

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Education

BILL: PCS/SB 626

INTRODUCER: Education Committee and Senator Bullard

SUBJECT: Bullying in the Public School System

DATE: March 11, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hand	Klebacha	ED	Pre-meeting
2.			JU	
3.			RC	
4.				
5.				
6.				

I. Summary:

PCS/SB 626 defines and prohibits cyberbullying, and specifies the circumstances under which bullying, cyberbullying and harassment of any student or employee of a public K-12 educational institution is prohibited. The bill requires the Department of Education, by October 1, 2013, to incorporate into its model policy on bullying and harassment, a prohibition on cyberbullying. The bill requires school districts, by December 1, 2013, to incorporate into their model policies on bullying and harassment, a prohibition on cyberbullying.

The effective date of the bill is July 1, 2013.

This bill substantially amends section 1006.147 of the Florida Statutes.

II. Present Situation:

Bullying and Harassment

The 2008 Florida Legislature enacted s. 1006.147, F.S., which prohibits bullying and harassment in the school environment.¹

Bullying means systemically and chronically inflicting physical hurt or psychological distress on one or more students and may involve:

- Teasing;
- Social exclusion;

¹ ch. 2008-123, L.O.F., provides the Jeffrey Johnston Stand Up for All Students Act.

- Threat;
- Intimidation;
- Stalking;
- Physical violence;
- Theft;
- Sexual, religious, or racial harassment;
- Public humiliation; or
- Destruction of property.²

Harassment means any threatening, insulting, or dehumanizing gesture, use of data or computer software, or written, verbal or physical conduct directed against a student or school employee that:

- Places a student or school employee in reasonable fear of harm to his or her person or damage to his or her property;
- Has the effect of substantially interfering with a student's educational performance, opportunities, or benefits; or
- Has the effect of substantially disrupting the orderly operation of a school.³

Bullying and harassment includes:

- Retaliation against a student or school employee by another student or school employee for asserting or alleging an act of bullying or harassment; and
- Perpetuation of bullying or harassment by an individual or group with intent to demean, dehumanize, embarrass, or cause physical harm to a student or school employee by incitement or coercion, accessing or knowingly causing or providing access to data or computer software through a computer, computer system, or computer network within the scope of the district school system, or acting in a manner that has an effect substantially similar to the effect of bullying or harassment.

Bullying or harassment of any student or employee of a public K-12 educational institution is specifically prohibited:

- During education programs and activities;
- During school-related and school-sponsored activities, including on a school bus; and
- Through the use of data or computer software that is accessed through a computer, computer system, or computer network of a public K-12 institution.⁴

School districts are required to have a policy which prohibits bullying and harassment of students and employees of public K-12 educational institutions, and which must be integrated with a school's curriculum, discipline policies and other violence prevention efforts.⁵

² s. 1006.147(3)(a), F.S.

³ s. 1006.147(3)(b), F.S.

⁴ s. 1006.147(2), F.S.

⁵ s. 1006.147(4), F.S.

Cyberbullying

Section 1006.147, F.S., does not define or specifically prohibit cyberbullying, except to:

- Prohibit bullying or harassment of any student or employee of a public K-12 educational institution through the use of data or computer software that is accessed through a computer, computer system, or computer network of a public K-12 educational institution;⁶ and
- Include as bullying the perpetuation of specific behaviors that includes teasing, social exclusion, and threats by an individual or group with intent to demean, dehumanize, embarrass, or cause physical harm to a student or school employee by accessing or knowingly causing or providing access to data or computer software through a computer, computer system, or computer network within the scope of the district school system.⁷

In a 2010 random sample of 4,400 students of ages 11 through 18:

- Approximately 20 percent responded that they had been a victim of cyberbullying;
- Approximately 20 percent responded that they had committed cyberbullying; and
- About 10 percent indicated that they had been both victim and offender.⁸

Subsequently, in a 2012 random sample of 4,441 students in grades 9-12, students who reported that many of their friends had bullied others (at school, using a computer, and using a cell phone) were significantly more likely to have also reported that they too had cyberbullied others.⁹

Research also revealed a link between cyberbullying and low self-esteem, family problems, academic problems, school violence and delinquent behavior.¹⁰ Forty-nine states have adopted anti-bullying legislation, with 16 of these states specifically including anti-cyberbullying legislation.¹¹

III. Effect of Proposed Changes:

The bill defines cyberbullying as:

Bullying or harassment that is related to computers, as described in s. 815.03, or that otherwise occurs through the use of technology or any electronic communications, including, but not limited to, any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic system, photoelectronic system, or photooptical system, or other transmission or medium such as electronic mail, text

⁶ s. 1006.147(2)(c), F.S.

⁷ s. 1006.147(3)(d)2.b., F.S.

⁸ Sameer Hinduja, PhD and Justin W. Patchin, PhD, *Cyberbullying: Identification, Prevention, and Response* (2010). See online at <http://www.cyberbullying.us/>. Last checked March 6, 2013.

⁹ Sameer Hinduja, PhD and Justin W. Patchin, PhD, *Cyberbullying Research Summary: The Influence of Parent, Educators, and Peers* (January 2013).

¹⁰ Sameer Hinduja, PhD and Justin W. Patchin, PhD, *Cyberbullying: Identification, Prevention, and Response* (2010). See online at <http://www.cyberbullying.us/>. Last checked March 6, 2013.

¹¹ Sameer Hinduja, PhD and Justin W. Patchin, PhD, *State Cyberbullying Laws: A Brief Review of State Cyberbullying Laws and Policies* (January 2013).

messaging, instant messaging, Internet communications, or facsimile communications.

Additionally, cyberbullying may include but not be limited to:

- Harassment and cyberstalking, as defined in s. 784.048, F.S.;
- Creating a webpage, weblog in which the creator assumes the identity of another person, or the knowing impersonating of another person, while posting content or sending messages; and
- Electronically sharing or distributing material and communications to more than one person or posting material on an electronic medium that may be accessed by one or more persons.

The bill adds to the list of activities that may constitute bullying:

- “Emotional pain or discomfort;” and
- “Humiliation.”

The bill adds to the definition of harassment specified conduct that:

- As provided in s. 784.048(1)(a), F.S., serves no legitimate purpose and causes substantial emotional distress to a student or school employee; and
- Materially and substantially disrupts or interferes with the orderly operation of a school or the ability of a student to be safe and secure at a school or a school-sponsored event.

The bill expands the circumstances under which bullying, cyberbullying, or harassment of any student or employee of a public K-12 educational institution is prohibited by:

- Adding to the existing prohibition of bullying or harassment through the use of data or computer software that is accessed through a computer, computer system, or computer network, which is physically located on the property of the educational institution or at the site of any school-related or school sponsored program or activity conducted by the educational institution; and
- Creating a new prohibition when the bullying, cyberbullying, or harassment, or if it is reasonably foreseeable that it could create, material and substantial interference with, or disruption of, a student’s ability to be safe and secure during school or a school-related or school-sponsored program or activity, including but not limited to, field trips, extracurricular activities, or transit on a school bus of a public K-12 educational institution for a school-related or school-sponsored program or activity.

The bill requires the Department of Education to incorporate into its existing model policy for bullying and harassment, a model policy prohibiting cyberbullying, no later than October 1, 2013. The model policy must include factors that school officials must consider when responding to a bullying, cyberbullying or harassment incident or situation that occurs off school grounds or outside a school-sponsored activity or event. The model policy must be included in the code of student conduct and provide clear notice to a student and parent that the district may discipline a person who violates the provisions of this section.

The bill requires school districts, by December 1, 2013, to incorporate into their policies prohibiting bullying and harassment, a prohibition on cyberbullying of any student or employee of a public K-12 educational institution. The bill requires the policy to:

- Require computers on which web-filtering software is not installed, or disabled, to be used when complaints of cyberbullying are investigated; and
- Provide instruction to students, parents, teachers, school administrators, counseling staff, and school volunteers on identifying, preventing, and responding to behaviors that lead to bullying, cyberbullying, and harassment.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The bill could be strengthened by clarifying the following provisions:

- Lines 47-50 should be amended to reflect that instances where bullying, cyberbullying, and harassment is prohibited includes those occurring on school buses;
- Line 119 should identify cyberbullying in addition to bullying or harassment;
- Line 234 should identify that a school district will discipline a person who violates s. 1006.147, F.S.; and
- Line 251 should identify that the definitions in s. 815.03, F.S., apply to s. 1006.147, F.S.

Additionally, lines 51-59 prohibit conduct that substantially interferes with a student's ability to be safe during school. However, case law has recently come to a consensus in applying the *Tinker* test. See *Wilson v. Lee's Summit R-7 School District*, 696 F.3d 771 (8th Cir. 2012); *Barbaras v. Florida State College of Medicine*, 2011 WL 7139411 (N.D.

Fla. 2011). In *Tinker*, the U.S. Supreme Court allowed a prohibition of student speech when that speech: (1) substantially interferes with the work of the school; or (2) impinges upon the student's ability to be secure. *See Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969). Thus, lines 51-59 should be clarified to include the disruption of school operations consistent with case law.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.