87R9401 MEW-D

By:  Meza H.B. No. 4064

A BILL TO BE ENTITLED

AN ACT

relating to policies and procedures for addressing bullying and harassment in public schools.

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

SECTION 1.  Section 12.104(b), Education Code, as amended by Chapters 262 (H.B. 1597), 464 (S.B. 11), 467 (H.B. 4170), and 943 (H.B. 3), Acts of the 86th Legislature, Regular Session, 2019, is reenacted and amended to read as follows:

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

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

(2)  the provisions in Chapter 554, Government Code; and

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

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

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

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

(D)  accelerated instruction under Section 28.0211;

(E)  high school graduation requirements under Section 28.025;

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

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

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

(I)  extracurricular activities under Section 33.081;

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

(K)  health and safety under Chapter 38;

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

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

(N)  intensive programs of instruction under Section 28.0213;

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

(P)  bullying and harassment prevention policies and procedures under Section 37.0832;

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

(R)  the right under Section 37.0151 to report to local law enforcement certain conduct constituting assault or harassment;

(S)  a parent's right to information regarding the provision of assistance for learning difficulties to the parent's child as provided by Sections 26.004(b)(11) and 26.0081(c) and (d);

(T)  establishment of residency under Section 25.001;

(U) [~~(T)~~]  school safety requirements under Sections 37.108, 37.1081, 37.1082, 37.109, 37.113, 37.114, 37.115, 37.207, and 37.2071;

(V) [~~(T)~~]  the early childhood literacy and mathematics proficiency plans under Section 11.185; and

(W) [~~(U)~~]  the college, career, and military readiness plans under Section 11.186.

SECTION 2.  Section 33.006(b), Education Code, is amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

SECTION 3.  Section 37.0832, Education Code, is amended to read as follows:

Sec. 37.0832.  BULLYING AND HARASSMENT PREVENTION POLICIES AND PROCEDURES. (a) In this section:

(1)  "Bullying":

(A)  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 engaging in written or verbal expression, expression through electronic means, or physical conduct that satisfies the applicability requirements provided by Subsection (a-1), and that:

(i)  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;

(ii)  is sufficiently severe, persistent, or pervasive enough that the action or threat creates an intimidating, threatening, or abusive educational environment for a student;

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

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

(B)  includes cyberbullying.

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

(3)  "Harassment" has the meaning assigned by Section 37.001.

(a-1)  This section applies to:

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

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

(3)  cyberbullying that occurs off school property or outside of a school-sponsored or school-related activity if the cyberbullying:

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

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

(b)  Conduct that constitutes bullying or harassment may include conduct that occurs due to:

(1)  another student's actual or perceived race, color, national origin, sex, disability status, sexual orientation, gender identity, gender expression, ethnicity, or religion;

(2)  a distinguishing characteristic of another student, as identified in the model guidance developed by the agency under Section 37.0833; or

(3)  a student's association with a person or group with one or more of the actual or perceived characteristics described by Subdivisions (1) and (2).

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

(1)  prohibits the bullying or harassment of a student;

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

(3)  establishes a procedure for providing notice, while considering the circumstances of the incident and ensuring the safety and well-being of the student, of an incident of bullying or harassment to:

(A)  a parent or guardian of the alleged victim on or before the third business day after the date the incident is reported; and

(B)  a parent or guardian of the alleged bully or harasser within a reasonable amount of time after the incident;

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

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

(6)  establishes procedures for reporting an incident of bullying or harassment, including procedures for a student to anonymously report an incident of bullying or harassment, promptly investigating a reported incident of bullying or harassment, and determining whether the reported incident of bullying or harassment occurred;

(7)  specifies that no remedial action may be taken solely on the basis of an anonymous report of an incident of bullying or harassment;

(8)  prohibits the imposition of a disciplinary measure on a student who, after an investigation, is found to be a victim of bullying or harassment, on the basis of that student's use of reasonable self-defense in response to the bullying or harassment; [~~and~~]

(9) [~~(8)~~]  requires that discipline for bullying or harassment of a student with disabilities comply with applicable requirements under federal law, including the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.);

(10)  distinguishes various responses to reported incidents of bullying or harassment, including age-appropriate consequences;

(11)  encourages positive and preventative approaches to discipline for bullying or harassment that minimize a student's removal from the classroom and ensure students are not subject to disproportionate punishment;

(12)  is consistent with the model guidance developed by the agency under Section 37.0833;

(13)  designates a school district employee to serve as the primary contact regarding the policies and procedures adopted under this section, including to:

(A)  receive copies of all formal and informal complaints regarding violations;

(B)  assume responsibility for the implementation of the policies and procedures; and

(C)  serve as primary contact for the agency; and

(14)  provides for the implementation of an evidence-based program for discussing bullying and harassment issues and related school policies with all students.

(c-1)  The procedures established under Subsection (c)(6) must designate the principal, or the principal's designee, at the campus in which the incident of bullying or harassment was reported as the person responsible for overseeing the investigation.

(c-2)  A school district must:

(1)  review and revise the district's policy adopted under Subsection (c) at least once every two years; and

(2)  submit the district's policy to the agency.

(d)  The policy and any necessary procedures adopted under Subsection (c) must be included:

(1)  annually, in the student and employee school district handbooks and as part of any new employee training materials; and

(2)  in the district improvement plan under Section 11.252.

(e)  The procedure for reporting bullying or harassment established under Subsection (c) must be posted on the district's Internet website to the extent practicable.

(f)  Each school district may establish a district-wide policy to assist in the prevention and mediation of bullying and harassment incidents between students that:

(1)  interfere with a student's educational opportunities; or

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

SECTION 4.  Subchapter C, Chapter 37, Education Code, is amended by adding Section 37.0833 to read as follows:

Sec. 37.0833.  BULLYING AND HARASSMENT MODEL GUIDANCE AND PROCEDURES. (a) In this section:

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

(2)  "Harassment" has the meaning assigned by Section 37.001.

(b)  To assist school districts in establishing bullying and harassment policies and procedures as required by Section 37.0832, the agency shall develop model guidance that:

(1)  includes definitions of bullying and harassment consistent with this section;

(2)  identifies distinguishing characteristics of students that are protected from bullying or harassment; and

(3)  includes guidance for school districts on:

(A)  the adoption and implementation of the district's policies and procedures; and

(B)  the needs of transgender, non-binary, and gender-nonconforming students that addresses:

(i)  maintenance of a safe and supportive learning environment free from discrimination and harassment for all students;

(ii)  terms, definitions, and discussion of gender identity and expression;

(iii)  maintenance of gender, name, and pronoun information to reflect a student's gender identity;

(iv)  protection of student privacy and the confidentiality of sensitive information;

(v)  student participation in school activities and events segregated by sex, including athletics and the use of school facilities; and

(vi)  compliance with all applicable state and local nondiscrimination and privacy laws or ordinances.

(c)  The agency shall hire a safe school specialist to:

(1)  identify evidence-based training resources; and

(2)  provide additional technical assistance for policy implementation by school districts that incorporates state bullying and harassment prevention standards.

(d)  The agency shall develop procedures for:

(1)  monitoring school district compliance with Section 37.0832;

(2)  providing technical assistance to school districts in implementing policies and procedures under Section 37.0832;

(3)  collecting reports on incidents of bullying and harassment from school districts, while maintaining student confidentiality;

(4)  publishing a biannual report that includes statewide statistics of incidents of bullying and harassment, disaggregated by characteristics identified under Subsection (b)(2); and

(5)  reporting of and responding to failures to implement bullying and harassment policies and procedures by school districts and administrators, including by:

(A)  investigating violations of law relating to bullying and harassment; and

(B)  imposing sanctions on school districts that fail to develop and implement policies and procedures in accordance with Section 37.0832.

(e)  For any school district that the agency determines is out of compliance with Section 37.0832, the agency shall conduct an investigation and issue a report detailing guidance for compliance. If the school district has not complied not later than one month after receiving the report from the agency, the commissioner may take any appropriate action authorized to be taken by the commissioner under Chapter 39A.

(f)  The commissioner may adopt rules as necessary to implement this section.

SECTION 5.  As soon as practicable after the effective date of this Act:

(1)  the Texas Education Agency shall develop the model guidance and procedures as required by Section 37.0833, Education Code, as added by this Act; and

(2)  each school district shall adopt a policy concerning bullying and harassment as required by Section 37.0832(c), Education Code, as amended by this Act.

SECTION 6.  To the extent of any conflict, this Act prevails over another Act of the 87th Legislature, Regular Session, 2021, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 7.  This Act applies beginning with the 2021-2022 school year.

SECTION 8.  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, 2021.