

EDUCATOR RIGHTS AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Keven J. Stratton

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to abusive conduct toward school employees.

Highlighted Provisions:

This bill:

- defines "abusive conduct";
 - requires a local school board or charter school governing board to:
 - update a policy related to bullying; and
 - implement a grievance process for a school employee who experiences abusive
- conduct;
- provides for training related to abusive conduct; and
 - makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53A-11a-102, 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

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) "Abusive conduct" means verbal, nonverbal, or physical conduct of a parent or student directed toward a school employee that, based on its severity, nature, and frequency of occurrence, a reasonable person would determine is intended to cause intimidation, humiliation, or unwarranted distress.

(b) A single act does not constitute abusive conduct.

~~[(1)]~~ (2) (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:

(A) physical harm to the school employee or student; or

(B) harm to property of the school employee or student.

(b) The conduct described in Subsection ~~[(1)]~~ (2)(a) constitutes bullying, regardless of whether the person against whom the conduct is committed directed, consented to, or acquiesced in, the conduct.

~~[(2)]~~ (3) "Communication" means the conveyance of a message, whether verbal, written, or electronic.

[~~(3)~~] (4) "Cyber-bullying" means using the Internet, a cell phone, or another device to send or post text, video, or an image with the intent or knowledge, or with reckless disregard, that the text, video, or image will hurt, embarrass, or threaten an individual, regardless of whether the individual directed, consented to, or acquiesced in the conduct, or voluntarily accessed the electronic communication.

[~~(4)~~] (5) "Harassment" means repeatedly communicating to another individual, in an objectively demeaning or disparaging manner, statements that contribute to a hostile learning or work environment for the individual.

[~~(5)~~] (6) (a) "Hazing" 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) (A) is done for the purpose of initiation or admission into, affiliation with, holding office in, or as a condition for, membership or acceptance, or continued membership or acceptance, in any school or school sponsored team, organization, program, 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) The conduct described in Subsection [~~(5)~~] (6)(a) constitutes hazing, regardless of whether the person against whom the conduct is committed directed, consented to, or acquiesced in, the conduct.

[~~(6)~~] (7) "Policy" means a [~~bullying and hazing~~] school board policy described in Section 53A-11a-301.

[~~(7)~~] (8) "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)]~~ (9) "School" means ~~[any]~~ a public elementary or secondary school ~~[or]~~, including a charter school.

~~[(9)]~~ (10) "School board" means:

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

~~[(10)]~~ (11) "School employee" means:

(a) a school ~~[teachers]~~ teacher;
(b) a school staff member;
(c) a school ~~[administrators; and]~~ administrator; or
(d) ~~[all others]~~ an individual employed, directly or indirectly, by ~~[the]~~ a school, school board, or school district.

Section 2. 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, abusive conduct, 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 Family Educational Rights and Privacy Act, 20 U.S.C. 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 3. Section **53A-11a-301** is amended to read:

53A-11a-301. Bullying, cyber-bullying, harassment, hazing, abusive conduct, and retaliation policy.

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

(2) The 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 policy shall include the following components:

(a) definitions of bullying, cyber-bullying, harassment, ~~[and]~~ hazing, and abusive

conduct that are consistent with this chapter;

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

(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, abusive conduct, 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, abusive conduct, or retaliation, involving the parent's student[-]; and

(f) a grievance process for a school employee who has experienced abusive conduct.

(4) A copy of the policy shall be:

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

(b) included in employee handbooks[-]; and

(c) distributed to parents.

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

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

Section 4. Section 53A-11a-302 is amended to read:

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

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

(1) update the State Board of Education's model policy on bullying, cyber-bullying, harassment, hazing, and retaliation to include abusive conduct; and

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

Section 5. Section 53A-11a-401 is amended to read:

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

(1) (a) A school board shall include in the training of a school employee[-] training

regarding bullying, cyber-bullying, harassment, hazing, abusive conduct, and retaliation.

(b) A school board may offer voluntary training to parents and students regarding abusive conduct.

(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, abusive conduct, 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.

Section 6. 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, abusive conduct, 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.

Legislative Review Note
Office of Legislative Research and General Counsel