

Senator Luz Escamilla proposes the following substitute bill:

BULLYING AND HAZING AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Luz Escamilla

House Sponsor: Steve Eliason

LONG TITLE

General Description:

This bill modifies provisions related to bullying and hazing of school employees and students.

Highlighted Provisions:

This bill:

- amends definitions related to bullying and hazing;
- requires a school board to update the school board's policy regarding bullying, cyber-bullying, hazing, and retaliation by September 1, 2018;
- requires employees, students, and parents to sign a statement annually acknowledging receipt of the school board's policy;
- requires the State Board of Education to require a school board to report on provisions related to bullying, cyber-bullying, hazing, and retaliation;
- requires the State Board of Education to make rules describing standards for training regarding bullying, cyber-bullying, hazing, and retaliation;
- requires that the training of school employees related to bullying, cyber-bullying, hazing, and retaliation meets standards described in State Board of Education rule;
- and
- makes technical and conforming changes.



Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a coordination clause.

Utah Code Sections Affected:**AMENDS:****53A-11a-102**, as last amended by Laws of Utah 2011, Chapter 235**53A-11a-201**, as last amended by Laws of Utah 2011, Chapter 235**53A-11a-202**, as last amended by Laws of Utah 2011, Chapter 235**53A-11a-203**, as last amended by Laws of Utah 2016, Chapter 221**53A-11a-301**, as last amended by Laws of Utah 2013, Chapter 335**53A-11a-302**, as last amended by Laws of Utah 2013, Chapter 335**53A-11a-401**, as last amended by Laws of Utah 2011, Chapter 235**53A-11a-402**, as last amended by Laws of Utah 2011, Chapter 235**Utah Code Sections Affected by Coordination Clause:****53A-11a-401**, as last amended by Laws of Utah 2011, Chapter 235

*Be it enacted by the Legislature of the state of Utah:*Section 1. Section **53A-11a-102** is amended to read:**53A-11a-102. Definitions.**

As used in this chapter:

~~[(1) (a) "Bullying" means intentionally or knowingly committing an act that:]~~~~[(i) (A) endangers the physical health or safety of a school employee or student;]~~~~[(B) involves any brutality of a physical nature such as whipping, beating, branding, calisthenics, bruising, electric shocking, placing of a harmful substance on the body, or exposure to the elements;]~~~~[(C) involves consumption of any food, liquor, drug, or other substance;]~~~~[(D) involves other physical activity that endangers the physical health and safety of a school employee or student; or]~~~~[(E) involves physically obstructing a school employee's or student's freedom to move; and]~~

57 ~~[(ii) is done for the purpose of placing a school employee or student in fear of:]~~

58 ~~[(A) physical harm to the school employee or student; or]~~

59 ~~[(B) harm to property of the school employee or student.]~~

60 ~~[(b) The conduct described in Subsection (1)(a) constitutes bullying, regardless of~~
61 ~~whether the person against whom the conduct is committed directed, consented to, or~~
62 ~~acquiesced in, the conduct.]~~

63 (1) "Bullying" means a school employee or student intentionally committing a written,
64 verbal, or physical act against a school employee or student that a reasonable person under the
65 circumstances should know or reasonably foresee will have the effect of:

66 (a) causing physical or emotional harm to the school employee or student;

67 (b) causing damage to the school employee's or student's property;

68 (c) placing the school employee or student in reasonable fear of:

69 (i) harm to the school employee's or student's physical or emotional well-being; or

70 (ii) damage to the school employee's or student's property;

71 (d) creating a hostile, threatening, humiliating, or abusive educational environment due
72 to:

73 (i) the pervasiveness, persistence, or severity of the actions; or

74 (ii) a power differential between the bully and the target; or

75 (e) substantially interfering with a student having a safe school environment that is
76 necessary to facilitate educational performance, opportunities, or benefits.

77 (2) "Communication" means the conveyance of a message, whether verbal, written, or
78 electronic.

79 (3) "Cyber-bullying" means using the Internet, a cell phone, or another device to send
80 or post text, video, or an image with the intent or knowledge, or with reckless disregard, that
81 the text, video, or image will hurt, embarrass, or threaten an individual, regardless of whether
82 the individual directed, consented to, or acquiesced in the conduct, or voluntarily accessed the
83 electronic communication.

84 ~~[(4) "Harassment" means repeatedly communicating to another individual, in an~~
85 ~~objectively demeaning or disparaging manner, statements that contribute to a hostile learning~~
86 ~~or work environment for the individual.]~~

87 ~~[(5)]~~ (4) (a) "Hazing" means a school employee or student intentionally [or],

88 knowingly, or recklessly committing an act or causing another individual to commit an act
89 toward a school employee or student that:

90 (i) (A) endangers the mental or physical health or safety of a school employee or
91 student;

92 (B) involves any brutality of a physical nature [~~such as~~], including whipping, beating,
93 branding, calisthenics, bruising, electric shocking, placing of a harmful substance on the body,
94 or exposure to the elements;

95 (C) involves consumption of any food, [~~liquor~~] alcoholic product, drug, or other
96 substance[; ~~(D) involves~~] or other physical activity that endangers the mental or physical health
97 and safety of a school employee or student; or

98 [(E)] (D) involves [~~physically obstructing a school employee's or student's freedom to~~
99 ~~move~~] any activity that would subject a school employee or student to extreme mental stress,
100 such as sleep deprivation, extended isolation from social contact, or conduct that subjects a
101 school employee or student to extreme embarrassment, shame, or humiliation; and

102 (ii) (A) is [~~done~~] committed for the purpose of initiation [~~or~~] into, admission into,
103 affiliation with, holding office in, or as a condition for[;] membership [~~or acceptance, or~~
104 ~~continued membership or acceptance;~~] in [any] a school or school sponsored team,
105 organization, program, club, or event; or

106 [(B) if the person committing the act against a school employee or student knew that
107 the school employee or student is a member of, or candidate for, membership with a school, or
108 school sponsored team, organization, program, or event to which the person committing the act
109 belongs to or participates in.]

110 (B) is directed toward a school employee or student who the individual who commits
111 the act knows, at the time the act is committed, is a member of, or candidate for membership
112 in, a school or school sponsored team, organization, program, club, or event in which the
113 individual who commits the act also participates.

114 (b) The conduct described in Subsection [(5)] (4)(a) constitutes hazing, regardless of
115 whether the [~~person~~] school employee or student against whom the conduct is committed
116 directed, consented to, or acquiesced in, the conduct.

117 [(6)] (5) "Policy" means a bullying, cyber-bullying, retaliation, and hazing policy
118 described in Section 53A-11a-301.

119 [(7)] (6) "Retaliate" means an act or communication intended:

120 (a) as retribution against a person for reporting bullying or hazing; or

121 (b) to improperly influence the investigation of, or the response to, a report of bullying
122 or hazing.

123 [(8)] (7) "School" means ~~any~~ a public elementary or secondary school ~~or~~, including
124 a charter school.

125 [(9)] (8) "School board" means:

126 (a) a local school board; or

127 (b) a ~~local~~ charter school governing board.

128 [(10)] (9) "School employee" means an individual working in the individual's official
129 capacity as:

130 (a) a school ~~teachers~~ teacher;

131 (b) a school staff member;

132 (c) a school ~~administrators; and~~ administrator; or

133 (d) ~~all others~~ an individual:

134 (i) who is employed, directly or indirectly, by ~~the~~ a school, school board, or school
135 district; and

136 (ii) who works on a school campus.

137 Section 2. Section **53A-11a-201** is amended to read:

138 **53A-11a-201. Bullying, hazing, and cyber-bullying prohibited.**

139 (1) ~~No~~ A school employee or student may not engage in bullying ~~or harassing~~ a
140 school employee or student:

141 (a) on school property;

142 (b) at a school related or sponsored event;

143 (c) on a school bus;

144 (d) at a school bus stop; or

145 (e) while the school employee or student is traveling to or from a location or event
146 described in Subsections (1)(a) through (d).

147 (2) ~~No~~ A school employee or student may not engage in hazing or cyber-bullying a
148 school employee or student at any time or in any location.

149 Section 3. Section **53A-11a-202** is amended to read:

53A-11a-202. Retaliation and making a false allegation prohibited.

(1) ~~[No]~~ A school employee or student may not engage in retaliation against:

(a) a school employee;

(b) a student; or

(c) an investigator for, or a witness of, an alleged incident of bullying, cyber-bullying, ~~[harassment,]~~ hazing, or retaliation.

(2) ~~[No]~~ A school employee or student may not make a false allegation of bullying, cyber-bullying, ~~[harassment,]~~ hazing, or retaliation against a school employee or student.

Section 4. Section **53A-11a-203** is amended to read:

53A-11a-203. Parental notification of certain incidents and threats required.

(1) For purposes of this section, "parent" includes a student's guardian.

(2) A school shall:

(a) notify a parent if the parent's student threatens to commit suicide; or

(b) notify the parents of each student involved in an incident of bullying, cyber-bullying, ~~[harassment,]~~ hazing, or retaliation~~;~~ of the incident involving each parent's student.

(3) (a) If a school notifies a parent of an incident or threat required to be reported under Subsection (2), the school shall produce and maintain a record that verifies that the parent was notified of the incident or threat.

(b) A school shall maintain a record described in Subsection (3)(a) in accordance with the requirements of:

(i) Chapter 1, Part 14, Student Data Protection Act;

(ii) Sections [53A-13-301](#) and [53A-13-302](#);

(iii) ~~[Federal]~~ the Family Educational Rights and Privacy Act, 20 U.S.C. Sec. 1232g; and

(iv) 34 C.F.R. Part 99.

(4) A local school board or charter school governing board shall adopt a policy regarding the process for:

(a) notifying a parent as required in Subsection (2); and

(b) producing and retaining a record that verifies that a parent was notified of an incident or threat as required in Subsection (3).

(5) At the request of a parent, a school may provide information and make recommendations related to an incident or threat described in Subsection (2).

(6) A school shall:

(a) provide a student a copy of a record maintained in accordance with this section that relates to the student if the student requests a copy of the record; and

(b) expunge a record maintained in accordance with this section that relates to a student if the student:

(i) has graduated from high school; and

(ii) requests the record be expunged.

Section 5. Section **53A-11a-301** is amended to read:

53A-11a-301. Bullying, cyber-bullying, hazing, and retaliation policy -- Signed statement requirement.

(1) On or before September 1, ~~[2013, each]~~ 2018, a school board shall update the school board's bullying, cyber-bullying, ~~[harassment,]~~ hazing, and retaliation policy consistent with this chapter.

(2) ~~[The]~~ A policy shall:

(a) be developed only with input from:

(i) students;

(ii) parents;

(iii) teachers;

(iv) school administrators;

(v) school staff; or

(vi) local law enforcement agencies; and

(b) provide protection to a student, regardless of the student's legal status.

(3) ~~[The]~~ A policy shall include the following components:

(a) definitions of bullying, cyber-bullying, ~~[harassment,]~~ and hazing that are consistent with this chapter;

(b) language prohibiting bullying, cyber-bullying, ~~[harassment,]~~ and hazing;

(c) language prohibiting retaliation against an individual who reports conduct that is prohibited under this chapter;

(d) language prohibiting making a false report of bullying, cyber-bullying,

[harassment,] hazing, or retaliation; [and]

(e) as required in Section 53A-11a-203, parental notification of:

(i) a student's threat to commit suicide; and

(ii) an incident of bullying, cyber-bullying, [harassment,] hazing, or retaliation involving the parent's student[-];

(f) an action plan to address a reported incident of bullying, cyber-bullying, hazing, or retaliation; and

(g) a requirement for a signed statement annually, indicating that the individual signing the statement has received the school board's policy, from each:

(i) school employee;

(ii) student who is at least eight years old; and

(iii) parent or guardian of a student enrolled in the charter school or school district.

(4) A copy of [the] a policy shall be:

(a) included in student conduct handbooks and employee handbooks[-]; and

(b) provided to a parent or a guardian of a student enrolled in the charter school or school district.

(5) A policy may not permit formal disciplinary action that is based solely on an anonymous report of bullying, cyber-bullying, [harassment,] hazing, or retaliation.

(6) Nothing in this chapter is intended to infringe upon the right of a school employee or student to exercise their right of free speech.

Section 6. Section 53A-11a-302 is amended to read:

53A-11a-302. Model policy and State Board of Education duties.

(1) On or before September 1, [2013] 2018, the State Board of Education shall:

[1] (a) update the State Board of Education's model policy on bullying, cyber-bullying, [harassment,] hazing, and retaliation; and

[2] (b) post the model policy described in Subsection (1)(a) on the State Board of Education's website.

(2) The State Board of Education shall require a school board to report annually to the State Board of Education on:

(a) the school board's policy, including implementation of the signed statement requirement described in Subsection 53A-11a-301(3)(g);

(b) the school board's training of school employees relating to bullying, cyber-bullying, hazing, and retaliation described in Section 53A-11a-401; and

(c) other information related to this chapter, as determined by the State Board of Education.

Section 7. Section **53A-11a-401** is amended to read:

53A-11a-401. Training, education, and prevention-- Standards.

(1) A school board shall include in the training of a school employee[;] training regarding bullying, cyber-bullying, [~~harassment,~~] hazing, and retaliation that meets the standards described in Subsection (4).

(2) To the extent that state or federal funding is available for this purpose, school boards are encouraged to implement programs or initiatives, in addition to the training described in Subsection (1), to provide for training and education regarding, and the prevention of, bullying, hazing, and retaliation.

(3) The programs or initiatives described in Subsection (2) may involve:

(a) the establishment of a bullying task force; or

(b) the involvement of school employees, students, or law enforcement.

(4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the State Board of Education shall make rules that establish standards for high quality training related to bullying, cyber-bullying, hazing, and retaliation.

Section 8. Section **53A-11a-402** is amended to read:

53A-11a-402. Other forms of legal redress.

(1) Nothing in this chapter prohibits a victim of bullying, cyber-bullying, [~~harassment,~~] hazing, or retaliation from seeking legal redress under any other provisions of civil or criminal law.

(2) This section does not create or alter tort liability.

Section 9. **Coordinating S.B. 161 with H.B. 62 -- Substantive and technical amendments.**

If this S.B. 161 and H.B. 62, Educator Rights Amendments, both pass and become law, it is the intent of the Legislature that the Office of Legislative Research and General Counsel shall prepare the Utah Code database for publication by modifying Subsection 53A-11a-401(4) to read:

274 "(4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
275 State Board of Education shall makes rules that establish standards for high quality training
276 related to bullying, cyber-bullying, hazing, abusive conduct, and retaliation."