

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]~~

~~[(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~~

or work environment for the individual.]

[(5)] (4) (a) "Hazing" means a school employee or student intentionally [or], knowingly, or recklessly committing an act or causing another individual to commit an act toward a school employee or student that:

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

(B) involves any brutality of a physical nature [~~such as~~], including 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~~] alcoholic product, drug, or other substance[; ~~(D) involves~~] or other physical activity that endangers the mental or physical health and safety of a school employee or student; or

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

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

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

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

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

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

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

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

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

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

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

(a) a local school board; or

(b) a ~~[local]~~ charter school governing board.

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

(a) a school [teachers] teacher;

(b) a school staff member;

(c) a school [administrators; and] administrator; or

(d) ~~[all others]~~ an individual:

(i) who is employed, directly or indirectly, by [the] a school, school board, or school district; and

(ii) who works on a school campus.

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

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

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

(a) on school property;

(b) at a school related or sponsored event;
(c) on a school bus;
(d) at a school bus stop; or
(e) while the school employee or student is traveling to or from a location or event described in Subsections (1)(a) through (d).

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

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.

(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;

- 198 (ii) parents;
199 (iii) teachers;
200 (iv) school administrators;
201 (v) school staff; or
202 (vi) local law enforcement agencies; and
203 (b) provide protection to a student, regardless of the student's legal status.
204 (3) ~~[The]~~ A policy shall include the following components:
205 (a) definitions of bullying, cyber-bullying, ~~[harassment,]~~ and hazing that are consistent
206 with this chapter;
207 (b) language prohibiting bullying, cyber-bullying, ~~[harassment,]~~ and hazing;
208 (c) language prohibiting retaliation against an individual who reports conduct that is
209 prohibited under this chapter;
210 (d) language prohibiting making a false report of bullying, cyber-bullying,
211 ~~[harassment,]~~ hazing, or retaliation; ~~[and]~~
212 (e) as required in Section 53A-11a-203, parental notification of:
213 (i) a student's threat to commit suicide; and
214 (ii) an incident of bullying, cyber-bullying, ~~[harassment,]~~ hazing, or retaliation
215 involving the parent's student~~[-]~~;
216 (f) an action plan to address a reported incident of bullying, cyber-bullying, hazing, or
217 retaliation; and
218 (g) a requirement for a signed statement annually, indicating that the individual signing
219 the statement has received the school board's policy, from each:
220 (i) school employee;
221 (ii) student who is at least eight years old; and
222 (iii) parent or guardian of a student enrolled in the charter school or school district.
223 (4) A copy of ~~[the]~~ a policy shall be:
224 (a) included in student conduct handbooks and employee handbooks[-]; and
225 (b) provided to a parent or a guardian of a student enrolled in the charter school or

226 school district.

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

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

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

232 **53A-11a-302. Model policy and State Board of Education duties.**

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

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

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

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

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

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

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

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

247 **53A-11a-401. Training, education, and prevention -- Standards.**

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

251 (2) To the extent that state or federal funding is available for this purpose, school
252 boards are encouraged to implement programs or initiatives, in addition to the training
253 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 makes 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:

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