88R5835 MEW-F

By:  Buckley H.B. No. 4033

A BILL TO BE ENTITLED

AN ACT

relating to discipline management and access to telehealth mental health services in public schools.

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

SECTION 1.  Section 12A.004(a), Education Code, is amended to read as follows:

(a)  A local innovation plan may not provide for the exemption of a district designated as a district of innovation from the following provisions of this title:

(1)  a state or federal requirement applicable to an open-enrollment charter school operating under Subchapter D, Chapter 12;

(2)  Subchapters A, C, D, and E, Chapter 11, except that a district may be exempt from Sections 11.1511(b)(5) and (14) and Section 11.162;

(3)  state curriculum and graduation requirements adopted under Chapter 28;

(4)  Chapter 37; and

(5) [~~(4)~~]  academic and financial accountability and sanctions under Chapters 39 and 39A.

SECTION 2.  Section 37.002, Education Code, is amended by amending Subsections (b), (c), and (d) and adding Subsection (b-2) to read as follows:

(b)  A teacher may remove from class a student:

(1)  who has been documented by the teacher to [~~repeatedly~~] interfere with the teacher's ability to communicate effectively with the students in the class or with the ability of the student's classmates to learn; or

(2)  whose behavior the teacher determines is [~~so~~] unruly, disruptive, or abusive and [~~that it seriously~~] interferes with the teacher's ability to communicate effectively with the students in the class or with the ability of the student's classmates to learn.

(b-2)  A teacher may remove a student from class under Subsection (b) based on a single incident of behavior described by Subsection (b)(1) or (2).

(c)  If a teacher removes a student from class under Subsection (b), the principal may place the student into another appropriate classroom, into in-school suspension, or into a disciplinary alternative education program as provided by Section 37.008. The principal may not return the student to that teacher's class without the teacher's consent unless the committee established under Section 37.003 determines that such placement is the best or only alternative available and a conference in which the teacher has been provided an opportunity to participate has been held in accordance with Section 37.009(a). The terms of the removal may prohibit the student from attending or participating in school-sponsored or school-related activity.

(d)  A teacher shall remove from class and send to the principal for placement in a disciplinary alternative education program or for expulsion, as appropriate, a student who engages in conduct described under Section 37.006 or 37.007. The student may not be returned to that teacher's class without the teacher's consent unless the committee established under Section 37.003 determines that such placement is the best or only alternative available and a conference in which the teacher has been provided an opportunity to participate has been held in accordance with Section 37.009(a). If the teacher removed the student from class because the student has engaged in prohibited conduct or the elements of any offense listed in Section 37.006(a)(2)(B), (a)(2)(G), (a)(2)(H), or (b), or Section 37.007(a)(1), (a)(2)(B)(i), [~~37.007(a)(2)(A)~~] or (a)(3) [~~(b)(2)(C)~~] against the teacher or another student in the teacher's class, the student may not be returned to the teacher's class without the teacher's consent. The teacher may not be coerced to consent.

SECTION 3.  Section 37.0021(f), Education Code, is amended to read as follows:

(f)  For purposes of this subsection, "weapon" includes any weapon described under Section 37.007(a)(2)(A) [~~37.007(a)(1)~~]. This section does not prevent a student's locked, unattended confinement in an emergency situation while awaiting the arrival of law enforcement personnel if:

(1)  the student possesses a weapon; and

(2)  the confinement is necessary to prevent the student from causing bodily harm to the student or another person.

SECTION 4.  Section 37.005(b), Education Code, is amended to read as follows:

(b)  A suspension under this section may not exceed five [~~three~~] school days.

SECTION 5.  Sections 37.006(a) and (b), Education Code, are amended to read as follows:

(a)  A student shall be removed from class and placed in a disciplinary alternative education program as provided by Section 37.008 if the student:

(1)  engages in conduct involving a public school that contains the elements of the offense of false alarm or report under Section 42.06, Penal Code[~~, or terroristic threat under Section 22.07, Penal Code~~]; or

(2)  commits the following on or within 300 feet of school property, as measured from any point on the school's real property boundary line, or while attending a school-sponsored or school-related activity on or off of school property:

(A)  engages in conduct punishable as a felony;

(B)  engages in conduct that contains the elements of the offense of assault under Section 22.01(a)(1), Penal Code;

(C)  sells, gives, or delivers to another person or possesses or uses or is under the influence of:

(i)  marihuana or a controlled substance, as defined by Chapter 481, Health and Safety Code, or by 21 U.S.C. Section 801 et seq.; or

(ii)  a dangerous drug, as defined by Chapter 483, Health and Safety Code;

(D)  sells, gives, or delivers to another person an alcoholic beverage, as defined by Section 1.04, Alcoholic Beverage Code, commits a serious act or offense while under the influence of alcohol, or possesses, uses, or is under the influence of an alcoholic beverage;

(E)  engages in conduct that contains the elements of an offense relating to an abusable volatile chemical under Sections 485.031 through 485.034, Health and Safety Code;

(F)  engages in conduct that contains the elements of the offense of public lewdness under Section 21.07, Penal Code, or indecent exposure under Section 21.08, Penal Code; [~~or~~]

(G)  engages in conduct that contains the elements of the offense of disorderly conduct [~~harassment~~] under Section 42.01 [~~42.07(a)(1), (2), (3), or (7)~~], Penal Code; or

(H)  engages in conduct described by Section 37.002(b) and the student was previously removed from class at the same school under that subsection for similar behavior [~~, against an employee of the school district~~].

(b)  Except as provided by Section 37.007(d), a student shall be removed from class and placed in a disciplinary alternative education program under Section 37.008 if the student engages in conduct on or off of school property against any school employee that contains the elements of the offense of:

(1)  retaliation under Section 36.06, Penal Code; or

(2)  harassment under Section 42.07(a)(1), (2), (3), or (7), Penal Code[~~, against any school employee~~].

SECTION 6.  Sections 37.007(a), (b), (d), and (i), Education Code, are amended to read as follows:

(a)  Except as provided by Subsection (k), a student shall be expelled from a school if the student:

(1)  engages in conduct involving a public school that contains the elements of the offense of terroristic threat under Section 22.07, Penal Code;

(2)  while[~~,~~] on school property or while attending a school-sponsored or school-related activity on or off of school property:

(A) [~~(1)~~]  engages in conduct that contains the elements of the offense of unlawfully carrying weapons under Section 46.02, Penal Code, or elements of an offense relating to prohibited weapons under Section 46.05, Penal Code; or

(B) [~~(2)~~]  engages in conduct that contains the elements of the offense of:

(i) [~~(A)~~]  aggravated assault under Section 22.02, Penal Code, sexual assault under Section 22.011, Penal Code, or aggravated sexual assault under Section 22.021, Penal Code;

(ii) [~~(B)~~]  arson under Section 28.02, Penal Code;

(iii) [~~(C)~~]  murder under Section 19.02, Penal Code, capital murder under Section 19.03, Penal Code, or criminal attempt, under Section 15.01, Penal Code, to commit murder or capital murder;

iv [~~(D)~~]  indecency with a child under Section 21.11, Penal Code;

v [~~(E)~~]  aggravated kidnapping under Section 20.04, Penal Code;

vi [~~(F)~~]  aggravated robbery under Section 29.03, Penal Code;

vii [~~(G)~~]  manslaughter under Section 19.04, Penal Code;

viii [~~(H)~~]  criminally negligent homicide under Section 19.05, Penal Code; or

ix [~~(I)~~]  continuous sexual abuse of young child or disabled individual under Section 21.02, Penal Code; or

(3)  while on or within 300 feet of school property, as measured from any point on the school's real property boundary line, or while attending a school-sponsored or school-related activity on or off of school property, engages in conduct that contains the elements of an offense under Section 22.01(a)(1), Penal Code, against a school district employee or a volunteer as defined by Section 22.053 of this code [~~engages in conduct specified by Section 37.006(a)(2)(C) or (D), if the conduct is punishable as a felony~~].

(b)  A student may be expelled if the student:

(1)  engages in conduct involving a public school that contains the elements of the offense of false alarm or report under Section 42.06, Penal Code[~~, or terroristic threat under Section 22.07, Penal Code~~];

(2)  while on or within 300 feet of school property, as measured from any point on the school's real property boundary line, or while attending a school-sponsored or school-related activity on or off of school property:

(A)  sells, gives, or delivers to another person or possesses, uses, or is under the influence of any amount of:

(i)  marihuana or a controlled substance, as defined by Chapter 481, Health and Safety Code, or by 21 U.S.C. Section 801 et seq.;

(ii)  a dangerous drug, as defined by Chapter 483, Health and Safety Code; or

(iii)  an alcoholic beverage, as defined by Section 1.04, Alcoholic Beverage Code;

(B)  engages in conduct that contains the elements of an offense relating to an abusable volatile chemical under Sections 485.031 through 485.034, Health and Safety Code; or

(C)  [~~engages in conduct that contains the elements of an offense under Section 22.01(a)(1), Penal Code, against a school district employee or a volunteer as defined by Section 22.053; or~~

[~~(D)~~]  engages in conduct that contains the elements of the offense of deadly conduct under Section 22.05, Penal Code;

(3)  subject to Subsection (d), while within 300 feet of school property, as measured from any point on the school's real property boundary line:

(A)  engages in conduct specified by Subsection (a)(2) [~~(a)~~]; or

(B)  possesses a firearm, as defined by 18 U.S.C. Section 921;

(4)  engages in conduct that contains the elements of any offense listed in Subsection (a)(2)(B)(i) [~~(a)(2)(A)~~] or (iii) [~~(C)~~] or the offense of aggravated robbery under Section 29.03, Penal Code, against another student, without regard to whether the conduct occurs on or off of school property or while attending a school-sponsored or school-related activity on or off of school property; or

(5)  engages in conduct that contains the elements of the offense of breach of computer security under Section 33.02, Penal Code, if:

(A)  the conduct involves accessing a computer, computer network, or computer system owned by or operated on behalf of a school district; and

(B)  the student knowingly:

(i)  alters, damages, or deletes school district property or information; or

(ii)  commits a breach of any other computer, computer network, or computer system.

(d)  A student shall be expelled if the student engages in conduct that contains the elements of any offense listed in Subsection (a)[~~, and may be expelled if the student engages in conduct that contains the elements of any offense listed in Subsection (b)(2)(C),~~] against any employee or volunteer in retaliation for or as a result of the person's employment or association with a school district, without regard to whether the conduct occurs on or off of school property or while attending a school-sponsored or school-related activity on or off of school property.

(i)  A student who engages in conduct described by Subsection (a)(2) [~~(a)~~] may be expelled from school by the district in which the student attends school if the student engages in that conduct:

(1)  on school property of another district in this state; or

(2)  while attending a school-sponsored or school-related activity of a school in another district in this state.

SECTION 7.  Section 37.0012, Education Code, is amended by amending Subsection (a) and adding Subsections (a-1) and (b-1) to read as follows:

(a)  A single person at each campus must be designated to serve as the campus behavior coordinator.  The person designated may be the principal of the campus or any other campus administrator selected by the principal.

(a-1)  Additional school staff members may assist the campus behavior coordinator in the performance of the campus behavior coordinator's duties, provided that the campus behavior coordinator personally verifies that all aspects of this subchapter are appropriately implemented.

(b-1)  The campus behavior coordinator shall:

(1)  monitor disciplinary referrals;

(2)  report to the campus's threat assessment and safe and supportive school team established under Section 37.115 any student who engages in conduct that contains the elements of:

(A)  the offense of terroristic threat under Section 22.07, Penal Code;

(B)  the offense of unlawfully carrying weapons under Section 46.02, Penal Code; or

(C)  an offense relating to prohibited weapons under Section 46.05, Penal Code; and

(3)  report to the campus's threat assessment and safe and supportive school team established under Section 37.115 and the iWatchTexas community reporting system operated by the Department of Public Safety any concerning student behaviors or behavioral trends that may pose a serious risk of violence to the student or others.

SECTION 8.  Section 37.011(b), Education Code, is amended to read as follows:

(b)  If a student admitted into the public schools of a school district under Section 25.001(b) is expelled from school for conduct for which expulsion is required under Section 37.007(a), (d), or (e), [~~or for conduct that contains the elements of the offense of terroristic threat as described by Section 22.07(c-1), (d), or (e), Penal Code,~~] the juvenile court, the juvenile board, or the juvenile board's designee, as appropriate, shall:

(1)  if the student is placed on probation under Section 54.04, Family Code, order the student to attend the juvenile justice alternative education program in the county in which the student resides from the date of disposition as a condition of probation, unless the child is placed in a post-adjudication treatment facility;

(2)  if the student is placed on deferred prosecution under Section 53.03, Family Code, by the court, prosecutor, or probation department, require the student to immediately attend the juvenile justice alternative education program in the county in which the student resides for a period not to exceed six months as a condition of the deferred prosecution;

(3)  in determining the conditions of the deferred prosecution or court-ordered probation, consider the length of the school district's expulsion order for the student; and

(4)  provide timely educational services to the student in the juvenile justice alternative education program in the county in which the student resides, regardless of the student's age or whether the juvenile court has jurisdiction over the student.

SECTION 9.  Section 37.019, Education Code, is amended by amending Subsection (a) and adding Subsection (b-1) to read as follows:

(a)  This subchapter does not prevent the principal or the principal's designee from ordering the immediate placement of a student in a disciplinary alternative education program if the principal or the principal's designee reasonably believes the student's behavior is [~~so~~] unruly, disruptive, or abusive and [~~that it seriously~~] interferes with a teacher's ability to communicate effectively with the students in a class, with the ability of the student's classmates to learn, or with the operation of school or a school-sponsored activity.

(b-1)  The principal or principal's designee may order the emergency placement or expulsion of a student under this section based on a single incident of behavior by the student.

SECTION 10.  Subchapter A, Chapter 37, Education Code, is amended by adding Section 37.024 to read as follows:

Sec. 37.024.  PENALTIES FOR IMPOSITION OF DISCIPLINARY MEASURES PROHIBITED. The agency may not withhold any state funding or impose a penalty on a school district based on the number of students in the district that have been removed from a classroom, placed into in-school or out-of-school suspension, placed in a disciplinary alternative education program or a juvenile justice alternative education program, or expelled.

SECTION 11.  Section 37.115, Education Code, is amended by amending Subsection (d) and adding Subsection (h-1) to read as follows:

(d)  The superintendent of the district shall ensure, to the greatest extent practicable, that the members appointed to each team have expertise in counseling, behavior management, mental health and substance use, classroom instruction, special education, school administration, school safety and security, emergency management, and law enforcement. A team may serve more than one campus of a school district, provided that:

(1)  each district campus is assigned a team; and

(2)  in serving a particular campus, the team includes the person designated to serve as the campus behavior coordinator under Section 37.0012 for that campus.

(h-1)  After informing the superintendent of a team's determination under Subsection (h), the team shall immediately submit a report on the team's determination through the iWatchTexas community reporting system operated by the Department of Public Safety.

SECTION 12.  Subchapter F, Chapter 38, Education Code, is amended by adding Section 38.2545 to read as follows:

Sec. 38.2545.  TEXAS CHILD HEALTH ACCESS THROUGH TELEMEDICINE.  (a) In this section:

(1)  "Consortium" means the Texas Child Mental Health Consortium established under Chapter 113, Health and Safety Code.

(2)  "Texas Child Health Access through Telemedicine program" means the Texas Child Health Access through Telemedicine program operated by the consortium.

(b)  If the consortium makes available mental health services to a school district through the Texas Child Health Access through Telemedicine program, the district shall offer to each student enrolled in the district access to those mental health services.

(c)  A school district may not provide a mental health service to a student who is under 18 years of age unless the district obtains written consent from the parent or legal guardian of the student as required by Section 113.0152, Health and Safety Code.

(d)  A school district may not require a student to participate in any service provided under Subsection (b).

(e)  Before the beginning of each school year, the agency shall determine at which school districts the Texas Child Health Access through Telemedicine program is available and verify that each of those school districts is in compliance with Subsection (b).

SECTION 13.  Section 12A.004(a), Education Code, as amended by this Act, applies only to a local innovation plan adopted or renewed on or after the effective date of this Act. A local innovation plan adopted or renewed before the effective date of this Act is governed by the law in effect on the date the plan was adopted or renewed, and the former law is continued in effect for that purpose.

SECTION 14.  This Act applies beginning with the 2023-2024 school year.

SECTION 15.  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, 2023.