

By: Menéndez, et al.
(Minjarez)

S.B. No. 179

Substitute the following for S.B. No. 179:

By: Bernal

C.S.S.B. No. 179

A BILL TO BE ENTITLED

1 AN ACT
2 relating to harassment, bullying, and cyberbullying of a public
3 school student or minor and certain mental health programs for
4 public school students.

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

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

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

10 (a) In this section:

11 (1) "Bullying":

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

21 (i) [~~(1)~~] has the effect or will have the
22 effect of physically harming a student, damaging a student's
23 property, or placing a student in reasonable fear of harm to the
24 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:

18 (1) bullying that occurs on or is delivered to school
19 property or to the site of a school-sponsored or school-related
20 activity on or off school property;

21 (2) bullying that occurs on a publicly or privately
22 owned school bus or vehicle being used for transportation of
23 students to or from school or a school-sponsored or school-related
24 activity; and

25 (3) cyberbullying that occurs off school property or
26 outside of a school-sponsored or school-related activity if the
27 cyberbullying;

1 (A) interferes with a student's educational
2 opportunities; or

3 (B) substantially disrupts the orderly operation
4 of a classroom, school, or school-sponsored or school-related
5 activity.

6 (c) The board of trustees of each school district shall
7 adopt a policy, including any necessary procedures, concerning
8 bullying that:

9 (1) prohibits the bullying of a student;

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

13 (3) establishes a procedure for providing notice of an
14 incident of bullying to a parent or guardian of the alleged victim
15 and a parent or guardian of the alleged bully within a reasonable
16 amount of time after the incident;

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

19 (5) sets out the available counseling options for a
20 student who is a victim of or a witness to bullying or who engages in
21 bullying;

22 (6) establishes procedures for reporting an incident
23 of bullying, including procedures for a student to anonymously
24 report an incident of bullying, investigating a reported incident
25 of bullying, and determining whether the reported incident of
26 bullying occurred;

27 (7) prohibits the imposition of a disciplinary measure

1 on a student who, after an investigation, is found to be a victim of
2 bullying, on the basis of that student's use of reasonable
3 self-defense in response to the bullying; and

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

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

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

12 (1) "Bullying" has the meaning assigned by Section
13 37.0832.

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

16 (b) A student may be removed from class and placed in a
17 disciplinary alternative education program as provided by Section
18 37.008 or expelled if the student:

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

21 (2) incites violence against a minor through group
22 bullying; or

23 (3) releases or threatens to release intimate visual
24 material of a minor or a student who is 18 years of age or older
25 without the student's consent.

26 (c) Nothing in this section exempts a school from reporting
27 a finding of intimate visual material of a minor.

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

3 (1) "Bullying" has the meaning assigned by Section
4 37.0832 [~~25.0342~~].

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

8 SECTION 5. Section 12.104(b), Education Code, is amended to
9 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; and

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

16 (A) the Public Education Information Management
17 System (PEIMS) to the extent necessary to monitor compliance with
18 this subchapter as determined by the commissioner;

19 (B) criminal history records under Subchapter C,
20 Chapter 22;

21 (C) reading instruments and accelerated reading
22 instruction programs under Section 28.006;

23 (D) accelerated instruction under Section
24 28.0211;

25 (E) high school graduation requirements under
26 Section 28.025;

27 (F) special education programs under Subchapter

- 1 A, Chapter 29;
- 2 (G) bilingual education under Subchapter B,
3 Chapter 29;
- 4 (H) prekindergarten programs under Subchapter E
5 or E-1, Chapter 29;
- 6 (I) extracurricular activities under Section
7 33.081;
- 8 (J) discipline management practices or behavior
9 management techniques under Section 37.0021;
- 10 (K) health and safety under Chapter 38;
- 11 (L) public school accountability under
12 Subchapters B, C, D, E, F, G, and J, Chapter 39;
- 13 (M) the requirement under Section 21.006 to
14 report an educator's misconduct;
- 15 (N) intensive programs of instruction under
16 Section 28.0213; ~~and~~
- 17 (O) the right of a school employee to report a
18 crime, as provided by Section 37.148; and
- 19 (P) bullying prevention policies and procedures
20 under Section 37.0832.

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

23 (d-2) Continuing education requirements for a classroom
24 teacher may include instruction regarding how grief and trauma
25 affect student learning and behavior and how evidence-based,
26 grief-informed, and trauma-informed strategies support the
27 academic success of students affected by grief and trauma.

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

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

8 Sec. 21.462. RESOURCES REGARDING STUDENTS WITH MENTAL
9 HEALTH NEEDS. The agency, in coordination with the Health and Human
10 Services Commission, shall establish and maintain an Internet
11 website to provide resources for school district or open-enrollment
12 charter school employees regarding working with students with
13 mental health conditions. The agency must include on the Internet
14 website information about:

- 15 (1) grief-informed and trauma-informed practices;
16 (2) building skills related to managing emotions,
17 establishing and maintaining positive relationships, and
18 responsible decision-making;
19 (3) positive behavior interventions and supports; and
20 (4) a safe and supportive school climate.

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

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

- 25 (1) participate in planning, implementing, and
26 evaluating a comprehensive developmental guidance program to serve
27 all students and to address the special needs of students:

1 (A) who are at risk of dropping out of school,
2 becoming substance abusers, participating in gang activity, or
3 committing suicide;

4 (B) who are in need of modified instructional
5 strategies; or

6 (C) who are gifted and talented, with emphasis on
7 identifying and serving gifted and talented students who are
8 educationally disadvantaged;

9 (2) consult with a student's parent or guardian and
10 make referrals as appropriate in consultation with the student's
11 parent or guardian;

12 (3) consult with school staff, parents, and other
13 community members to help them increase the effectiveness of
14 student education and promote student success;

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

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

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

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

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

1 CHAPTER 129A. RELIEF FOR CYBERBULLYING OF CHILD

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

5 Sec. 129A.002. INJUNCTIVE RELIEF. (a) A recipient of
6 cyberbullying behavior who is younger than 18 years of age at the
7 time the cyberbullying occurs or a parent of or person standing in
8 parental relation to the recipient may seek injunctive relief under
9 this chapter against the individual who was cyberbullying the
10 recipient or, if the individual is younger than 18 years of age,
11 against a parent of or person standing in parental relation to the
12 individual.

13 (b) A court may issue a temporary restraining order,
14 temporary injunction, or permanent injunction appropriate under
15 the circumstances to prevent any further cyberbullying, including
16 an order or injunction:

17 (1) enjoining a defendant from engaging in
18 cyberbullying; or

19 (2) compelling a defendant who is a parent of or person
20 standing in parental relation to an individual who is younger than
21 18 years of age to take reasonable actions to cause the individual
22 to cease engaging in cyberbullying.

23 (c) A plaintiff in an action for injunctive relief brought
24 under this section is entitled to a temporary restraining order on
25 showing that the plaintiff is likely to succeed in establishing
26 that the individual was cyberbullying the recipient. The plaintiff
27 is not required to plead or prove that, before notice can be served

1 and a hearing can be held, immediate and irreparable injury, loss,
2 or damage is likely to result from past or future cyberbullying by
3 the individual against the recipient.

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

7 (e) A temporary restraining order or temporary injunction
8 granted under this section shall order the preservation of any
9 relevant electronic communication. The temporary restraining
10 order or temporary injunction is not required to:

- 11 (1) define the injury or state why it is irreparable;
12 (2) state why the order was granted without notice; or
13 (3) include an order setting the cause for trial on the
14 merits with respect to the ultimate relief requested.

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

20 (b) The forms and instructions:

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

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

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

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

27 (1) state:

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

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

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

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

12 (e) The attorney general and the clerk of a court shall
13 inform members of the general public of the availability of a form
14 promulgated by the supreme court under this section as appropriate
15 and make the form available free of charge.

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

19 Sec. 129A.004. INAPPLICABILITY. (a) An action filed under
20 this chapter may not be joined with an action filed under Title 1,
21 4, or 5, Family Code.

22 (b) Chapter 27 does not apply to an action under this
23 chapter.

24 Sec. 129A.005. CERTAIN CONDUCT EXCEPTED. This chapter does
25 not apply to a claim brought against an interactive computer
26 service, as defined by 47 U.S.C. Section 230, for cyberbullying.

27 SECTION 10. Sections [161.325\(a-1\)](#), (d), (e), (f), and (i),

1 Health and Safety Code, are amended to read as follows:

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

- 3 (1) early mental health intervention;
- 4 (2) mental health promotion [~~and positive youth~~
5 ~~development~~];
- 6 (3) substance abuse prevention;
- 7 (4) substance abuse intervention; [~~and~~
- 8 (5) suicide prevention;
- 9 (6) grief-informed and trauma-informed practices;
- 10 (7) building skills related to managing emotions,
11 establishing and maintaining positive relationships, and
12 responsible decision-making;
- 13 (8) positive behavior interventions and supports and
14 positive youth development; and
- 15 (9) safe and supportive school climate.

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

21 (1) includes [~~establishes~~] a procedure for providing
22 notice of a recommendation for early mental health or substance
23 abuse intervention regarding a student to a parent or guardian of
24 the student within a reasonable amount of time after the
25 identification of early warning signs as described by Subsection
26 (b)(2);

27 (2) includes [~~establishes~~] a procedure for providing

1 notice of a student identified as at risk of committing suicide to a
2 parent or guardian of the student within a reasonable amount of time
3 after the identification of early warning signs as described by
4 Subsection (b)(2);

5 (3) establishes that the district may develop a
6 reporting mechanism and may designate at least one person to act as
7 a liaison officer in the district for the purposes of identifying
8 students in need of early mental health or substance abuse
9 intervention or suicide prevention; and

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

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

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

- 22 (1) the annual student handbook; and
23 (2) the district improvement plan under Section
24 [11.252](#), Education Code.

25 (i) Nothing in this section is intended to interfere with
26 the rights of parents or guardians and the decision-making
27 regarding the best interest of the child. Practices [~~Policy~~] and

1 procedures developed [~~adopted~~] in accordance with this section are
2 intended to notify a parent or guardian of a need for mental health
3 or substance abuse intervention so that a parent or guardian may
4 take appropriate action. Nothing in this section shall be
5 construed as giving school districts the authority to prescribe
6 medications. Any and all medical decisions are to be made by a
7 parent or guardian of a student.

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

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

12 (1) initiates communication and in the course of the
13 communication makes a comment, request, suggestion, or proposal
14 that is obscene;

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

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

23 (4) causes the telephone of another to ring repeatedly
24 or makes repeated telephone communications anonymously or in a
25 manner reasonably likely to harass, annoy, alarm, abuse, torment,
26 embarrass, or offend another;

27 (5) makes a telephone call and intentionally fails to

1 hang up or disengage the connection;

2 (6) knowingly permits a telephone under the person's
3 control to be used by another to commit an offense under this
4 section; ~~[or]~~

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

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

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

12 (1) has previously been convicted under this section;
13 or

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

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

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

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

23 (1) "Electronic communication" means a transfer of
24 signs, signals, writing, images, sounds, data, or intelligence of
25 any nature transmitted in whole or in part by a wire, radio,
26 electromagnetic, photoelectronic, or photo-optical system. The
27 term includes:

1 (A) a communication initiated through the use of
2 [~~by~~] electronic mail, instant message, network call, a cellular or
3 other type of telephone, a computer, a camera, text message, a
4 social media platform or application, an Internet website, any
5 other Internet-based communication tool, or facsimile machine; and

6 (B) a communication made to a pager.

7 SECTION 13. Section [37.0832\(b\)](#), Education Code, is
8 repealed.

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

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

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