

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 3225**

4 (By Delegates M. Poling, Paxton, Perry, Ennis,
5 Pethtel, Shaver, Moye, Smith,
6 Lawrence and L. Phillips)

7 (Originating in the Committee on the Judiciary)

8 [February 25, 2011]

9
10 A BILL to amend and reenact §18-2C-2 and §18-2C-3 of the Code of
11 West Virginia, 1931, as amended, all relating to harassment,
12 intimidation or bullying; expanding the scope of a school
13 board's policy prohibiting harassment, intimidation and
14 bullying in public schools so that it applies to acts off
15 school grounds when the acts cause disruption in or
16 interference with the orderly operation of the school or
17 creates a hostile educational environment at the school;
18 including electronic acts of harassment, intimidation and
19 bullying in the types of acts covered by the prohibition;
20 definitions; requiring the Department of Education to adopt
21 rules pertaining to when local school officials shall refer
22 students to local juvenile courts; and effective date.

23 *Be it enacted by the Legislature of West Virginia:*

24 That §18-2C-2 and §18-2C-3 of the Code of West Virginia, 1931,
25 as amended, be amended and reenacted, all to read as follows:

1 **ARTICLE 2C. HARASSMENT, INTIMIDATION OR BULLYING PROHIBITION.**

2 **§18-2C-2. Definitions.**

3 As used in this article:

4 (1) "Harassment, intimidation or bullying" means any
5 intentional gesture, or any intentional pattern of gestures or
6 written, verbal, electronic or physical act or threat that:

7 (a) A ~~reasonable~~ person under the circumstances should know
8 will have the effect of any one or more of the following:

9 (1) Physically or emotionally harming a student;

10 (2) Damaging a student's property;

11 (3) Placing a student in ~~reasonable~~ fear of harm to his or her
12 person; ~~or~~

13 (4) Placing a student in ~~reasonable~~ fear of damage to his or
14 her property; ~~or~~

15 (b) ~~Is sufficiently severe, persistent or pervasive that it~~
16 ~~creates an intimidating, threatening or abusive educational~~
17 ~~environment for a student;~~ Has the effect of insulting or demeaning
18 any student or group of students in such a way as to cause
19 disruption in or interference with the orderly operation of the
20 school; or

21 (c) Creates a hostile educational environment for the student
22 by interfering with a student's education or by severely or
23 pervasively causing physical or emotional harm to the student.

24 (2) "Electronic act" means without limitation a communication

1 or electronic text or image transmitted by means of an electronic
2 device including by not limited to a telephone, wireless phone,
3 other wireless communications device, computer or pager.

4 (3) "Harassment" means a pattern of unwelcomed verbal or
5 physical conduct relating to another person that causes or should
6 be expected to cause substantial interference with the other's
7 performance in the school.

8 **§18-2C-3. Policy prohibiting harassment, intimidation or bullying.**

9 (a) Each county board ~~of education~~ shall establish a policy
10 prohibiting harassment, intimidation or bullying. Each county
11 board has control over the content of its policy as long as the
12 policy contains, at a minimum, the requirements of subdivision (b)
13 of this section. The policy shall be adopted through a process
14 that includes representation of parents or guardians, school
15 employees, school volunteers, students and community members.

16 (b) Each county board policy shall, at a minimum, include the
17 following components:

18 (1) A statement prohibiting harassment, intimidation or
19 bullying of any student on school property, a school bus, at a
20 school bus stop or at school sponsored events.

21 (2) The policy shall apply to any act of harassment,
22 intimidation or bullying, whether or not the act originated on
23 school property or off school property if the act is directed
24 specifically at a student and maliciously intended for the purpose

1 of disrupting school or creating a hostile educational environment
2 for the student, and has a high likelihood of succeeding in that
3 purpose;

4 (3) A definition of harassment, intimidation or bullying no
5 less inclusive than that in section two of this article;

6 ~~(3)~~(4) A procedure for reporting prohibited incidents;

7 ~~(4)~~(5) A requirement that school personnel report prohibited
8 incidents of which they are aware;

9 ~~(5)~~(6) A requirement that parents or guardians of any student
10 involved in an incident prohibited pursuant to this article be
11 notified;

12 ~~(6)~~(7) A procedure for documenting any prohibited incident
13 that is reported;

14 ~~(7)~~(8) A procedure for responding to and investigating any
15 reported incident;

16 ~~(8)~~(9) A strategy for protecting a victim from additional
17 harassment, intimidation or bullying, and from retaliation
18 following a report;

19 ~~(9)~~(10) A disciplinary procedure for any student guilty of
20 harassment, intimidation or bullying; and

21 ~~(10)~~(11) A requirement that any information relating to a
22 reported incident is confidential, and exempt from disclosure under
23 the provisions of chapter twenty-nine-b of this code.

24 (12) The West Virginia Department of Education shall adopt

1 rules to determine when local school officials shall refer students
2 to local juvenile courts.

3 (c) Each county board shall adopt the policy and submit a copy
4 to the State Superintendent of Schools by December 1, ~~2001~~ 2011.

5 (d) To assist county boards in developing their policies, the
6 West Virginia Department of Education shall develop a model policy
7 and rules applicable to grades kindergarten through twelfth. The
8 model policy shall be issued by September 1, ~~2001~~ 2011.

9 (e) Notice of the county board's policy shall appear in any
10 student handbook, and in any county board publication that sets
11 forth the comprehensive rules, procedures and standards of conduct
12 for the school.