

**Senate Bill No. 446**

2 (By Senators Stollings, Foster, Jenkins, Klempa, Green, Beach,  
3 Wills, Yost and Plymale)

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[Introduced January 27, 2012; referred to the Committee on Education; and then to the Committee on the Judiciary.]

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11 A BILL to amend and reenact §18-2C-2, §18-2C-3 and §18-2C-5 of the  
12 Code of West Virginia, 1931, as amended, all relating to  
13 harassment, intimidation or bullying of students in public  
14 schools; expanding the offenses to include causing a material  
15 disruption of the work of the school; and expressing that the  
16 section does not infringe upon first amendment rights of  
17 students, teachers or staff and does not prohibit expression  
18 of religious, philosophical or political views.

19 Be it enacted by the Legislature of West Virginia:

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

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

24 §18-2C-2. Definitions.

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

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

- 8           (A) Physically harming a student;  
9           (B) Damaging a student's property;

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

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

14           (E) Causing a material disruption of the work of the school.

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

18          (3) Disrupts or interferes with the orderly operation of the  
19 school.

20       (b) As used in this article, an electronic act, communication,  
21 transmission or threat includes, but is not limited to, one which  
22 is administered via telephone, wireless phone, computer, pager or  
23 any electronic or wireless device whatsoever and includes, but is  
24 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  
12 subsection(b) of this section. The policy shall be adopted through  
13 a process that includes representation of parents or guardians,  
14 school employees, school volunteers, students and community  
15 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) A definition of harassment, intimidation or bullying no  
22 less inclusive than that in section two of this article;

23            (3) A procedure for reporting prohibited incidents;

24            (4) A requirement that school personnel report prohibited

1 incidents of which they are aware;

2       (5) A requirement that parents or guardians of any student  
3 involved in an incident prohibited pursuant to this article be  
4 notified;

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

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

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

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

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

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

1 the Legislative Oversight Committee on Education Accountability;  
2 and

3       (12) A statement that the policy does not violate nor is  
4 intended to violate the First Amendment rights of students and does  
5 not prohibit nor is intended to prohibit expression of religious,  
6 philosophical or political views so long as the expression does not  
7 cause a material disruption of the work of the school.

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

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

14       (e) Notice of the county board's policy shall appear in any  
15 student handbook and in any county board publication that sets  
16 forth the comprehensive rules, procedures and standards of conduct  
17 for the school.

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

19       (a) Schools and county boards are encouraged, but not  
20 required, to form bullying prevention task forces, programs and  
21 other initiatives involving school staff, students, teachers,  
22 administrators, volunteers, parents, law enforcement and community  
23 members.

24       (b) To the extent state or federal funds are appropriated for

1 these purposes, each school district shall:

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

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

7       (c) Information regarding the county board policy against  
8 harassment, intimidation or bullying shall be incorporated into  
9 each school's current employee training program.

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

13       (2) Training or education under this section shall not  
14 prohibit the expression of religious, philosophical or political  
15 views so long as the expression does not cause a material  
16 disruption of the school.

NOTE: The purpose of this bill is to expand the offenses to include causing a material disruption of the work of the school; express that the section does not infringe upon first amendment rights of students, teachers or staff and does not prohibit expression of religious, philosophical or political views.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.