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## Bill Analysis

**Version:** As Introduced

**Primary Sponsor:** Rep. Greenspan

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### Summary

#### Consequences for harassment, intimidation, or bullying

- Requires each school district, community school, and STEM school to adopt a policy requiring the district superintendent, or equivalent official, to take a disciplinary action against a student who commits an offense of harassment, intimidation, or bullying.
- Requires that the policy authorize the imposition of a detention, suspension, or expulsion for an offense of harassment, intimidation, or bullying, as determined appropriate under the circumstances.
- Permits districts or schools to require community service of, or impose additional disciplinary measures on, students who receive a detention, suspension, or expulsion under the bill.
- Prohibits students from participating in an extracurricular activity during a detention, suspension, or expulsion under the bill.
- Permits districts and schools to provide tutoring and academic support for suspended or expelled students and requires districts or schools to allow them to take all required state assessments.
- Permits districts and schools to provide counseling services, upon parental consent, for students who receive a detention, suspension, or expulsion under the bill.
- Requires districts and schools to allow the victim of harassment, intimidation, or bullying to make up missed schoolwork and permits districts or schools to offer counseling services to the victim.

## **Private school policy regarding harassment, intimidation, or bullying**

- Requires that each chartered nonpublic school to adopt a policy requiring disciplinary action against a student who commits an offense of harassment, intimidation, or bullying.
- Specifies that the policy must be similar to the policy adopted by a school district.
- Requires that the policy must be submitted to the Department of Education and posted on the school's website if it has one.

## **State Board model policy**

- Requires the State Board of Education to develop evidence-based best practices regarding harassment, intimidation, and bullying.
- Requires the State Board to review the harassment, intimidation, and bullying model policy and best practices every four years, and update them as necessary.

## **Investigation of employees**

- Requires public schools to investigate any report of harassment, intimidation, or bullying by an employee, faculty member, teacher, consultant, or volunteer against a student and then to determine the proper course of action pursuant to current law.

## **Posting of suspension, expulsion, and locker search policies**

- Requires all suspension and expulsion policies and locker search policies to be posted on the website of the school district, community school, and STEM school.

## **Criminal penalty for hazing**

- Revises the criminal prohibition on "hazing."

## **Harassment, intimidation, and bullying and hazing in higher education**

- Requires each state institution of higher education to adopt a policy regarding hazing and harassment, intimidation, or bullying.

## **Title**

- Entitles the bill the "Ohio Anti-Bullying and Hazing Act."

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## **Detailed Analysis**

### **Public school policies on harassment, intimidation, or bullying**

The bill revises the requirements regarding harassment, intimidation, or bullying policies that school districts, community schools, and STEM schools must adopt under current law. It requires that a district or school adopt a policy requiring disciplinary action against any student who commits an offense of harassment, intimidation, or bullying and makes other changes.

## **Disciplinary actions**

In accordance with the district's or school's policy, the district superintendent, or equivalent official, must issue a disciplinary action against a student who commits an offense of harassment, intimidation, or bullying. The disciplinary action may include any of the following, as determined appropriate, for each offense committed by a student:

1. A detention requiring the student to be present in school outside of the instructional day for up to a total number of hours equivalent to ten school days to complete supervised learning activities or a community service plan;
2. An in-school suspension of up to ten school days;
3. An out-of-school suspension of up to ten school days; or
4. An expulsion.<sup>1</sup>

The bill specifies that any suspension or expulsion for harassment, intimidation, or bullying must be issued in accordance with continuing law, and specifically with the due process procedures required under continuing law.<sup>2</sup>

### **Community service**

A district or school may develop a community service plan for a student subjected to detention, suspension, or expulsion under the bill and require that the student complete it. The plan must include specific goals and timelines and the duration of the required community service. That service requirement may continue beyond the date the student returns to school.<sup>3</sup>

### **Other disciplinary measures**

The bill also prohibits a student from participating in any extracurricular activity during the student's detention, suspension, and expulsion and specifically states that a district or school may impose additional measures on the student as the district or school determines appropriate.<sup>4</sup>

### **Other required actions**

Each district or school must do both of the following with regard to a student suspended or expelled for harassment, intimidation, or bullying:

1. Permit the student to complete all missed schoolwork. The district or school may offer tutoring and academic support to the student.

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<sup>1</sup> R.C. 3313.669(A). R.C. 3313.669 applies to community schools and STEM schools through references in R.C. 3314.03(A)(11)(d) and 3326.11.

<sup>2</sup> R.C. 3313.669(A)(4), second paragraph, and (H).

<sup>3</sup> R.C. 3313.669(B)(1).

<sup>4</sup> R.C. 3313.669(B)(2) and (3).

2. Permit the student to take any required state assessments. The student is permitted to take the assessment in the student's regular school setting.<sup>5</sup>

### **Counseling**

Additionally, the bill permits a district or school to provide counseling or intervention services to the student subject to parental consent. If the district or school does not provide counseling or intervention services, it may coordinate with community organizations to provide such services and help identify available resources.<sup>6</sup>

### **Return to school**

A student who is suspended or expelled for harassment, intimidation, or bullying is required to complete all missed schoolwork to return to school. If the student does not do so, the district superintendent, or equivalent official, may allow the student to return to school if the student has made sufficient progress toward completing that requirement.<sup>7</sup>

### **Investigation**

The bill requires that, upon receiving a report or being notified of a potential incident of harassment, intimidation, or bullying at school or on school grounds, a principal or another administrator must conduct an investigation to determine if such behavior occurred.<sup>8</sup>

### **Alternative form of discipline**

The bill permits a school administrator, including the district superintendent or principal, to petition the governing body of the district or school to approve an alternative form of discipline after the required investigation, but prior to any detention, suspension, or expulsion for the offense. The administrator may petition the governing body if the administrator believes the student:

1. Has extenuating circumstances specific to that student;
2. Has a high chance of successful reintegration into the school using the alternative form of discipline; and
3. Does not pose a risk to the safety of the school and the victim.

The governing body of the district or school may approve the alternative form of discipline by a majority vote of its full membership.<sup>9</sup>

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<sup>5</sup> R.C. 3313.669(C)(1).

<sup>6</sup> R.C. 3313.669(C)(2).

<sup>7</sup> R.C. 3313.669(D).

<sup>8</sup> R.C. 3313.669(E)(1).

<sup>9</sup> R.C. 3313.669(E)(2) and 3313.669(F).

## Notification regarding detention

The bill prescribes a notification process for a student and the student's parent, guardian, or custodian if the student is subject to detention for an offense of harassment, intimidation, or bullying. This process is similar to that afforded to expelled students under continuing law. Under the bill, a district superintendent, or equivalent official, must do both of the following prior to issuing a detention to a student for harassment, intimidation, or bullying:

1. Provide the student and student's parent with written notice of the intention to issue a detention; and
2. Provide the student and student's parent, or representative, an opportunity to appear in person before the district superintendent or equivalent official, or their designee, to challenge the reasons for the intended detention or to explain the student's actions.

The notice must include:

1. Reasons for the intended detention, suspension, or expulsion;
2. Notification of the opportunity to challenge the reasons or to explain; and
3. The time and place to appear.

The time to appear must not be earlier than three or later than five school days after the notice is given, unless the district superintendent grants an extension. If an extension is granted, the district superintendent must notify the student and the student's parent, guardian, custodian, or representative the new time and place to appear.<sup>10</sup>

## Victims' rights

The bill permits a district or school to offer, but not require, counseling services to the victim of harassment, intimidation, or bullying. It also requires each district or school to permit a victim to complete all missed schoolwork due to the harassment, intimidation, or bullying. A district may offer tutoring and academic support to the victim.<sup>11</sup>

## No effect on permanent exclusion

The bill states that nothing in the newly enacted section regarding suspension and expulsion of a student for bullying creates a requirement for a district or school to provide a student who has been "permanently" excluded with the same services the district or school would provide to a student attending school in that district.<sup>12</sup> Yet the bill does not make any changes to the law regarding permanent exclusion from the public schools, which is done only through a prescribed adjudicatory procedure for very serious, specified offenses. Those offenses include aggravated murder and certain other homicide offenses, drug possession,

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<sup>10</sup> R.C. 3313.669(G).

<sup>11</sup> R.C. 3313.669(I).

<sup>12</sup> R.C. 3313.669(J).

felonious assault, aggravated assault, conveyance or possession of a deadly weapon at school, and certain sex offenses.<sup>13</sup>

### **Continuing obligation to provide a free and appropriate education**

The bill specifies that nothing in the bill affects the obligation of a district or school to provide a free and appropriate education to children with disabilities under continuing state and federal special public education law.<sup>14</sup>

### **Private school policies on harassment, intimidation, or bullying**

Under the bill, each chartered nonpublic school must adopt a policy requiring a disciplinary action against any pupil who commits an offense of harassment, intimidation, or bullying. The policy must address issues such as disciplinary actions and due process in a manner that is similar to the policy adopted by a school district under the bill's provisions. The school also must review the policy at least once every three years and update it as necessary based on the review. Additionally, the school must submit to the Department of Education the policy in a form and manner determined by the Department and post the policy on the school's website if it has one.<sup>15</sup>

### **State Board model policy**

The State Board of Education is required under current law to develop a model policy to prohibit harassment, intimidation, or bullying to assist school districts in developing their own policies.

The bill further requires the State Board to provide each school district with evidence-based best practices regarding policies to prohibit harassment, intimidation, or bullying. It also requires the State Board to review the model policy and best practices at least once every four years, and update them as necessary based on the review.<sup>16</sup>

### **Investigation of employees required**

The bill requires a school district, community school, and STEM school to investigate any report of harassment, intimidation, or bullying by an administrator, employee, faculty member, teacher, consultant, or volunteer against a student. After the investigation, the district superintendent, superintendent designee, or equivalent official, must determine the proper course of action pursuant to current law.<sup>17</sup>

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<sup>13</sup> R.C. 3301.121 and 3313.662, neither in the bill.

<sup>14</sup> R.C. 3313.669(K). The bill uses the phrase "free appropriate education," but the term under federal law is free appropriate public education.

<sup>15</sup> R.C. 3301.165.

<sup>16</sup> R.C. 3301.22.

<sup>17</sup> R.C. 3319.318(A). R.C. 3319.318 applies to community schools and STEM schools through references in R.C. 3314.03(A)(11)(d) and 3326.11.

For the purposes of such an investigation, the bill states that harassment, intimidation, or bullying is “any intentional written, verbal, electronic, or physical act that an administrator, employee, faculty member, teacher, consultant, or volunteer of a school district exhibited toward a student more than once.” The behavior must cause mental or physical harm to the student and be “sufficiently severe, persistent, or pervasive that it creates an intimidating, threatening, or abusive educational environment for the student.”<sup>18</sup>

## **Other changes to the harassment, intimidation, or bullying policy**

Current law requires school districts, community schools, and STEM schools to establish a policy prohibiting harassment, intimidation, or bullying. The policy includes procedures for reporting incidents, parental notification, documentation, protecting victims, and disciplinary procedures (including those for retaliation). The bill revises portions of this policy as follows:

1. Expands the policy to prohibit offenses of harassment, intimidation, or bullying from being committed against administrators, employees, faculty members, teachers, consultants, and volunteers of the district or school (in addition to students, as under current law);<sup>19</sup>
2. When notifying the parent of a student involved in an incident of harassment, intimidation, or bullying, requires each district or school to maintain a record for each incident verifying that the parent was notified of the incident;<sup>20</sup>
3. Requires the policy to include a disciplinary procedure for any student guilty of retaliation against a student, administrator, employee, faculty member, teacher, consultant, or volunteer of the district or school who reports an incident of harassment, intimidation, or bullying;<sup>21</sup>
4. Requires the governing body of the district or school to review the policy at least once every three years and update it as necessary based on the review;<sup>22</sup>
5. Requires the policy to be updated to include hazing;<sup>23</sup>
6. Requires the policy to apply to grades kindergarten through twelve.<sup>24</sup>

The bill also expands the definition of “harassment, intimidation, or bullying” that applies to public primary and secondary schools to prohibit harassment, intimidation, or

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<sup>18</sup> R.C. 3319.318(B).

<sup>19</sup> R.C. 3313.666(B).

<sup>20</sup> R.C. 3313.666(B)(5).

<sup>21</sup> R.C. 3313.666(B)(10).

<sup>22</sup> R.C. 3313.666(H).

<sup>23</sup> R.C. 3313.666(H).

<sup>24</sup> R.C. 3313.666(B).

bullying against administrators, employees, faculty members, teachers, consultants, and volunteers of the district or school (in addition to students) and to include hazing.<sup>25</sup>

## **Web posting of suspension and expulsion and locker search policies**

The bill requires all suspension and expulsion policies and locker search policies to be posted on the website of the school district, community school, and STEM school.<sup>26</sup>

## **Criminal offense of “hazing”**

### **Definition of “hazing”**

The bill revises the criminal definition of “hazing” to prohibit “any act to continue or reinstate membership in or affiliation with any student or other organization” to the meaning of hazing. Current law defines hazing as “doing any act or coercing another, including the victim, to do any act of initiation into any student or other organization that causes or creates a substantial risk of causing mental or physical harm to any person.”<sup>27</sup>

It also adds the following individuals to the list of those currently prohibited from recklessly permitting hazing: teachers, consultants, alumni, and volunteers of any organization, including primary, secondary, and post-secondary schools and any other public or private educational institution. Currently, only administrators, employees, and faculty members are so prohibited.<sup>28</sup>

### **Penalty**

The bill increases the criminal penalty for “hazing” to a second degree misdemeanor, instead of a fourth degree misdemeanor as under current law.<sup>29</sup>

### **Additional prohibitions**

Additionally, the bill prohibits any person from knowingly participating in the hazing of another when the hazing causes serious physical harm to the other person.

It further prohibits an administrator, employee, faculty member, teacher, consultant, alumnus, or volunteer of any organization including primary, secondary, or post-secondary school or any other public or private educational institution from knowingly permitting the hazing of any person when the hazing causes serious harm to any person.<sup>30</sup>

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<sup>25</sup> R.C. 3313.666(A).

<sup>26</sup> R.C. 3313.661(A), third paragraph, and (C).

<sup>27</sup> R.C. 2903.31(A).

<sup>28</sup> R.C. 2903.31(B).

<sup>29</sup> R.C. 2903.31(D).

<sup>30</sup> R.C. 2903.31(C).



Violation of either prohibition is a fourth degree felony.<sup>31</sup>

## **Harassment, intimidation, and bullying and hazing policies for state institutions of higher education**

The bill requires each state institution of higher education to adopt a policy and rules regarding (1) hazing and (2) harassment, intimidation, or bullying. The policy must include penalties for such offenses, including sanctions, fines, withholding of a diploma or transcript, probation, suspension, and expulsion.<sup>32</sup>

For state institutions of higher education, the bill defines “harassment, intimidation, or bullying” as any intentional written, verbal, electronic, or physical act that a student has exhibited toward another particular student or an administrator, employee, faculty member, consultant, or volunteer of the institution more than once, and the behavior both (1) causes mental or physical harm to the other individual and (2) is sufficiently severe, persistent, or pervasive that it creates an intimidating, threatening, or abusive educational environment for the other individual.<sup>33</sup>

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### **History**

Action	Date
As Introduced	07-09-19

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H0310-I-133/ts

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<sup>31</sup> R.C. 2903.31(D).

<sup>32</sup> R.C. 3345.19(A).

<sup>33</sup> R.C. 3345.19(B)(1).