

- SUBJECT:** Bullying and harassment in public schools
- COMMITTEE:** Public Education — committee substitute recommended
- VOTE:** 6 ayes — Eissler, Farias, Jackson, Olivo, Patrick, Weber
0 nays
5 absent — Hochberg, Allen, Aycock, Dutton, Shelton
- WITNESSES:** For — Kathy Grant; Alexis Griffin; Barbara Paris, BullyPolice.org; Kuan Sanchez; Randall Terrell, Equality Texas; (*Registered, but did not testify:* Portia Bosse, Texas State Teachers Association; Monty Exter, Association of Texas Professional Educators; Christine Gendron, Texas Network of Youth Services; Tanya Griffin; Mark Hanna, National Association of Social Workers, Texas Chapter; Shirlen Hardeo, Legacy Community Health Services; Ted Melina Raab, Texas AFT; Claudia Sanchez; Pablo Sanchez; Bill Stout, Green Party of Texas; Maria Torres)
- Against — Jessica Cassidy, American Civil Liberties Union of Texas; (*Registered, but did not testify:* Jonathan Saenz, Free Market Foundation; Kyleen Wright)
- On — Ramiro Canales, Texas Association of School Administrators, Texas Association of School Boards
- BACKGROUND:** Education Code, sec. 25.0342 governs the transfer of victims of bullying. Section 25.0342(a) defines "bullying" as engaging in written or verbal expression or physical conduct that a school district board of trustees or the board's designee determines:
- will have the effect of physically harming a student, damaging a student's property, or placing a student in reasonable fear of physical harm or damage to property; or
 - is sufficiently severe, persistent, or pervasive that the action or threat creates an intimidating, threatening, or abusive education environment for the student.

Education Code, sec. 25.0342(b) provides that a student who is a victim of bullying may, upon the request of the student's parent or guardian, be transferred to another classroom or to another campus within the school district.

Education Code, sec. 37.001(b) defines “harassment” as threatening to cause harm or bodily injury to another student, engaging in sexually intimidating conduct, causing physical damage to the property of another student, subjecting another student to physical confinement or restraint, or maliciously taking any action that substantially harms another student's physical or emotional health or safety.

Education Code, sec. 37.083(b) states that each school district may develop and implement a sexual harassment policy to include in the district improvement plan.

Education Code, sec. 39.053(a)(4) requires each school district to publish an annual performance report that includes a statement of the number, rate, and type of violent or criminal incidents that occurred on each district campus.

DIGEST:

CSHB 1323 would amend the definition of “bullying” in Education Code, sec. 25.0342(a) to include written or verbal expression through electronic means, on or off of school property, that a school district board of trustees or the board's designee determined substantially disrupted the orderly operation of a school.

In addition, the bill would amend sec. 25.0342(b) to provide that a school board could transfer a student who engaged in bullying to another classroom or to another campus within the school district on the request of a parent or guardian of the student who was the victim of bullying. The bill would require that the school board verify that a student had engaged in bullying before the transfer and that, to the extent possible, the school board and each district educator with knowledge of the request keep the request confidential.

CSHB 1323 would amend Education Code, sec. 37.083(b) to require each school district to develop and implement a bullying and sexual harassment prevention policy to be included in the district improvement plan. The policy would have to provide for:

- the instruction of students regarding the elements of bullying and sexual harassment;
- the action students should take in case of bullying or sexual harassment, including reporting an incident; and
- the notification of the parents or guardians of each student involved in an incident of bullying or sexual harassment.

The bill would amend Education Code, sec. 39.053(a)(4) to require each school district to include in its annual performance report a statement of the number, rate, and type of incidents of bullying, harassment, sexual harassment, discrimination, and violent or criminal incidents against any student on the basis of the actual or perceived race, ethnicity, color, religion, gender, gender identity or expression, sexual orientation, national origin, or disability of the alleged perpetrator or victim that occurred on each district campus.

The bill would apply beginning with the 2009-2010 school year.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2009.

**SUPPORTERS
SAY:**

CSHB 1323 would strengthen the ability of schools to deal with a serious and rapidly growing problem. Bullying is not new to schools, but the methods by which it is occurring in schools today are new. Modern technology such as cell phones, text messaging, and online social networking websites such as Facebook and MySpace have added an element of anonymity that has caused bullying to occur in middle schools and high schools with greater frequency and severity.

CSHB 1323 would expand the definition of bullying to reflect and include electronic communications, whether initiated on or off of school property. The intent of the bill is to capture incidents occurring at school-sponsored events off of school grounds because bullying is disruptive to the educational environment whether initiated on school grounds or off campus. By specifically addressing electronic bullying and the consequences of it, the bill would support schools by providing policies so that administrators could address the issues immediately, thus preventing escalation of a problem situation, protecting the victim, and allowing educators and students to get back to the core business of education as quickly as possible.

The bill would create a safer environment that would be more conducive to learning. Anything that disrupts the educational process detracts from student achievement. The state has a responsibility to provide an environment in which students feel safe, secure, and validated, trusting that if somebody violates their right to an education that school administrators would have the power to protect them.

CSHB 1323 would make necessary changes in an effort to slow an escalating trend. Existing law does not address the problem sufficiently. Current law gives administrators the authority to remove students engaging in bullying to an alternative educational setting for a defined term. This temporarily relieves the situation for the victim and restores the educational environment for the school. However, upon completion of the term, the bully student returns to the original campus, and the bullying behavior typically begins again. The only alternative, under current law, is to remove the victim to another classroom or campus within the district. This hardly seems fair to the innocent victim, who already has suffered the abusive treatment of the bully and then has the only option provided by the state be for to leave his or her school, friends, and teachers.

CSHB 1323 would correct this by allowing schools to, after verifying sufficiently severe, persistent, or pervasive incidences of bullying, remove the student who engaged in the bullying, at the request of the victim's family. Bullying is an imbalance of power. By removing and placing the bully at another campus, the bully's power is diminished, making it less likely that he will engage in bullying behavior on the new campus. Meanwhile, the student who was the victim of bullying has the opportunity to thrive in the absence of the bully.

**OPPONENTS
SAY:**

CSHB 1323 would have negative, unintended consequences for both students and parents. The bill would expand the definition of bullying to apply to incidents both on and off of school grounds, including activities unrelated to school or the education environment. When students are in school, the school is obligated to act “in loco parentis” — in the place of a parent. However, as soon as a student leaves school grounds, the parent is in charge of the child and of the child's discipline. Because the definition of bullying is vague and subjective, the bill would allow schools to regulate a variety of off-campus activities that should be within the sphere of parents or, in serious instances, the police.

In addition, CSHB 1323 would undermine the natural development of students by policing student conduct that children should be working out themselves. When students experience difficult life situations, they develop the tools that will benefit them and lead to success in life. By shielding and sheltering children from the hard knocks of youth, the bill actually could cheat students of these edifying life experiences, doing them a disservice.

CSHB 1323 is unnecessary. Existing statutes and standards describe bullying behavior as “written or verbal expression,” which would apply to electronic means, whether written in a cell phone text message or written within an Internet website.

NOTES:

The committee substitute differs from the bill as filed by adding:

- a provision to require school boards and educators with knowledge of a transfer request to keep the request confidential, to the extent practicable;
- elements to be included in a school district's bullying and sexual harassment prevention policy;
- as a criterion in determining whether a behavior constitutes bullying, a determination that the conduct or expression substantially disrupts the orderly operation of a school, rather than that the conduct or expression is communicated in a manner likely to cause a disruption to the educational environment of a campus.