

By: Minjarez

H.B. No. 305

A BILL TO BE ENTITLED

AN ACT

relating to student harassment, bullying, and cyberbullying.

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

SECTION 1. This Act shall be known as David's Law.

SECTION 2. Section 37.0832, Education Code, is amended by amending Subsections (a), (c), (d), and (e) and adding Subsection (a-1) to read as follows:

(a) In this section:

(1) "Bullying":

(A) [~~"bullying"~~] means a single significant act or a pattern of acts by one or more students directed at another student that exploits an imbalance of power and involves [~~subject to Subsection (b)~~], engaging in written or verbal expression, expression through electronic means, or physical conduct, that satisfies the applicability requirements provided by Subsection (a-1), [~~that occurs on school property, at a school-sponsored or school-related activity, or in a vehicle operated by the district]~~ and that:

(i) [~~(1)~~] has the effect or will have the effect of physically harming a student, causing a student to experience substantial negative mental health effects, damaging a student's property, or placing a student in reasonable fear of harm to the student's person or of damage to the student's property; [~~or~~]

(ii) [~~(2)~~] is sufficiently severe,

1 persistent, and pervasive enough that the action or threat creates  
2 an intimidating, threatening, or abusive educational environment  
3 for a student;

4 (iii) materially and substantially  
5 disrupts the educational process or the orderly operation of a  
6 classroom or school; or

7 (iv) infringes on the rights of the victim  
8 at school; and

9 (B) includes cyberbullying.

10 (2) "Cyberbullying" means bullying that is done  
11 through the use of electronic communication, including through the  
12 use of a cellular or other type of telephone, a computer, a pager, a  
13 camera, electronic mail, instant messaging, text messaging, a  
14 social media account, or an Internet website.

15 (a-1) This section applies to:

16 (1) bullying that occurs on or is delivered to school  
17 property or to the site of a school-sponsored or school-related  
18 activity on or off school property;

19 (2) bullying that occurs on a publicly or privately  
20 owned school bus or van being used for transportation of students to  
21 or from school or a school-sponsored or school-related activity;  
22 and

23 (3) cyberbullying that occurs off school property or  
24 outside of a school-sponsored or school-related activity if the  
25 cyberbullying:

26 (A) interferes with a student's educational  
27 opportunities; or

1                    (B) substantially disrupts the orderly operation  
2 of a classroom, school, or school-sponsored or school-related  
3 activity.

4            (c) The board of trustees of each school district and the  
5 governing body of each open-enrollment charter school or private  
6 school shall adopt a policy, including any necessary procedures,  
7 concerning bullying that:

8                    (1) prohibits the bullying of a student;

9                    (2) prohibits retaliation against any person,  
10 including a victim, a witness, or another person, who in good faith  
11 provides information concerning an incident of bullying;

12                    (3) establishes a procedure for providing notice of an  
13 incident of bullying to a parent or guardian of the victim and a  
14 parent or guardian of the bully not later than the next school day  
15 ~~[within a reasonable amount of time]~~ after the incident is  
16 reported;

17                    (4) establishes the actions a student should take to  
18 obtain assistance and intervention in response to bullying;

19                    (5) sets out the available counseling options for a  
20 student who is a victim of or a witness to bullying or who engages in  
21 bullying;

22                    (6) establishes procedures for reporting an incident  
23 of bullying, including procedures for a student, parent, teacher,  
24 or administrator to anonymously report an incident of bullying,  
25 investigating a reported incident of bullying, and determining  
26 whether the reported incident of bullying occurred;

27                    (7) prohibits the imposition of a disciplinary measure

1 on a student who, after an investigation, is found to be a victim of  
2 bullying, on the basis of that student's use of reasonable  
3 self-defense in response to the bullying; and

4 (8) requires that discipline for bullying of a student  
5 with disabilities comply with applicable requirements under  
6 federal law, including the Individuals with Disabilities Education  
7 Act (20 U.S.C. Section 1400 et seq.).

8 (d) The policy and any necessary procedures adopted under  
9 Subsection (c) must be included:

10 (1) annually, in any ~~[the]~~ student and employee  
11 ~~[school-district]~~ handbooks; and

12 (2) in the district improvement plan under Section  
13 [11.252](#).

14 (e) The procedure for reporting bullying established under  
15 Subsection (c) must be posted on the district's or school's Internet  
16 website to the extent practicable.

17 SECTION 3. Subchapter A, Chapter [37](#), Education Code, is  
18 amended by adding Section 37.0052 to read as follows:

19 Sec. 37.0052. PLACEMENT OR EXPULSION OF STUDENTS WHO HAVE  
20 ENGAGED IN CERTAIN BULLYING BEHAVIOR. (a) In this section:

21 (1) "Bullying" has the meaning assigned by Section  
22 [37.0832](#).

23 (2) "Intimate visual material" has the meaning  
24 assigned by Section [98B.001](#), Civil Practice and Remedies Code.

25 (b) A student may be removed from class and placed in a  
26 disciplinary alternative education program as provided by Section  
27 [37.008](#) or expelled if the student:

1           (1) engages in bullying that encourages a minor to  
2 commit or attempt to commit suicide;

3           (2) incites violence against a minor through group  
4 bullying; or

5           (3) releases or threatens to release intimate visual  
6 material of a minor.

7           SECTION 4. Subchapter A, Chapter 37, Education Code, is  
8 amended by adding Section 37.0151 to read as follows:

9           Sec. 37.0151. REPORT TO LOCAL LAW ENFORCEMENT REGARDING  
10 CERTAIN CONDUCT CONSTITUTING ASSAULT OR HARASSMENT; LIABILITY. (a)  
11 The principal of a public or private primary or secondary school, or  
12 a person designated by the principal under Subsection (c), shall  
13 make a report to any school district police department and the  
14 police department of the municipality in which the school is  
15 located or, if the school is not in a municipality, the sheriff of  
16 the county in which the school is located if the principal has  
17 reasonable grounds to believe that a student engaged in conduct  
18 that constitutes an offense under Section 22.01 or 42.07(a)(7),  
19 Penal Code.

20           (b) A person who makes a report under this section shall  
21 include the name and address of each student the person believes may  
22 have participated in the conduct.

23           (c) The principal of a public or private primary or  
24 secondary school may designate a school employee, other than a  
25 school counselor, who is under the supervision of the principal to  
26 make the report under this section.

27           (d) A person is not liable in civil damages for making a

1 report in good faith under this section.

2 SECTION 5. Sections 37.218(a)(1) and (2), Education Code,  
3 are amended to read as follows:

4 (1) "Bullying" has the meaning assigned by Section  
5 37.0832 [~~25.0342~~].

6 (2) "Cyberbullying" has the meaning assigned by  
7 Section 37.0832 [~~means the use of any electronic communication~~  
8 ~~device to engage in bullying or intimidation~~].

9 SECTION 6. Section 33.006(b), Education Code, is amended to  
10 read as follows:

11 (b) In addition to a school counselor's responsibility  
12 under Subsection (a), the school counselor shall:

13 (1) participate in planning, implementing, and  
14 evaluating a comprehensive developmental guidance program to serve  
15 all students and to address the special needs of students:

16 (A) who are at risk of dropping out of school,  
17 becoming substance abusers, participating in gang activity, or  
18 committing suicide;

19 (B) who are in need of modified instructional  
20 strategies; or

21 (C) who are gifted and talented, with emphasis on  
22 identifying and serving gifted and talented students who are  
23 educationally disadvantaged;

24 (2) consult with a student's parent or guardian and  
25 make referrals as appropriate in consultation with the student's  
26 parent or guardian;

27 (3) consult with school staff, parents, and other

1 community members to help them increase the effectiveness of  
2 student education and promote student success;

3 (4) coordinate people and resources in the school,  
4 home, and community;

5 (5) with the assistance of school staff, interpret  
6 standardized test results and other assessment data that help a  
7 student make educational and career plans; ~~and~~

8 (6) deliver classroom guidance activities or serve as  
9 a consultant to teachers conducting lessons based on the school's  
10 guidance curriculum; and

11 (7) serve as an impartial, nonreporting mediator for  
12 interpersonal conflicts involving two or more students, including  
13 accusations of bullying or cyberbullying under Section 37.0832.

14 SECTION 7. Section 42.07(b)(1), Penal Code, is amended to  
15 read as follows:

16 (1) "Electronic communication" means a transfer of  
17 signs, signals, writing, images, sounds, data, or intelligence of  
18 any nature transmitted in whole or in part by a wire, radio,  
19 electromagnetic, photoelectronic, or photo-optical system. The  
20 term includes:

21 (A) a communication initiated by electronic  
22 mail, instant message, Internet website, social media application,  
23 network call, ~~or~~ facsimile machine, or other Internet-based  
24 communication tool; and

25 (B) a communication made to a pager.

26 SECTION 8. Section 37.0832(b), Education Code, is repealed.

27 SECTION 9. The change in law made by this Act applies only

1 to an offense committed or conduct violating a penal law of this  
2 state that occurs on or after the effective date of this Act. An  
3 offense committed or conduct that occurs before the effective date  
4 of this Act is governed by the law in effect on the date the offense  
5 was committed or conduct occurred, and the former law is continued  
6 in effect for that purpose. For purposes of this section, an  
7 offense was committed or conduct violating a penal law of this state  
8 occurred before the effective date of this Act if any element of the  
9 offense or conduct occurred before that date.

10 SECTION 10. This Act takes effect September 1, 2017.