86R3097 JES-D

By:  Hall S.B. No. 377

A BILL TO BE ENTITLED

AN ACT

relating to eliminating certain requirements imposed on school districts; establishing a process for review of a school district's termination or suspension of a classroom teacher.

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

SECTION 1.  Section 11.253(d), Education Code, is amended to read as follows:

(d)  Each campus improvement plan must:

(1)  assess the academic achievement for each student in the school using the achievement indicator system as described by Section 39.053;

(2)  set the campus performance objectives based on the achievement indicator system, including objectives for special needs populations, including students in special education programs under Subchapter A, Chapter 29;

(3)  identify how the campus goals will be met for each student;

(4)  determine the resources needed to implement the plan;

(5)  identify staff needed to implement the plan;

(6)  set timelines for reaching the goals;

(7)  measure progress toward the performance objectives periodically to ensure that the plan is resulting in academic improvement;

(8)  include goals and methods for violence prevention and intervention on campus;

(9)  provide for a program to encourage parental involvement at the campus; and

(10)  if the campus is an elementary, middle, or junior high school, set goals and objectives for the coordinated health program at the campus based on:

(A)  student fitness assessment data, including any data from research-based assessments such as the school health index assessment and planning tool created by the federal Centers for Disease Control and Prevention;

(B)  student academic performance data;

(C)  student attendance rates;

(D)  the percentage of students who are educationally disadvantaged; and

(E)  the use and success of any method to ensure that students participate in moderate to vigorous physical activity as required by Section 28.002(l)[~~; and~~

[~~(F)  any other indicator recommended by the local school health advisory council~~].

SECTION 2.  The heading to Subchapter F, Chapter 21, Education Code, is amended to read as follows:

SUBCHAPTER F. HEARINGS [~~BEFORE HEARING EXAMINERS~~]

SECTION 3.  Section 21.253, Education Code, is amended by adding Subsections (c) and (d) to read as follows:

(c)  The school district may choose to have the hearing conducted before:

(1)  a hearing examiner; or

(2)  the board of trustees or a subcommittee designated by the board.

(d)  The school district shall notify the commissioner of the school district's choice under Subsection (c).

SECTION 4.  The heading to Section 21.258, Education Code, is amended to read as follows:

Sec. 21.258.  CONSIDERATION OF RECOMMENDATION OF HEARING EXAMINER BY BOARD OF TRUSTEES OR BOARD SUBCOMMITTEE.

SECTION 5.  The heading to Section 21.259, Education Code, is amended to read as follows:

Sec. 21.259.  DECISION OF BOARD OF TRUSTEES OR BOARD SUBCOMMITTEE AFTER CONSIDERATION OF RECOMMENDATION OF HEARING EXAMINER.

SECTION 6.  Subchapter F, Chapter 21, Education Code, is amended by adding Section 21.2595 to read as follows:

Sec. 21.2595.  HEARING BY BOARD OF TRUSTEES OR BOARD SUBCOMMITTEE; DECISION. (a) If the school district chooses to have a hearing before the board of trustees or a subcommittee designated by the board, the board or subcommittee shall conduct the hearing as provided by this section.

(b)  The board of trustees or board subcommittee has the same authority as a hearing examiner and the hearing is subject to the same requirements and shall be conducted in the same manner as provided under Sections 21.255 and 21.256. The school district and the teacher have the same rights and responsibilities as provided by Sections 21.255 and 21.256.

(c)  Not later than the 60th day after the date on which the district receives a copy of the teacher's written request for a hearing, the board of trustees or board subcommittee shall complete the hearing and shall announce a decision that:

(1)  includes findings of fact and conclusions of law; and

(2)  may include a grant of relief.

(d)  A determination by the board of trustees or board subcommittee regarding good cause for the suspension of a teacher without pay or the termination of a probationary, continuing, or term contract is a conclusion of law.

SECTION 7.  Section 21.260, Education Code, is amended to read as follows:

Sec. 21.260.  RECORDING OF BOARD PROCEEDINGS [~~MEETING AND ANNOUNCEMENT~~]. A certified shorthand reporter shall record the oral argument under Section 21.258 and the announcement of a [~~the~~] decision under Section 21.259 or 21.2595. The school district shall bear the cost of the services of the certified shorthand reporter.

SECTION 8.  Sections 21.301(a) and (c), Education Code, are amended to read as follows:

(a)  Not later than the 20th day after the date the board of trustees or board subcommittee announces its decision under Section 21.259 or 21.2595 or the board advises the teacher of its decision not to renew the teacher's contract under Section 21.208, the teacher may appeal the decision by filing a petition for review with the commissioner.

(c)  The commissioner shall review, as applicable, the record of the hearing before the hearing examiner and the oral argument before the board of trustees or board subcommittee or the record of the hearing before the board of trustees or board subcommittee. Except as provided in Section 21.302, the commissioner shall consider the appeal solely on the basis of the local record and may not consider any additional evidence or issue. The commissioner, on the motion of a party or on the commissioner's motion, may hear oral argument. The commissioner shall accept written argument.

SECTION 9.  Section 21.302(a), Education Code, is amended to read as follows:

(a)  If a party alleges that procedural irregularities that are not reflected in the local record occurred at a [~~the~~] hearing under Subchapter F [~~before the hearing examiner~~], the commissioner may hold a hearing for the presentation of evidence on that issue. The party alleging that procedural irregularities occurred shall identify the specific alleged defect and its claimed effect on the board's or board subcommittee's decision. The commissioner may make appropriate orders consistent with rules adopted by the commissioner. The commissioner's determination on any alleged procedural irregularities is final and may not be appealed.

SECTION 10.  Sections 21.303(a) and (b), Education Code, are amended to read as follows:

(a)  If the board of trustees or board subcommittee decided not to renew a teacher's term contract, the commissioner may not substitute the commissioner's judgment for that of the board or subcommittee [~~of trustees~~] unless the decision was arbitrary, capricious, or unlawful or is not supported by substantial evidence.

(b)  If the board of trustees or board subcommittee terminated a teacher's probationary, continuing, or term contract during the contract term or suspended a teacher without pay, the commissioner may not substitute the commissioner's judgment for that of the board or subcommittee unless:

(1)  if the board or subcommittee accepted the hearing examiner's findings of fact without modification, the decision is arbitrary, capricious, or unlawful or is not supported by substantial evidence; [~~or~~]

(2)  if the board or subcommittee modified the hearing examiner's findings of fact, the decision is arbitrary, capricious, or unlawful or the hearing examiner's original findings of fact are not supported by substantial evidence; or

(3)  the decision of the board or subcommittee in a hearing under Section 21.2595 is arbitrary, capricious, or unlawful or the original findings of fact of the board or subcommittee are not supported by substantial evidence.

SECTION 11.  Sections 21.304(d) and (e), Education Code, are amended to read as follows:

(d)  The commissioner shall maintain and index decisions of the commissioner issued under this section with, as applicable:

(1)  the recommendations or decisions of the hearing examiner; or

(2)  the decisions of the board of trustees or board subcommittee announced under Section 21.2595.

(e)  If the commissioner reverses the action of the board of trustees or board subcommittee, the commissioner shall order the school district to reinstate the teacher and to pay the teacher any back pay and employment benefits from the time of discharge or suspension to reinstatement.

SECTION 12.  Section 21.305(a), Education Code, is amended to read as follows:

(a)  If a teacher appeals the decision of the board of trustees or board subcommittee, the school district shall bear the cost of preparing the original transcripts of, as applicable:

(1)  the hearing before the hearing examiner[~~;~~] and

[~~(2)~~]  the oral argument before the board of trustees or board subcommittee; or

(2)  the hearing before the board or subcommittee under Section 21.2595.

SECTION 13.  Section 21.451, Education Code, is amended by adding Subsection (h) to read as follows:

(h)  Notwithstanding any other law, a school district may, but is not required to, provide staff training regarding:

(1)  Internet safety;

(2)  teen dating violence;

(3)  bullying;

(4)  student parenthood;

(5)  child abuse; or

(6)  school bus transportation safety.

SECTION 14.  Section 28.002(p), Education Code, is amended to read as follows:

(p)  The State Board of Education, in conjunction with the office of the attorney general, shall develop a parenting and paternity awareness program that a school district may [~~shall~~] use in the district's high school health curriculum or[~~. A school district may use the program developed under this subsection in~~] the district's middle or junior high school curriculum. At the discretion of the district, a teacher may modify the suggested sequence and pace of the program at any grade level. The program must:

(1)  address parenting skills and responsibilities, including child support and other legal rights and responsibilities that come with parenthood;

(2)  address relationship skills, including money management, communication skills, and marriage preparation; and

(3)  in district middle, junior high, or high schools that do not have a family violence prevention program, address skills relating to the prevention of family violence.

SECTION 15.  Sections 28.0023(c) and (e), Education Code, are amended to read as follows:

(c)  A school district or open-enrollment charter school may [~~shall~~] provide instruction to students in grades 7 through 12 in cardiopulmonary resuscitation in a manner consistent with the requirements of this section [~~and State Board of Education rules adopted under this section~~]. The instruction may be provided as a part of any course. [~~A student shall receive the instruction at least once before graduation.~~]

(e)  If a school district or open-enrollment charter school offers cardiopulmonary [~~Cardiopulmonary~~] resuscitation instruction, the instruction must include training that has been developed:

(1)  by the American Heart Association or the American Red Cross; or

(2)  using nationally recognized, evidence-based guidelines for emergency cardiovascular care and incorporating psychomotor skills to support the instruction.

SECTION 16.  Subchapter A, Chapter 28, Education Code, is amended by adding Section 28.0026 to read as follows:

Sec. 28.0026.  INSTRUCTION NOT REQUIRED. Notwithstanding any other law, a school district may, but is not required to, provide student instruction regarding:

(1)  Internet safety;

(2)  teen dating violence;

(3)  bullying;

(4)  student parenthood;

(5)  child abuse; or

(6)  school bus transportation safety.

SECTION 17.  The heading to Section 28.004, Education Code, is amended to read as follows:

Sec. 28.004.  [~~LOCAL SCHOOL HEALTH ADVISORY COUNCIL AND~~] HEALTH EDUCATION INSTRUCTION.

SECTION 18.  Sections 28.004(e), (i), and (k), Education Code, are amended to read as follows:

(e)  Any course materials and instruction relating to human sexuality, sexually transmitted diseases, or human immunodeficiency virus or acquired immune deficiency syndrome shall be selected by the board of trustees [~~with the advice of the local school health advisory council~~] and must:

(1)  present abstinence from sexual activity as the preferred choice of behavior in relationship to all sexual activity for unmarried persons of school age;

(2)  devote more attention to abstinence from sexual activity than to any other behavior;

(3)  emphasize that abstinence from sexual activity, if used consistently and correctly, is the only method that is 100 percent effective in preventing pregnancy, sexually transmitted diseases, infection with human immunodeficiency virus or acquired immune deficiency syndrome, and the emotional trauma associated with adolescent sexual activity;

(4)  direct adolescents to a standard of behavior in which abstinence from sexual activity before marriage is the most effective way to prevent pregnancy, sexually transmitted diseases, and infection with human immunodeficiency virus or acquired immune deficiency syndrome; and

(5)  teach contraception and condom use in terms of human use reality rates instead of theoretical laboratory rates, if instruction on contraception and condoms is included in curriculum content.

(i)  Before each school year, a school district shall provide written notice to a parent of each student enrolled in the district of the board of trustees' decision regarding whether the district will provide human sexuality instruction to district students.  If instruction will be provided, the notice must include:

(1)  a summary of the basic content of the district's human sexuality instruction to be provided to the student, including a statement informing the parent of the instructional requirements under state law;

(2)  a statement of the parent's right to:

(A)  review curriculum materials as provided by Subsection (j); and

(B)  remove the student from any part of the district's human sexuality instruction without subjecting the student to any disciplinary action, academic penalty, or other sanction imposed by the district or the student's school; and

(3)  information describing the opportunities for parental involvement in the development of the curriculum to be used in human sexuality instruction[~~, including information regarding the local school health advisory council established under Subsection (a)~~].

(k)  A school district shall publish in the student handbook and post on the district's Internet website, if the district has an Internet website:

(1)  a statement of the policies adopted to ensure that elementary school, middle school, and junior high school students engage in at least the amount and level of physical activity required by Section 28.002(l);

(2)  a statement of:

(A)  [~~the number of times during the preceding year the district's school health advisory council has met;~~

[~~(B)~~]  whether the district has adopted and enforces policies to ensure that district campuses comply with agency vending machine and food service guidelines for restricting student access to vending machines; and

(B) [~~(C)~~]  whether the district has adopted and enforces policies and procedures that prescribe penalties for the use of e-cigarettes, as defined by Section 38.006, and tobacco products by students and others on school campuses or at school-sponsored or school-related activities; and

(3)  a statement providing notice to parents that they can request in writing their child's physical fitness assessment results at the end of the school year if assessment was requested under Section 38.101.

SECTION 19.  Sections 33.901(a) and (b), Education Code, are amended to read as follows:

(a)  If at least 10 percent of the students enrolled in one or more schools in a school district or enrolled in an open-enrollment charter school are eligible for free or reduced-price breakfasts under the national school breakfast program provided for by the Child Nutrition Act of 1966 (42 U.S.C. Section 1773), the board of trustees of the school district or the governing body of the open-enrollment charter school may [~~shall either~~]:

(1)  participate in the national program and make the benefits of the national program available to all eligible students in the schools or school; or

(2)  develop and implement a locally funded program to provide free meals, including breakfast and lunch, to each student eligible for free meals under federal law and reduced-price meals, including breakfast and lunch, to each student eligible for reduced-price meals under federal law, provided that the reduced price may not exceed the maximum allowable rate under federal law.

(b)  A school district campus or an open-enrollment charter school participating in the national school breakfast program provided for by the Child Nutrition Act of 1966 (42 U.S.C. Section 1773) or providing a locally funded program in which 80 percent or more of the students qualify under the national program for a free or reduced-price breakfast may [~~shall~~] offer a free breakfast to each student.

SECTION 20.  Section 34.008(c), Education Code, is amended to read as follows:

(c)  A mass transit authority contracting under this section for daily transportation of pre-primary, primary, or secondary students to or from school shall conduct, in a manner and on a schedule approved by the county or district school board, the following education programs:

(1)  a program to inform the public that public school students will be riding on the authority's or company's buses; and

(2)  a program to educate the drivers of the buses to be used under the contract of the special needs and problems of public school students riding on the buses[~~; and~~

[~~(3)  a program to educate public school students on bus riding safety and any special considerations arising from the use of the authority's or company's buses~~].

SECTION 21.  Section 34.012(b), Education Code, is amended to read as follows:

(b)  The State Board of Education shall serve as a clearinghouse of best practices for school districts seeking the most efficient and sensible information regarding school bus safety[~~, including possible compliance with Section 547.701, Transportation Code, using school buses originally purchased without seat belts~~].

SECTION 22.  Section 37.001(a), Education Code, is amended to read as follows:

(a)  The board of trustees of an independent school district shall, with the advice of its district-level committee established under Subchapter F, Chapter 11, adopt a student code of conduct for the district. The student code of conduct must be posted and prominently displayed at each school campus or made available for review at the office of the campus principal. In addition to establishing standards for student conduct, the student code of conduct must:

(1)  specify the circumstances, in accordance with this subchapter, under which a student may be removed from a classroom, campus, disciplinary alternative education program, or vehicle owned or operated by the district;

(2)  specify conditions that authorize or require a principal or other appropriate administrator to transfer a student to a disciplinary alternative education program;

(3)  outline conditions under which a student may be suspended as provided by Section 37.005 or expelled as provided by Section 37.007;

(4)  specify that consideration will be given, as a factor in each decision concerning suspension, removal to a disciplinary alternative education program, expulsion, or placement in a juvenile justice alternative education program, regardless of whether the decision concerns a mandatory or discretionary action, to:

(A)  self-defense;

(B)  intent or lack of intent at the time the student engaged in the conduct;

(C)  a student's disciplinary history; or

(D)  a disability that substantially impairs the student's capacity to appreciate the wrongfulness of the student's conduct;

(5)  provide guidelines for setting the length of a term of:

(A)  a removal under Section 37.006; and

(B)  an expulsion under Section 37.007;

(6)  address the notification of a student's parent or guardian of a violation of the student code of conduct committed by the student that results in suspension, removal to a disciplinary alternative education program, or expulsion;

(7)  prohibit bullying, harassment, and making hit lists and ensure that district employees enforce those prohibitions;

(8)  provide, as appropriate for students at each grade level, methods, including options, for:

(A)  managing students in the classroom, on school grounds, and on a vehicle owned or operated by the district;

(B)  disciplining students; and

(C)  preventing and intervening in student discipline problems[~~, including bullying, harassment, and making hit lists~~]; and

(9)  include an explanation of the provisions regarding refusal of entry to or ejection from district property under Section 37.105, including the appeal process established under Section 37.105(h).

SECTION 23.  Section 37.0831(b), Education Code, is amended to read as follows:

(b)  A dating violence policy:

(1)  must:

(A) [~~(1)~~]  include a definition of dating violence that includes the intentional use of physical, sexual, verbal, or emotional abuse by a person to harm, threaten, intimidate, or control another person in a dating relationship, as defined by Section 71.0021, Family Code; and

(B) [~~(2)~~]  address safety planning, enforcement of protective orders, school-based alternatives to protective orders, and [~~training for teachers and administrators,~~] counseling for affected students;[~~,~~] and

(2)  may address:

(A)  training for teachers and administrators; and

(B)  awareness education for students and parents.

SECTION 24.  Section 38.004(b), Education Code, is amended to read as follows:

(b)  A [~~Each~~] school district may, but is not required to, [~~shall~~] provide child abuse antivictimization programs in elementary and secondary schools.

SECTION 25.  Section 38.101, Education Code, is amended to read as follows:

Sec. 38.101.  REQUEST FOR ASSESSMENT [~~REQUIRED~~]. At the request of the student's parent or a person standing in parental relation to the student [~~(a) Except as provided by Subsection (b)~~], a school district annually shall assess the physical fitness of a student [~~students~~] enrolled in grade three or higher in a course that satisfies the curriculum requirements for physical education under Section 28.002(a)(2)(C).

[~~(b)  A school district is not required to assess a student for whom, as a result of disability or other condition identified by commissioner rule, the assessment instrument adopted under Section 38.102 is inappropriate.~~]

SECTION 26.  (a) Section 12.0029(d), Agriculture Code, is repealed.

(b)  The following provisions of the Education Code are repealed:

(1)  Section 28.002(s);

(2)  Sections 28.0023(b) and (d);

(3)  Sections 28.004(a), (b), (c), (d), (d-1), (l), (l-1), (m), and (n); and

(4)  Section 33.901(c).

(c)  Section 547.701(e), Transportation Code, is repealed.

SECTION 27.  Section 21.253, Education Code, as amended by this Act, applies only to a written notice of a proposed decision described by Section 21.251, Education Code, received by a teacher on or after September 1, 2019.

SECTION 28.  This Act applies beginning with the 2019-2020 school year.

SECTION 29.  This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2019.