a school employee and a student enrolled in the district
9 concerning topics included in the reproductive and sexual health
10 curriculum. The policy must:

11 (1) direct school employees to refer students to
12 discuss topics included in the reproductive and sexual health
13 curriculum with the student's parent, a school counselor, or, if
14 applicable, the student's teacher responsible for teaching
15 materials related to human sexuality instruction;

16 (2) inform school employees regarding appropriate
17 boundaries related to communicating with students; and

18 (3) include provisions designed to prevent improper
19 communication between school employees and students.

20 (s) A school district shall make the policy adopted under
21 Subsection (r) available in the same manner as curriculum materials
22 under Subsection (j)(1).

23 (t) A school district may not host an extracurricular
24 activity related to human sexuality unless the board of trustees
25 has adopted a written policy, subject to the restriction imposed by
26 Section 28.0043 and using the procedure described by Subsection
27 (e-1), specifying the circumstances in which the district may host

1 an extracurricular activity related to human sexuality.

2 (u) For purposes of adopting a communication policy under
3 this section, "communication" includes any verbal or written
4 communication conducted in person or facilitated through the use of
5 an electronic device, including communication conducted through a
6 telephone, including a cellular telephone, a computer, a computer
7 network, personal data assistance, a pager, e-mail, text message,
8 instant message, a social media application, or an Internet
9 website.

10 (v) If the attorney general or an appropriate district or
11 county attorney believes that a school district has violated or is
12 violating the provisions of this section, the attorney general or
13 district or county attorney may bring a cause of action on behalf of
14 the state to enjoin the district from violating the provisions of
15 this section. The action may be brought in a district court in
16 Travis County or a county in which any part of the violation or
17 threatened violation occurred. The court may grant any prohibitory
18 or mandatory relief warranted by the facts, including a temporary
19 restraining order, temporary injunction, or permanent injunction.

20 SECTION 4. Subchapter A, Chapter 28, Education Code, is
21 amended by adding Section 28.0043 to read as follows:

22 Sec. 28.0043. RESTRICTION ON INSTRUCTION REGARDING SEXUAL
23 ORIENTATION AND GENDER IDENTITY. (a) A school district,
24 open-enrollment charter school, or district or charter school
25 employee may not provide or allow a third party to provide
26 instruction, guidance, activities, or programming regarding sexual
27 orientation or gender identity to students enrolled in

1 prekindergarten through 12th grade.

2 (b) This section may not be construed to limit:

3 (1) a student's ability to engage in speech or
4 expressive conduct protected by the First Amendment to the United
5 States Constitution or by Section 8, Article I, Texas Constitution,
6 that does not result in material disruption to school activities;
7 or

8 (2) the ability of a person who is authorized by the
9 district to provide physical or mental health-related services to
10 provide the services to a student, subject to any required parental
11 consent.

12 SECTION 5. Section 12A.004(a), Education Code, as amended
13 by this Act, applies to a local innovation plan adopted or renewed
14 before, on, or after the effective date of this Act.

15 SECTION 6. Section 28.004, Education Code, as amended by
16 this Act, applies only to a cause of action that accrues on or after
17 the effective date of this Act.

18 SECTION 7. To the extent of any conflict, this Act prevails
19 over another Act of the 88th Legislature, Regular Session, 2023,
20 relating to nonsubstantive additions to and corrections in enacted
21 codes.

22 SECTION 8. This Act takes effect immediately if it receives
23 a vote of two-thirds of all the members elected to each house, as
24 provided by Section 39, Article III, Texas Constitution. If this
25 Act does not receive the vote necessary for immediate effect, this
26 Act takes effect September 1, 2023.