By:  Hughes, Creighton S.B. No. 1072

A BILL TO BE ENTITLED

AN ACT

relating to local school health advisory councils and instruction regarding human sexuality, sexual orientation, and gender identity provided by 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 542 (S.B. 168), 887 (S.B. 1697), 915 (H.B. 3607), 974 (S.B. 2081), and 1046 (S.B. 1365), Acts of the 87th Legislature, Regular Session, 2021, 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, except class size limits for prekindergarten classes imposed under Section 25.112, which do not apply;

(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)  the provisions of Subchapter A, Chapter 39;

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

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

(O)  intensive programs of instruction under Section 28.0213;

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

(Q)  bullying prevention policies and procedures under Section 37.0832;

(R)  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;

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

(T)  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);

(U)  establishment of residency under Section 25.001;

(V)  school safety requirements under Sections 37.108, 37.1081, 37.1082, 37.109, 37.113, 37.114, 37.1141, 37.115, 37.207, and 37.2071;

(W)  the early childhood literacy and mathematics proficiency plans under Section 11.185;

(X)  the college, career, and military readiness plans under Section 11.186; [~~and~~]

(Y) [~~(X)~~]  parental options to retain a student under Section 28.02124; and

(Z)  establishing a local school health advisory council in which members are appointed by the governing body of the school and health education instruction complies with Section 28.004.

SECTION 2.  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; [~~and~~]

(4)  Section 28.004; and

(5)  academic and financial accountability and sanctions under Chapters 39 and 39A.

SECTION 3.  Section 28.004, Education Code, is amended by amending Subsection (c) and adding Subsections (r), (s), (t), (u), and (v) to read as follows:

(c)  The local school health advisory council's duties include recommending:

(1)  the number of hours of instruction to be provided in:

(A)  health education in kindergarten through grade eight; and

(B)  if the school district requires health education for high school graduation, health education, including physical health education and mental health education, in grades 9 through 12;

(2)  policies, procedures, strategies, and curriculum appropriate for specific grade levels designed to prevent physical health concerns, including obesity, cardiovascular disease, Type 2 diabetes, and mental health concerns, including suicide, through coordination of:

(A)  health education, which must address physical health concerns and mental health concerns to ensure the integration of physical health education and mental health education;

(B)  physical education and physical activity;

(C)  nutrition services;

(D)  parental involvement;

(E)  instruction on substance abuse prevention;

(F)  school health services, including mental health services;

(G)  a comprehensive school counseling program under Section 33.005;

(H)  a safe and healthy school environment; and

(I)  school employee wellness;

(3)  appropriate grade levels and methods of instruction for human sexuality instruction;

(4)  strategies for integrating the curriculum components specified by Subdivision (2) with the following elements in a coordinated school health program for the district:

(A)  school health services, including physical health services and mental health services, if provided at a campus by the district or by a third party under a contract with the district;

(B)  a comprehensive school counseling program under Section 33.005;

(C)  a safe and healthy school environment; and

(D)  school employee wellness;

(5)  if feasible, joint use agreements or strategies for collaboration between the school district and community organizations or agencies;

(6)  strategies to increase parental awareness regarding:

(A)  risky behaviors and early warning signs of suicide risks and behavioral health concerns, including mental health disorders and substance use disorders; and

(B)  available community programs and services that address risky behaviors, suicide risks, and behavioral health concerns;

(7)  appropriate grade levels and curriculum for instruction regarding opioid addiction and abuse and methods of administering an opioid antagonist, as defined by Section 483.101, Health and Safety Code; [~~and~~]

(8)  appropriate grade levels and curriculum for instruction regarding child abuse, family violence, dating violence, and sex trafficking, including likely warning signs that a child may be at risk for sex trafficking, provided that the local school health advisory council's recommendations under this subdivision do not conflict with the essential knowledge and skills developed by the State Board of Education under this subchapter; and

(9)  the communication policy described by Subsection (r) for approval by the board of trustees of the school district.

(r)  Subject to the restriction imposed by Section 28.0043 and using the procedure described by Subsection (e-1), the board of trustees shall adopt a written policy regarding communication outside of a course dedicated to human sexuality instruction between a school employee and a student enrolled in the district concerning topics included in the reproductive and sexual health curriculum. The policy must:

(1)  direct school employees to refer students to discuss topics included in the reproductive and sexual health curriculum with the student's parent, a school counselor, or, if applicable, the student's teacher responsible for teaching materials related to human sexuality instruction;

(2)  inform school employees regarding appropriate boundaries related to communicating with students; and

(3)  include provisions designed to prevent improper communication between school employees and students.

(s)  A school district shall make the policy adopted under Subsection (r) available in the same manner as curriculum materials under Subsection (j)(1).

(t)  A school district may not host an extracurricular activity related to human sexuality unless the board of trustees has adopted a written policy, subject to the restriction imposed by Section 28.0043 and using the procedure described by Subsection (e-1), specifying the circumstances in which the district may host an extracurricular activity related to human sexuality.

(u)  For purposes of adopting a communication policy under this section, "communication" includes any verbal or written communication conducted in person or facilitated through the use of an electronic device, including communication conducted through a telephone, including a cellular telephone, a computer, a computer network, personal data assistance, a pager, e-mail, text message, instant message, a social media application, or an Internet website.

(v)  If the attorney general or an appropriate district or county attorney believes that a school district has violated or is violating the provisions of this section, the attorney general or district or county attorney may bring a cause of action on behalf of the state to enjoin the district from violating the provisions of this section. The action may be brought in a district court in Travis County or a county in which any part of the violation or threatened violation occurred. The court may grant any prohibitory or mandatory relief warranted by the facts, including a temporary restraining order, temporary injunction, or permanent injunction.

SECTION 4.  Subchapter A, Chapter 28, Education Code, is amended by adding Section 28.0043 to read as follows:

Sec. 28.0043.  RESTRICTION ON INSTRUCTION REGARDING SEXUAL ORIENTATION AND GENDER IDENTITY. (a) A school district, open-enrollment charter school, or district or charter school employee may not provide or allow a third party to provide instruction, guidance, activities, or programming regarding sexual orientation or gender identity to students enrolled in prekindergarten through 12th grade.

(b)  This section may not be construed to limit:

(1)  a student's ability to engage in speech or expressive conduct protected by the First Amendment to the United States Constitution or by Section 8, Article I, Texas Constitution, that does not result in material disruption to school activities; or

(2)  the ability of a person who is authorized by the district to provide physical or mental health-related services to provide the services to a student, subject to any required parental consent.

SECTION 5.  Section 12A.004(a), Education Code, as amended by this Act, applies to a local innovation plan adopted or renewed before, on, or after the effective date of this Act.

SECTION 6.  Section 28.004, Education Code, as amended by this Act, applies only to a cause of action that accrues on or after the effective date of this Act.

SECTION 7.  To the extent of any conflict, this Act prevails over another Act of the 88th Legislature, Regular Session, 2023, relating to nonsubstantive additions to and corrections in enacted codes.

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, 2023.