

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

- 1 28.0211;
- 2 (E) high school graduation requirements under
- 3 Section 28.025;
- 4 (F) special education programs under Subchapter
- 5 A, Chapter 29;
- 6 (G) bilingual education under Subchapter B,
- 7 Chapter 29;
- 8 (H) prekindergarten programs under Subchapter E
- 9 or E-1, Chapter 29;
- 10 (I) extracurricular activities under Section
- 11 33.081;
- 12 (J) discipline management practices or behavior
- 13 management techniques under Section 37.0021;
- 14 (K) health and safety under Chapter 38;
- 15 (L) public school accountability under
- 16 Subchapters B, C, D, F, G, and J, Chapter 39, and Chapter 39A;
- 17 (M) the requirement under Section 21.006 to
- 18 report an educator's misconduct;
- 19 (N) intensive programs of instruction under
- 20 Section 28.0213;
- 21 (O) the right of a school employee to report a
- 22 crime, as provided by Section 37.148;
- 23 (P) bullying and harassment prevention policies
- 24 and procedures under Section 37.0832;
- 25 (Q) the right of a school under Section 37.0052
- 26 to place a student who has engaged in certain bullying behavior in a
- 27 disciplinary alternative education program or to expel the student;

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

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

7 (T) establishment of residency under Section
8 25.001*i*;

9 (U) [~~(T)~~] school safety requirements under
10 Sections 37.108, 37.1081, 37.1082, 37.109, 37.113, 37.114, 37.115,
11 37.207, and 37.2071*i*;

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (7) serve as an impartial, nonreporting resource for
19 interpersonal conflicts and discord involving two or more students,
20 including accusations of bullying or harassment under Section
21 [37.0832](#).

22 SECTION 3. Section [37.0832](#), Education Code, is amended to
23 read as follows:

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

26 (1) "Bullying":

27 (A) means a single significant act or a pattern

1 of acts by one or more students directed at another student that
2 exploits an imbalance of power and involves engaging in written or
3 verbal expression, expression through electronic means, or
4 physical conduct that satisfies the applicability requirements
5 provided by Subsection (a-1), and that:

6 (i) has the effect or will have the effect
7 of physically harming a student, damaging a student's property, or
8 placing a student in reasonable fear of harm to the student's person
9 or of damage to the student's property;

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

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

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

18 (B) includes cyberbullying.

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

25 (3) "Harassment" has the meaning assigned by Section
26 [37.001](#).

27 (a-1) This section applies to:

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

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

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

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

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

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

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

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

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

27 (c) The board of trustees of each school district shall

1 adopt a policy, including any necessary procedures, concerning
2 bullying and harassment that:

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

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

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

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

15 (B) a parent or guardian of the alleged bully or
16 harasser within a reasonable 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 and
19 harassment;

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

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

1 occurred;

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

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

10 (9) ~~(8)~~ requires that discipline for bullying or
11 harassment of a student with disabilities comply with applicable
12 requirements under federal law, including the Individuals with
13 Disabilities Education Act (20 U.S.C. Section 1400 et seq.);

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

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

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

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

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

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

3 (C) serve as primary contact for the agency; and
4 (14) provides for the implementation of an
5 evidence-based program for discussing bullying and harassment
6 issues and related school policies with all students.

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

11 (c-2) A school district must:

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

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

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

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

20 (2) in the district improvement plan under Section
21 [11.252](#).

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

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

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

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

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

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

9 (1) "Bullying" has the meaning assigned by Section
10 37.0832.

11 (2) "Harassment" has the meaning assigned by Section
12 37.001.

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

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

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

20 (3) includes guidance for school districts on:

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

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

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

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

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

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

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

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

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

13 (1) identify evidence-based training resources; and

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

17 (d) The agency shall develop procedures for:

18 (1) monitoring school district compliance with
19 Section 37.0832;

20 (2) providing technical assistance to school
21 districts in implementing policies and procedures under Section
22 37.0832;

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

26 (4) publishing a biannual report that includes
27 statewide statistics of incidents of bullying and harassment,

1 disaggregated by characteristics identified under Subsection
2 (b)(2); and

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

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

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

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

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

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

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

25 (2) each school district shall adopt a policy
26 concerning bullying and harassment as required by Section
27 37.0832(c), Education Code, as amended by this Act.

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

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

7 SECTION 8. This Act takes effect immediately if it receives
8 a vote of two-thirds of all the members elected to each house, as
9 provided by Section 39, Article III, Texas Constitution. If this
10 Act does not receive the vote necessary for immediate effect, this
11 Act takes effect September 1, 2021.