

BILL ANALYSIS

C.S.H.B. 1149
By: Swanson
Public Education
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Parents and activists have raised concerns about surveys, screenings, so-called wellbeing checks, or intrusive assessments conducted independently or embedded into the content of a child's school lesson plans or activities. In addition, some health instructional materials and social and emotional learning materials also contain practices that could be considered psychological or quasi-therapeutic. Under Chapter 26 of the Education Code, a public school district employee is required to obtain written parental consent before conducting a psychological examination of a child; however, these practices seem to undermine a parent's right to consent. Unfortunately, the current parental consent requirement does not provide a definition of psychological examination, testing, and treatment, and teachers and administrators can use this to propose a curriculum that attempts to ascertain the personal mental health details of a child without the knowledge or consent of their parents.

C.S.H.B. 1149 seeks to address these concerns by providing for definitions of psychological or psychiatric examination or test and treatment, and for expanded parental consent requirements regarding those actions.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1149 amends the Education Code to revise a provision requiring the written consent of a parent before a public school district employee may conduct a psychological examination, test, or treatment of a child, with certain exceptions, or may make or authorize the making of a videotape of a child or record or authorize the recording of a child's voice as follows:

- extends the applicability of the provision to a contractor of a district and specifies that the provision applies with respect to a psychological or psychiatric examination or test and psychological or psychiatric treatment; and
- specifies that the required frequency for the employee or contractor to obtain the consent is each time before doing so and specifies that the written consent required is written informed consent.

The bill prohibits this revised provision from being construed to limit the authority of a district employee or contractor to verbally inquire about a child's general well-being or conduct an academic lesson, provided that the lesson does not directly inquire or probe into a child's mental or emotional state. The bill defines the following terms for purposes of the revised provision:

- "psychological or psychiatric examination or test" as a method designed to elicit information regarding an attitude, habit, trait, opinion, belief, feeling, or mental disorder or a condition thought to lead to a mental disorder, regardless of the manner in which the method is presented or characterized, including a method that is presented or characterized as a survey, check-in, or screening or embedded in an academic lesson; and
- "psychological or psychiatric treatment" as the planned, systematic use of a method, technique, or psychoactive substance that is designed to affect behavioral, emotional, or attitudinal characteristics of an individual or group.

C.S.H.B. 1149 requires a district to retain the written informed consent of a child's parent as part of the child's education records. The bill also extends to a contractor of a district the applicability of the provision establishing that a district employee is not required to obtain the consent of a child's parent before the employee or contractor may make a videotape of a child or authorize the recording of a child's voice if the videotape or voice recording is to be used only for specified purposes relating to safety or certain promotion of safety, a cocurricular or extracurricular activity, regular classroom instruction, or media coverage of the school.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 1149 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

While both the introduced and substitute revise the provision requiring written parental consent to be obtained before a public school district employee may conduct a psychological examination, test, or treatment of a child, with certain exceptions, or may make or authorize the making of a videotape of a child or record or authorize the recording of a child's voice, the substitute makes the following revisions that were not made in the introduced:

- extends the applicability of the provision to a contractor of a district;
- specifies that the written consent required is written informed consent; and
- specifies that the required frequency for obtaining the consent is each time an examination, test, or treatment is conducted on a child.

The substitute includes the following provisions absent from the introduced:

- a prohibition against that revised provision being construed to limit the authority of a district employee or contractor to verbally inquire about a child's general well-being or conduct an academic lesson, provided that the lesson does not directly inquire or probe into a child's mental or emotional state;
- a requirement for a district to retain the obtained written informed consent of a child's parent as part of the child's education records; and
- a provision including a contractor of a school district among those who are expressly not required to obtain the consent of a child's parent before making a videotape of a child or authorizing the recording of a child's voice that is to be used only for specified purposes.