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H.B. No. 306

Substitute the following for H.B. No. 306:

By: Bernal

C.S.H.B. No. 306

A BILL TO BE ENTITLED

AN ACT

relating to harassment, bullying, and cyberbullying of a public school student or minor and certain mental health programs for public school students.

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

SECTION 1. This Act shall be known as David's Law.

SECTION 2. Section 37.0832, Education Code, is amended by amending Subsections (a) and (c) and adding Subsection (a-1) to read as follows:

(a) In this section:

(1) "Bullying":

(A) [~~,"bullying"~~] means a single significant act or a pattern of acts by one or more students directed at another student that exploits an imbalance of power and involves [~~subject to Subsection (b),~~] engaging in written or verbal expression, expression through electronic means, or physical conduct, that satisfies the applicability requirements provided by Subsection (a-1), [~~that occurs on school property, at a school-sponsored or school-related activity, or in a vehicle operated by the district]~~ and that:

(i) [~~(1)~~] has the effect or will have the effect of physically harming a student, damaging a student's property, or placing a student in reasonable fear of harm to the student's person or of damage to the student's property; [~~or~~]

1                    (ii) [~~2~~] is sufficiently severe,  
2 persistent, or [~~and~~] pervasive enough that the action or threat  
3 creates an intimidating, threatening, or abusive educational  
4 environment for a student;

5                    (iii) materially and substantially  
6 disrupts the educational process or the orderly operation of a  
7 classroom or school; or

8                    (iv) infringes on the rights of the victim  
9 at school; and

10                    (B) includes cyberbullying.

11                    (2) "Cyberbullying" means bullying that is done  
12 through the use of electronic communication, including through the  
13 use of a cellular or other type of telephone, a computer, a camera,  
14 electronic mail, instant messaging, text messaging, a social media  
15 application, an Internet website, or any other Internet-based  
16 communication tool.

17                    (a-1) This section applies to bullying that occurs on school  
18 property or at the site of a school-sponsored or school-related  
19 activity on or off school property if the bullying:

20                    (1) interferes with a student's educational  
21 opportunities; or

22                    (2) substantially disrupts the orderly operation of a  
23 classroom, school, or school-sponsored or school-related activity.

24                    (c) The board of trustees of each school district shall  
25 adopt a policy, including any necessary procedures, concerning  
26 bullying that:

27                    (1) prohibits the bullying of a student;

1           (2) prohibits retaliation against any person,  
2 including a victim, a witness, or another person, who in good faith  
3 provides information concerning an incident of bullying;

4           (3) establishes a procedure for providing notice of an  
5 incident of bullying to a parent or guardian of the alleged victim  
6 and a parent or guardian of the alleged bully within a reasonable  
7 amount of time after the incident;

8           (4) establishes the actions a student should take to  
9 obtain assistance and intervention in response to bullying;

10          (5) sets out the available counseling options for a  
11 student who is a victim of or a witness to bullying or who engages in  
12 bullying;

13          (6) establishes procedures for reporting an incident  
14 of bullying, including procedures for a student to anonymously  
15 report an incident of bullying, investigating a reported incident  
16 of bullying, and determining whether the reported incident of  
17 bullying occurred;

18          (7) prohibits the imposition of a disciplinary measure  
19 on a student who, after an investigation, is found to be a victim of  
20 bullying, on the basis of that student's use of reasonable  
21 self-defense in response to the bullying; and

22          (8) requires that discipline for bullying of a student  
23 with disabilities comply with applicable requirements under  
24 federal law, including the Individuals with Disabilities Education  
25 Act (20 U.S.C. Section 1400 et seq.).

26          SECTION 3. Subchapter A, Chapter 37, Education Code, is  
27 amended by adding Section 37.0052 to read as follows:

1       Sec. 37.0052. PLACEMENT OR EXPULSION OF STUDENTS WHO HAVE  
2 ENGAGED IN CERTAIN BULLYING BEHAVIOR. (a) In this section:

3           (1) "Bullying" has the meaning assigned by Section  
4 37.0832.

5           (2) "Intimate visual material" has the meaning  
6 assigned by Section 98B.001, Civil Practice and Remedies Code.

7       (b) A student may be removed from class and placed in a  
8 disciplinary alternative education program as provided by Section  
9 37.008 or expelled if the student:

10           (1) engages in bullying that encourages a minor to  
11 commit or attempt to commit suicide;

12           (2) incites violence against a minor through group  
13 bullying; or

14           (3) releases or threatens to release intimate visual  
15 material of a minor.

16       SECTION 4. Sections 37.218(a)(1) and (2), Education Code,  
17 are amended to read as follows:

18           (1) "Bullying" has the meaning assigned by Section  
19 37.0832 [~~25.0342~~].

20           (2) "Cyberbullying" has the meaning assigned by  
21 Section 37.0832 [~~means the use of any electronic communication~~  
22 ~~device to engage in bullying or intimidation~~].

23       SECTION 5. Section 12.104(b), Education Code, is amended to  
24 read as follows:

25       (b) An open-enrollment charter school is subject to:

26           (1) a provision of this title establishing a criminal  
27 offense; and

1           (2) a prohibition, restriction, or requirement, as  
2 applicable, imposed by this title or a rule adopted under this  
3 title, relating to:

4           (A) the Public Education Information Management  
5 System (PEIMS) to the extent necessary to monitor compliance with  
6 this subchapter as determined by the commissioner;

7           (B) criminal history records under Subchapter C,  
8 Chapter 22;

9           (C) reading instruments and accelerated reading  
10 instruction programs under Section 28.006;

11           (D) accelerated instruction under Section  
12 28.0211;

13           (E) high school graduation requirements under  
14 Section 28.025;

15           (F) special education programs under Subchapter  
16 A, Chapter 29;

17           (G) bilingual education under Subchapter B,  
18 Chapter 29;

19           (H) prekindergarten programs under Subchapter E  
20 or E-1, Chapter 29;

21           (I) extracurricular activities under Section  
22 33.081;

23           (J) discipline management practices or behavior  
24 management techniques under Section 37.0021;

25           (K) health and safety under Chapter 38;

26           (L) public school accountability under  
27 Subchapters B, C, D, E, F, G, and J, Chapter 39;

1 (M) the requirement under Section 21.006 to  
2 report an educator's misconduct;

3 (N) intensive programs of instruction under  
4 Section 28.0213; ~~and~~

5 (O) the right of a school employee to report a  
6 crime, as provided by Section 37.148; and

7 (P) bullying prevention policies and procedures  
8 under Section 37.0832.

9 SECTION 6. Section 21.054, Education Code, is amended by  
10 adding Subsections (d-2) and (e-2) to read as follows:

11 (d-2) Continuing education requirements for a classroom  
12 teacher may include instruction regarding how grief and trauma  
13 affect student learning and behavior and how evidence-based,  
14 grief-informed, and trauma-informed strategies support the  
15 academic success of students affected by grief and trauma.

16 (e-2) Continuing education requirements for a principal may  
17 include instruction regarding how grief and trauma affect student  
18 learning and behavior and how evidence-based, grief-informed, and  
19 trauma-informed strategies support the academic success of  
20 students affected by grief and trauma.

21 SECTION 7. Subchapter J, Chapter 21, Education Code, is  
22 amended by adding Section 21.462 to read as follows:

23 Sec. 21.462. RESOURCES REGARDING STUDENTS WITH MENTAL  
24 HEALTH NEEDS. The agency, in coordination with the Health and Human  
25 Services Commission, shall establish and maintain an Internet  
26 website to provide resources for school district or open-enrollment  
27 charter school employees regarding working with students with

1 mental health conditions. The agency must include on the Internet  
2 website information about:

- 3 (1) grief-informed and trauma-informed practices;
- 4 (2) building skills related to managing emotions,  
5 establishing and maintaining positive relationships, and  
6 responsible decision-making;
- 7 (3) positive behavior interventions and supports; and
- 8 (4) a safe and supportive school climate.

9 SECTION 8. Section 33.006(b), Education Code, is amended to  
10 read as follows:

11 (b) In addition to a school counselor's responsibility  
12 under Subsection (a), the school counselor shall:

13 (1) participate in planning, implementing, and  
14 evaluating a comprehensive developmental guidance program to serve  
15 all students and to address the special needs of students:

16 (A) who are at risk of dropping out of school,  
17 becoming substance abusers, participating in gang activity, or  
18 committing suicide;

19 (B) who are in need of modified instructional  
20 strategies; or

21 (C) who are gifted and talented, with emphasis on  
22 identifying and serving gifted and talented students who are  
23 educationally disadvantaged;

24 (2) consult with a student's parent or guardian and  
25 make referrals as appropriate in consultation with the student's  
26 parent or guardian;

27 (3) consult with school staff, parents, and other

1 community members to help them increase the effectiveness of  
2 student education and promote student success;

3 (4) coordinate people and resources in the school,  
4 home, and community;

5 (5) with the assistance of school staff, interpret  
6 standardized test results and other assessment data that help a  
7 student make educational and career plans; ~~and~~

8 (6) deliver classroom guidance activities or serve as  
9 a consultant to teachers conducting lessons based on the school's  
10 guidance curriculum; and

11 (7) serve as an impartial, nonreporting resource for  
12 interpersonal conflicts and discord involving two or more students,  
13 including accusations of bullying under Section 37.0832.

14 SECTION 9. Title 6, Civil Practice and Remedies Code, is  
15 amended by adding Chapter 129A to read as follows:

16 CHAPTER 129A. RELIEF FOR CYBERBULLYING OF CHILD

17 Sec. 129A.001. DEFINITION. In this chapter,  
18 "cyberbullying" has the meaning assigned by Section 37.0832(a),  
19 Education Code.

20 Sec. 129A.002. INJUNCTIVE RELIEF. (a) A recipient of  
21 cyberbullying behavior who is younger than 18 years of age at the  
22 time the cyberbullying occurs or a parent of or person standing in  
23 parental relation to the recipient may seek injunctive relief under  
24 this chapter against the individual who was cyberbullying the  
25 recipient or, if the individual is younger than 18 years of age,  
26 against a parent of or person standing in parental relation to the  
27 individual.



1       (b) A court may issue a temporary restraining order,  
2 temporary injunction, or permanent injunction appropriate under  
3 the circumstances to prevent any further cyberbullying, including  
4 an order or injunction:

5           (1) enjoining a defendant from engaging in  
6 cyberbullying; or

7           (2) compelling a defendant who is a parent of or person  
8 standing in parental relation to an individual who is younger than  
9 18 years of age to take reasonable actions to cause the individual  
10 to cease engaging in cyberbullying.

11       (c) A plaintiff in an action for injunctive relief brought  
12 under this section is entitled to a temporary restraining order on  
13 showing that the plaintiff is likely to succeed in establishing  
14 that the individual was cyberbullying the recipient. The plaintiff  
15 is not required to plead or prove that, before notice can be served  
16 and a hearing can be held, immediate and irreparable injury, loss,  
17 or damage is likely to result from past or future cyberbullying by  
18 the individual against the recipient.

19       (d) A plaintiff is entitled to a temporary or permanent  
20 injunction under this section on showing that the individual was  
21 cyberbullying the recipient.

22       (e) A temporary restraining order or temporary injunction  
23 granted under this section shall order the preservation of any  
24 relevant electronic communication. The temporary restraining  
25 order or temporary injunction is not required to:

26           (1) define the injury or state why it is irreparable;

27           (2) state why the order was granted without notice; or

1           (3) include an order setting the cause for trial on the  
2 merits with respect to the ultimate relief requested.

3           Sec. 129A.003. PROMULGATION OF FORMS. (a) The supreme  
4 court shall, as the court finds appropriate, promulgate forms for  
5 use as an application for initial injunctive relief by individuals  
6 representing themselves in suits involving cyberbullying and  
7 instructions for the proper use of each form or set of forms.

8           (b) The forms and instructions:

9           (1) must be written in language that is easily  
10 understood by the general public;

11           (2) shall be made readily available to the general  
12 public in the manner prescribed by the supreme court; and

13           (3) must be translated into the Spanish language.

14           (c) The Spanish language translation of a form must:

15           (1) state:

16           (A) that the Spanish language translated form is  
17 to be used solely for the purpose of assisting in understanding the  
18 form and may not be submitted to the court; and

19           (B) that the English language version of the form  
20 must be submitted to the court; or

21           (2) be incorporated into the English language version  
22 of the form in a manner that is understandable to both the court and  
23 members of the general public.

24           (d) Each form and its instructions must clearly and  
25 conspicuously state that the form is not a substitute for the advice  
26 of an attorney.

27           (e) The attorney general and the clerk of a court shall

1 inform members of the general public of the availability of a form  
2 promulgated by the supreme court under this section as appropriate  
3 and make the form available free of charge.

4 (f) A court shall accept a form promulgated by the supreme  
5 court under this section unless the form has been completed in a  
6 manner that causes a substantive defect that cannot be cured.

7 Sec. 129A.004. ATTORNEY'S FEES AND COSTS. In a proceeding  
8 under this chapter, the court may award to any claimant or defendant  
9 costs and reasonable and necessary attorney's fees as are equitable  
10 and just. The amount awarded to any party under this section for  
11 attorney's fees may not exceed \$5,000.

12 Sec. 129A.005. INAPPLICABILITY. (a) An action filed under  
13 this chapter may not be joined with an action filed under Title 1,  
14 4, or 5, Family Code.

15 (b) Chapter 27 does not apply to an action under this  
16 chapter.

17 Sec. 129A.006. CERTAIN CONDUCT EXCEPTED. This chapter does  
18 not apply to a claim brought against an interactive computer  
19 service, as defined by 47 U.S.C. Section 230, for cyberbullying.

20 SECTION 10. Sections 161.325(a-1), (d), (e), (f), and (i),  
21 Health and Safety Code, are amended to read as follows:

22 (a-1) The list must include programs in the following areas:

- 23 (1) early mental health intervention;  
24 (2) mental health promotion [~~and positive youth~~  
25 ~~development~~];  
26 (3) substance abuse prevention;  
27 (4) substance abuse intervention; [~~and~~]

1 (5) suicide prevention;

2 (6) grief-informed and trauma-informed practices;

3 (7) building skills related to managing emotions,  
4 establishing and maintaining positive relationships, and  
5 responsible decision-making;

6 (8) positive behavior interventions and supports and  
7 positive youth development; and

8 (9) safe and supportive school climate.

9 (d) A [~~The board of trustees of each~~] school district shall  
10 develop practices and procedures [~~may adopt a policy~~] concerning  
11 each area listed in Subsection (a-1), including mental health  
12 promotion and intervention, substance abuse prevention and  
13 intervention, and suicide prevention that:

14 (1) includes [~~establishes~~] a procedure for providing  
15 notice of a recommendation for early mental health or substance  
16 abuse intervention regarding a student to a parent or guardian of  
17 the student within a reasonable amount of time after the  
18 identification of early warning signs as described by Subsection  
19 (b)(2);

20 (2) includes [~~establishes~~] a procedure for providing  
21 notice of a student identified as at risk of committing suicide to a  
22 parent or guardian of the student within a reasonable amount of time  
23 after the identification of early warning signs as described by  
24 Subsection (b)(2);

25 (3) establishes that the district may develop a  
26 reporting mechanism and may designate at least one person to act as  
27 a liaison officer in the district for the purposes of identifying

1 students in need of early mental health or substance abuse  
2 intervention or suicide prevention; and

3 (4) sets out available counseling alternatives for a  
4 parent or guardian to consider when their child is identified as  
5 possibly being in need of early mental health or substance abuse  
6 intervention or suicide prevention.

7 (e) The practices and procedures developed under Subsection  
8 (d) [~~policy~~] must prohibit the use without the prior consent of a  
9 student's parent or guardian of a medical screening of the student  
10 as part of the process of identifying whether the student is  
11 possibly in need of early mental health or substance abuse  
12 intervention or suicide prevention.

13 (f) The practices [~~policy~~] and [~~any necessary~~] procedures  
14 developed [~~adopted~~] under Subsection (d) must be included in:

- 15 (1) the annual student handbook; and  
16 (2) the district improvement plan under Section  
17 [11.252](#), Education Code.

18 (i) Nothing in this section is intended to interfere with  
19 the rights of parents or guardians and the decision-making  
20 regarding the best interest of the child. Practices [~~Policy~~] and  
21 procedures developed [~~adopted~~] in accordance with this section are  
22 intended to notify a parent or guardian of a need for mental health  
23 or substance abuse intervention so that a parent or guardian may  
24 take appropriate action. Nothing in this section shall be  
25 construed as giving school districts the authority to prescribe  
26 medications. Any and all medical decisions are to be made by a  
27 parent or guardian of a student.

1 SECTION 11. Sections 42.07(a) and (c), Penal Code, are  
2 amended to read as follows:

3 (a) A person commits an offense if, with intent to harass,  
4 annoy, alarm, abuse, torment, or embarrass another, the person:

5 (1) initiates communication and in the course of the  
6 communication makes a comment, request, suggestion, or proposal  
7 that is obscene;

8 (2) threatens, in a manner reasonably likely to alarm  
9 the person receiving the threat, to inflict bodily injury on the  
10 person or to commit a felony against the person, a member of the  
11 person's family or household, or the person's property;

12 (3) conveys, in a manner reasonably likely to alarm  
13 the person receiving the report, a false report, which is known by  
14 the conveyor to be false, that another person has suffered death or  
15 serious bodily injury;

16 (4) causes the telephone of another to ring repeatedly  
17 or makes repeated telephone communications anonymously or in a  
18 manner reasonably likely to harass, annoy, alarm, abuse, torment,  
19 embarrass, or offend another;

20 (5) makes a telephone call and intentionally fails to  
21 hang up or disengage the connection;

22 (6) knowingly permits a telephone under the person's  
23 control to be used by another to commit an offense under this  
24 section; ~~or~~

25 (7) sends repeated electronic communications in a  
26 manner reasonably likely to harass, annoy, alarm, abuse, torment,  
27 embarrass, or offend another; or

1           (8) engages in bullying, as that term is defined by  
2 Section 37.0832(a), Education Code.

3           (c) An offense under this section is a Class B misdemeanor,  
4 except that the offense is a Class A misdemeanor if the actor:

5           (1) has previously been convicted under this section;  
6 or

7           (2) engages in the conduct described by Subsection  
8 (a)(8) and:

9           (A) the actor has previously violated a temporary  
10 restraining order or injunction issued under Chapter 129A, Civil  
11 Practice and Remedies Code; or

12           (B) the actor's conduct results in serious bodily  
13 injury or death.

14           SECTION 12. Section 42.07(b)(1), Penal Code, is amended to  
15 read as follows:

16           (1) "Electronic communication" means a transfer of  
17 signs, signals, writing, images, sounds, data, or intelligence of  
18 any nature transmitted in whole or in part by a wire, radio,  
19 electromagnetic, photoelectronic, or photo-optical system. The  
20 term includes:

21           (A) a communication initiated through the use of  
22 [by] electronic mail, instant message, network call, a cellular or  
23 other type of telephone, a computer, a camera, text message, a  
24 social media platform or application, an Internet website, any  
25 other Internet-based communication tool, or facsimile machine; and

26           (B) a communication made to a pager.

27           SECTION 13. Section 37.0832(b), Education Code, is

1 repealed.

2           SECTION 14. The change in law made by this Act applies only  
3 to an offense committed or conduct violating a penal law of this  
4 state that occurs on or after the effective date of this Act. An  
5 offense committed or conduct that occurs before the effective date  
6 of this Act is governed by the law in effect on the date the offense  
7 was committed or conduct occurred, and the former law is continued  
8 in effect for that purpose. For purposes of this section, an  
9 offense was committed or conduct violating a penal law of this state  
10 occurred before the effective date of this Act if any element of the  
11 offense or conduct occurred before that date.

12           SECTION 15. It is the intent of the legislature that every  
13 provision, section, subsection, sentence, clause, phrase, or word  
14 in this Act, and every application of the provisions in this Act to  
15 each person or entity, are severable from each other. If any  
16 application of any provision in this Act to any person, group of  
17 persons, or circumstances is found by a court to be invalid for any  
18 reason, the remaining applications of that provision to all other  
19 persons and circumstances shall be severed and may not be affected.

20           SECTION 16. This Act takes effect September 1, 2017.