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Indicates New Matter

COMMITTEE REPORT

March 1, 2012

**S. 566**

Introduced by Senators Leventis, Ford, Elliott, Reese, Ryberg, Setzler and Land

S. Printed 3/1/12--S. [SEC 3/2/12 12:07 PM]

Read the first time February 15, 2011.

**THE COMMITTEE ON EDUCATION**

To whom was referred a Bill (S. 566) to amend Section 59‑63‑120, Code of Laws of South Carolina, 1976, relating to definitions of the Safe School Climate Act, so as to amend the definition of harassment, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended by adding an appropriately numbered SECTION to read:

/ SECTION \_\_. The General Assembly finds that there is no acceptable reason to bully another person. /

Amend further, as and if amended, by striking item (1) of Section 59‑63‑120 of the 1976 Code as contained in SECTION 1 and inserting:

/ (1) ‘Harassment, intimidation, or bullying’ means a gesture, an electronic communication, or a written, verbal, physical, or sexual act that is reasonably perceived to have the effect of:

(a) harming a student physically or emotionally or damaging a student’s property, or placing a student in reasonable fear of personal harm or property damage; or

(b) insulting or demeaning a student or group of students causing substantial disruption in, or substantial interference with, the orderly operation of the school~~.~~; or

(c) being motivated by any differentiating characteristic real, perceived, or implied, or being motivated by association with a person who has one or more of these characteristics. /

Amend further, as and if amended, Section 59‑63‑140(B)(5) of the 1976 Code, as contained in SECTION 2, page 3, beginning on line 10, by striking / The principal shall inform the parents or guardians of all students involved in the alleged incident, and may discuss, as appropriate, the availability of counseling and other intervention services. /

and inserting:

/ The principal shall inform the parents or guardians of all students involved in the alleged incident, as appropriate and with consideration of the victim’s privacy, and may discuss, as appropriate, the availability of supportive counseling. /

Amend further, as and if amended, by adding a new section to be appropriately numbered to read:

/ SECTION \_\_. Section 59‑18‑900 of the 1976 Code, as last amended by Act 282 of 2008, is further amended by adding at the end a new subsection to read:

“(H) The annual report card for each elementary, middle, and high school of this State and each school district prepared as provided in this section shall not include the school’s and district’s progress and success in complying with the provisions of the Safe Schools Climate Act as contained in Article 2, Chapter 63, Title 59.” /

Renumber sections to conform.

Amend title to conform.

JOHN E. COURSON for Committee.

**A** **BILL**

TO AMEND SECTION 59‑63‑120, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS OF THE SAFE SCHOOL CLIMATE ACT, SO AS TO AMEND THE DEFINITION OF HARASSMENT TO INCLUDE MOTIVATIONS; TO AMEND SECTION 59‑63‑140, RELATING TO LOCAL DISTRICT POLICIES PROHIBITING HARASSMENT, SO AS TO INCLUDE PROCEDURES AND REPORTING REQUIREMENTS FOR ACTS OF HARASSMENT, AND TO REQUIRE LOCAL DISTRICTS TO POST A LINK TO THE POLICY ON THEIR WEBSITES; TO AMEND SECTION 59‑63‑150, RELATING TO AVAILABILITY OF CIVIL OR CRIMINAL REDRESS, SO AS TO INCLUDE PROVISIONS REGARDING THE CONSTRUCTION OF THE ARTICLE; AND BY ADDING SECTION 59‑63‑160 SO AS TO PROVIDE PROCEDURES FOR THE FILING OF REPORTS, NOTIFICATION TO THE DISTRICT SUPERINTENDENT AND TO THE DISTRICT BOARD OF TRUSTEES, TO PROVIDE A PROCESS FOR GRADING SCHOOLS AND DISTRICTS WITH REGARD TO HARASSMENT, INTIMIDATION, AND BULLYING, AND TO PROVIDE FOR PUBLICATION OF THE SCHOOL AND DISTRICT GRADE ON ITS WEBSITE.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 59‑63‑120 of the 1976 Code, as added by Act 353 of 2006, is amended to read:

“Section 59‑63‑120. As used in this article:

(1) ‘Harassment, intimidation, or bullying’ means a gesture, an electronic communication, or a written, verbal, physical, or sexual act that is reasonably perceived ~~to have the effect of~~:

(a) to have the effect of harming a student physically or emotionally or damaging a student’s property, or placing a student in reasonable fear of personal harm or property damage; or

(b) to have the effect of insulting or demeaning a student or group of students causing substantial disruption in, or substantial interference with, the orderly operation of the school~~.~~; or

(c) as being motivated by any actual or perceived differentiating characteristic such as race, color, religion, ancestry, national origin, gender, socioeconomic status, academic status, gender identity, physical appearance, sexual orientation, or mental, physical, developmental, or sensory disability, or by association with a person who is perceived to have one or more of those characteristics.

(2) ‘School’ means in a classroom, on school premises, on a school bus or other school‑related vehicle, at an official school bus stop, at a school‑sponsored activity or event whether or not it is held on school premises, or at another program or function where the school is responsible for the child.”

SECTION 2. Section 59‑63‑140 of the 1976 Code, as added by Act 353 of 2006, is amended to read:

“Section 59‑63‑140. (A) Before January 1, 2007, each local school district shall adopt a policy prohibiting harassment, intimidation, or bullying at school. The school district shall involve parents and guardians, school employees, volunteers, students, administrators, and community representatives in the process of creating the policy.

(B) The policy must include, but may not be limited to, the following components:

(1) a statement prohibiting harassment, intimidation, or bullying of a student;

(2) a definition of harassment, intimidation, or bullying no less inclusive than the definition in Section 59‑63‑120;

(3) a description of appropriate student behavior;

(4) consequences and appropriate remedial actions as provided in Article 3 of this chapter for persons committing acts of harassment, intimidation, or bullying, and for persons engaging in reprisal or retaliation;

(5) procedures for reporting acts of harassment, intimidation, or bullying, to include a provision for reporting anonymously. However, formal disciplinary action ~~must~~ may not be taken solely on the basis of an anonymous report. The procedures must identify the appropriate school personnel responsible for taking the report and investigating the complaint. All acts of harassment, intimidation, or bullying must be reported verbally to the school principal on the same day when the school employee or contracted service provider witnessed or received reliable information regarding the incident. The principal shall inform the parents or guardians of all students involved in the alleged incident, and may discuss, as appropriate, the availability of counseling and other intervention services. All acts of harassment, intimidation, or bullying must be reported in writing to the school principal within two school days of when the school employee or contracted service provider witnessed or received reliable information that a student had been subject to harassment, intimidation, or bullying;

(6) procedures for prompt investigation of reports of serious violations and complaints, which procedures must provide at a minimum that:

(a) the investigation must be initiated by the principal or the principal’s designee within one school day of the report of the incident. The investigation must be completed as soon as possible, but not later than ten school days from the date of the written report of the incident of harassment, intimidation, or bullying. In the event that there is information relative to the investigation that is anticipated but not yet received by the end of the ten day period, the principal or principal’s designee may amend the original report of the results of the investigation to reflect the information;

(b) the results of the investigation must be reported to the school district superintendent within two school days of the completion of the investigation, and the superintendent may decide to provide intervention services, establish training programs to reduce harassment, intimidation, or bullying and enhance school climate, impose discipline, order counseling as a result of the findings of the investigation, or take or recommend other appropriate action;

(c) the results of each investigation must be reported to the school district board of trustees no later than the date of the board’s meeting next following the completion of the investigation, along with information on any services provided, training established, discipline imposed, or other action taken or recommended by the superintendent;

(d) parents or guardians of the students who are parties to the investigation must be entitled to receive information about the investigation, in accordance with federal and state law and regulation, including the nature of the investigation, whether the district found evidence of harassment, intimidation, or bullying, or whether discipline was imposed or services provided to address the incident of harassment, intimidation, or bullying. This information must be provided in writing within five school days after the results of the investigation are reported to the board. A parent or guardian may request a hearing before the board after receiving the information, and the hearing must be held within ten days of the request. The board shall meet in executive session for the hearing to protect the confidentiality of the students. At the hearing, the board may hear from the school principal about the incident, recommendations for discipline or services, and any programs instituted to reduce these incidents;

(e) at the next school district board of trustees meeting following its receipt of the report, the board shall issue a decision, in writing, to affirm, reject, or modify the superintendent’s decision. The board’s decision may be appealed to the State Superintendent of Education, in accordance with the procedures set forth in law and regulation, no later than ninety days after the issuance of the board’s decision;

(7) a statement that prohibits reprisal or retaliation against a person who reports an act of harassment, intimidation, or bullying;

(8) consequences and appropriate remedial action for persons found to have falsely accused another;

(9) a process for discussing the district’s harassment, intimidation, or bullying policy with students; ~~and~~

(10) a statement of how the policy is to be publicized, including notice that the policy applies to participation in school‑sponsored functions~~.~~; and

(11) a requirement that a link to the policy be prominently posted on the home page of the school district’s website and distributed annually to parents and guardians who have children enrolled in a school in the school district.

(C) To assist local school districts in developing policies for the prevention of harassment, intimidation, or bullying, the State Board of Education shall develop model policies applicable to grades kindergarten through twelve. Additionally, the State Board of Education shall develop teacher preparation program standards on the identification and prevention of bullying. The model policies and standards must be developed no later than September 1, 2006.

(D) The local school board shall ensure that the school district’s policy developed pursuant to this article is included in the school district’s publication of the comprehensive rules, procedures, and standards of conduct for schools and in the student’s handbook.

(E) Information regarding a local school district policy against harassment, intimidation, or bullying must be incorporated into a school’s employee training program. Training also should be provided to school volunteers who have significant contact with students.

(F) Schools and school districts are encouraged to establish bullying prevention programs and other initiatives involving school staff, students, administrators, volunteers, parents, law enforcement, and community members.”

SECTION 3. Section 59‑63‑150 of the 1976 Code, as added by Act 353 of 2006, is amended to read:

“Section 59‑63‑150. (A) This article ~~must~~ may not be interpreted to prevent a victim from seeking redress pursuant to another available civil or criminal law. This section does not create or alter tort liability.

(B) A school employee or volunteer who promptly reports an incident of harassment, intimidation, or bullying to the appropriate school official designated by the local school district’s policy, and who makes this report in compliance with the procedures in the district’s policy, is immune from a cause of action for damages arising from failure to remedy the reported incident.

(C) This article may not be construed to permit school officials to punish student expression or speech based on an undifferentiated fear or apprehension of disturbance or out of a desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint.

(D) Nothing in this article may be construed to require an exhaustion of the administrative complaint process before civil or criminal law remedies may be pursued regarding bullying or harassing behavior.

(E) The provisions of this article are severable, and if any provision of this article is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of this article which can be given effect without the invalid provision.

(F) Nothing in this act may be construed to create any classification, protected class, suspect category, or preference beyond those existing in present statute or case law.”

SECTION 4. Article 2, Chapter 63, Title 59 of the 1976 Code is amended by adding:

“Section 59‑63‑160. (A) A school employee who observes or who has direct knowledge from a participant or victim of an act of violence shall, in accordance with standards established by the district, file a report describing the incident to the school principal in a manner prescribed by the district superintendent, and copy of the report must be forwarded to the district superintendent.

(B) The principal shall notify the district superintendent of the action taken regarding the incident. Annually, at a public hearing, the district superintendent shall report to the district board of trustees all acts of violence and harassment, intimidation, or bullying that occurred during the previous school year.  The report must include the number of reports of harassment, intimidation, or bullying, the status of all investigations, the nature of the bullying based on one of the protected categories identified in Section 59‑63‑120(1)(c), the names of the investigators, the type and nature of any discipline imposed on any student engaged in harassment, intimidation, or bullying, and any other measures imposed, training conducted, or programs implemented, to reduce harassment, intimidation, or bullying.  The information also must be reported once each school year to the Department of Education. The report must include data broken down by the enumerated categories as listed in Section 59‑63‑120(1)(c), and data broken down by each school in the district, in addition to district‑wide data.  It is a violation to improperly release any confidential information not authorized by federal or state law for public release.

(C) The report must be used to grade each school for the purpose of assessing its effort to identify harassment, intimidation, or bullying.  The district shall receive a grade determined by averaging the grades of all the schools in the district.  The Department of Education shall adopt guidelines for a program to grade schools for the purposes of this subsection.

(D) The grade received by a school and the district must be posted on the homepage of the school’s website.  The grade for the district and each school of the district must be posted on the homepage of the district’s website.  A link to the report must be available on the district’s website.  The information must be posted on the websites within ten days of the receipt of a grade by the school and district.”

SECTION 5. This act takes effect upon approval by the Governor.

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