

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 446**

4 (By Senators Stollings, Foster, Jenkins, Klempa, Green, Beach,
5 Wills, Yost and Plymale)

6 _____
7 [Originating in the Committee on Education;
8 reported February 10, 2012.]
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12 A BILL to amend and reenact §18-2C-2, §18-2C-3 and §18-2C-5 of the
13 Code of West Virginia, 1931, as amended, all relating to
14 harassment, intimidation or bullying of students in public
15 schools; adding elements to definition of "harassment,
16 intimidation or bullying"; and expressing that certain
17 statutory provisions, policy, training and education does not
18 infringe upon first amendment rights of certain persons and
19 does not prohibit expression of religious, philosophical or
20 political views so long as the expression does not cause a
21 material disruption of the work of the school.

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

23 That §18-2C-2, §18-2C-3 and §18-2C-5 of the Code of West
24 Virginia, 1931, as amended, be amended and reenacted, all to read
25 as follows:

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

1 **§18-2C-2. Definitions.**

2 (a) As used in this article, "harassment, intimidation or
3 bullying" means any ~~intentional gesture, or any~~ severe, continuous,
4 pervasive and intentional gesture, or any severe, continuous,
5 pervasive and intentional electronic, written, verbal or physical
6 act, communication, transmission or threat that:

7 (1) A reasonable person under the circumstances should know
8 will have the effect of causing a material disruption of the work
9 of the school and will have the effect of any one or more of the
10 following:

11 (A) Physically harming a student;

12 (B) Damaging a student's property;

13 (C) Placing a student in reasonable fear of harm to his or her
14 person; or

15 (D) Placing a student in reasonable fear of damage to his or
16 her property;

17 (2) Is sufficiently severe, persistent or pervasive that it
18 creates an intimidating, threatening or emotionally abusive
19 educational environment for a student; or

20 (3) Disrupts or interferes with the orderly operation of the
21 school.

22 (b) As used in this article, an electronic act, communication,
23 transmission or threat includes, but is not limited to, one which
24 is administered via telephone, wireless phone, computer, pager or
25 any electronic or wireless device whatsoever and includes, but is
26 not limited to, transmission of any image or voice, email or text

1 message using any such device.

2 (c) Nothing in this section violates or is intended to
3 violate the First Amendment rights of students and does not
4 prohibit nor is intended to prohibit expression of religious,
5 philosophical or political views so long as the expression does not
6 cause a material disruption of the work of the school.

7 **§18-2C-3. Policy prohibiting harassment, intimidation or bullying.**

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

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

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

20 (2) A definition of harassment, intimidation or bullying no
21 less inclusive than that in section two of this article;

22 (3) A procedure for reporting prohibited incidents;

23 (4) A requirement that school personnel report prohibited
24 incidents of which they are aware;

25 (5) A requirement that parents or guardians of any student
26 involved in an incident prohibited pursuant to this article be

1 notified;

2 (6) A procedure for documenting any prohibited incident that
3 is reported;

4 (7) A procedure for responding to and investigating any
5 reported incident;

6 (8) A strategy for protecting a victim from additional
7 harassment, intimidation or bullying and from retaliation following
8 a report;

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

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

14 (11) A requirement that each county board ~~shall~~ input into the
15 uniform integrated regional computer information system (commonly
16 known as the West Virginia Education Information System) described
17 in section twenty-six, article two of this chapter and compile an
18 annual report regarding the means of harassment, intimidation or
19 bullying that have been reported to them and the reasons therefor,
20 if known. The West Virginia Department of Education shall compile
21 the information and report it annually beginning July 1, 2012, to
22 the Legislative Oversight Committee on Education Accountability;
23 and

24 (12) A statement that the policy does not violate nor is
25 intended to violate the First Amendment rights of students and does
26 not prohibit nor is intended to prohibit expression of religious,

1 philosophical or political views so long as the expression does not
2 cause a material disruption of the work of the school.

3 (c) Each county board shall adopt the policy and submit a copy
4 to the State Superintendent of Schools by December 1, ~~2011~~. 2012.

5 (d) To assist county boards in developing their policies, the
6 West Virginia Department of Education shall develop a model policy
7 applicable to grades kindergarten through twelfth. The model
8 policy shall be issued by September 1, ~~2011~~. 2012.

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.

13 **§18-2C-5. Policy training and education.**

14 (a) Schools and county boards are encouraged, but not
15 required, to form bullying prevention task forces, programs and
16 other initiatives involving school staff, students, teachers,
17 administrators, volunteers, parents, law enforcement and community
18 members.

19 (b) To the extent state or federal funds are appropriated for
20 these purposes, each school district shall:

21 (1) Provide training on the harassment, intimidation or
22 bullying policy to school employees and volunteers who have direct
23 contact with students; and

24 (2) Develop a process for educating students on the
25 harassment, intimidation or bullying policy.

26 (c) Information regarding the county board policy against

1 harassment, intimidation or bullying shall be incorporated into
2 each school's current employee training program.

3 (d) (1) Any training and education under this section shall
4 not infringe upon the First Amendment rights of students, teachers
5 or staff.

6 (2) Training or education under this section shall not
7 prohibit the expression of religious, philosophical or political
8 views so long as the expression does not cause a material
9 disruption of the school.