



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

Mike Niemi

### **Sub. H.B. 360**

132nd General Assembly  
(As Passed by the House)

**Reps.** Greenspan, Anielski, Keller, Miller, Sheehy, Thompson, Antonio, Arndt, DeVitis, Edwards, Hill, LaTourette, Lepore-Hagan, Lipps, Pelanda, R. Smith, Stein, Young

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## **BILL SUMMARY**

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

- Specifies that a public school student must be suspended for up to ten days for the first offense of harassment, intimidation, or bullying, be suspended for up to 30 days for the second offense, and be expelled for up to 182 days for the third such offense in the same school year.
- Permits school districts or schools to require community service for students suspended or expelled 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 suspended or expelled 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 for the victim.

### **State Board model policy**

- Requires the State Board of Education to develop evidence-based best practices regarding harassment, intimidation, and bullying, and provide them to districts and schools.

- 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 the superintendent 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.

### **Other changes to school harassment, intimidation, and bullying policy**

- 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.
- Exempts from the bill's suspension and expulsion policies students in grades kindergarten through three and students who have developmental disabilities.

### **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.

### **Criminal penalty for hazing**

- Revises the criminal prohibition on "hazing."

### **Title**

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

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## CONTENT AND OPERATION

### K-12 school policies on harassment, intimidation, or bullying

The bill makes changes to requirements regarding harassment, intimidation, or bullying policies public schools must adopt under current law. It dictates how offenses of harassment, intimidation, or bullying must be addressed and makes other changes.

#### Suspension and expulsion

In accordance with the policy on harassment, intimidation, or bullying, the superintendent or equivalent officer of the district's or school's governing body must suspend a student with an in-school suspension for up to ten days for the first offense, suspend a student with an in-school suspension for up to 30 days for a second offense, and expel the student for up to 182 days for the third offense within the same school year. The superintendent may choose to expel a student for the first or second offense if the superintendent determines an expulsion is more appropriate. The superintendent may also impose an out-of-school suspension or expulsion rather than an in-school suspension if the superintendent determines it is more appropriate.<sup>1</sup>

In the case of a suspension or expulsion term that would extend beyond the length of a school year, the remaining portion of the suspension or expulsion must be applied to the following school year.<sup>2</sup>

#### Other required actions

Each district or school must do the following with regard to students suspended or expelled for harassment, intimidation, or bullying:

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

<sup>2</sup> R.C. 3313.669(A)(3), second paragraph.



(1) Permit the student to complete all missed schoolwork. For this purpose, the district or school may offer tutoring and academic support to the student.

(2) Permit the student to take any required state assessments. For this purpose, the student is permitted to take the assessment in the student's regular school setting.

(3) Prohibit the student from participating in extracurricular activities.

### **Community service**

A district or school may develop a community service plan that a suspended or expelled student must complete. The plan must include specific goals and timelines and the duration of the required community service. The community service plan may continue beyond the date upon which a student returns to school.

### **Counseling**

Additionally, the bill permits a district or school to provide counseling or intervention services to the student as long as parental consent is given. If the district or school does not provide counseling or intervention services, the district or school may coordinate with community organizations to provide such services and help identify available resources.<sup>3</sup>

### **Other measures**

The bill also specifically states that a district or school may impose additional measures for a student suspended or expelled for bullying as the district or school governing body determines appropriate.<sup>4</sup>

### **Return to school**

To return to school, a student who is suspended or expelled for harassment, intimidation, or bullying must complete all missed schoolwork. If the student does not complete that requirement, the superintendent or equivalent officer may allow the student to return to school if sufficient progress has been made toward completing that requirement.<sup>5</sup>

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

<sup>4</sup> R.C. 3313.669(C).

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



## **Exemptions**

The bill explicitly states that its suspension and expulsion policies regarding harassment, intimidation, or bullying do not apply to any student in grades kindergarten through three or to any student who has a developmental disability.<sup>6</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 other administrator must conduct an investigation to determine if such behavior occurred.<sup>7</sup>

## **Alternative form of discipline**

The bill allows that, after the required investigation and prior to any suspension or expulsion under the bill's provisions, a school administrator, including the superintendent or principal, may petition the governing body of the district or school to approve an alternative form of discipline instead of suspension or expulsion for the student. 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;
- (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>8</sup>

## **Due process**

The bill provides for due process and appeal procedures for students suspended or expelled for harassment, intimidation, or bullying that are essentially the same as those afforded to other expelled students. Under the bill, a district superintendent or equivalent officer must do both of the following prior to suspending or expelling a student for harassment, intimidation, or bullying:

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

<sup>7</sup> R.C. 3313.669(E)(1).

<sup>8</sup> R.C. 3313.669(E)(2) and 3313.669(F).



(1) Provide the student and student's parent with written notice of the intention to suspend or expel the student; and

(2) Provide the student and student's parent, or representative, an opportunity to appear in person before the superintendent or equivalent officer, or their designee, to challenge the reasons for the intended suspension or expulsion or to explain the student's actions.<sup>9</sup>

The notice must include the following:

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

The meeting must occur within three to five school days after the notice is given, unless an extension of time is granted at the request of the student, student's parent, or representative. If an extension is granted, the student, student's parent, or representative must be notified of the new time and place to appear.<sup>10</sup>

#### **Official notice of suspension and expulsion**

Within one school day of a student's suspension or expulsion, the superintendent (or superintendent's equivalent officer) or principal must notify in writing the student's parent and the district's or school's treasurer of the suspension or expulsion. The notice must include the following:

- (1) Reasons for the suspension or expulsion;
- (2) The right to appeal the suspension or expulsion;
- (3) The right to be represented in all appeal proceedings;
- (4) The right to be granted a hearing before the district's or school's governing body, or its designee, in order to be heard against the suspension or expulsion; and
- (5) The right to request that the hearing be held in executive session.

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<sup>9</sup> R.C. 3313.669(E)(3)(a) and (b).

<sup>10</sup> R.C. 3313.669(E)(3)(b), second paragraph.

The notice also must specify the manner and date by which the student or student's parent must notify the governing body of the intention to appeal the suspension or expulsion.<sup>11</sup>

### **Appeals process**

A student or student's parent may appeal a suspension or expulsion due to harassment, intimidation, or bullying in the manner and date specified by the governing body of the district or school. The student or student's parent may be represented in all appeal proceedings and must be granted a hearing. At the request of the student, student's parent, or attorney, the board may hold the hearing in executive session but must act upon the suspension or expulsion at a public meeting.<sup>12</sup> The district board may do the following by majority vote:

- (1) Affirm the suspension or expulsion;
- (2) Reinstate the student;
- (3) Reverse, vacate, or modify the suspension or expulsion.<sup>13</sup>

The bill requires the district's or school's governing body, or its designee, to make a verbatim record of an appeal hearing, and any decision can be appealed to the applicable court of common pleas.<sup>14</sup>

### **Victims' rights**

The bill permits the governing body of a district or school to offer counseling services to the victim of harassment, intimidation, or bullying. A victim is not, however required to participate in the counseling.<sup>15</sup>

The bill requires each district or school to permit a victim of harassment, intimidation, or bullying to complete all missed schoolwork due to the harassment, intimidation, or bullying. A district may offer tutoring and academic support to the victim.<sup>16</sup>

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

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

<sup>13</sup> R.C. 3313.669(H).

<sup>14</sup> R.C. 3313.669(H), second paragraph.

<sup>15</sup> R.C. 3313.669(J)(1).

<sup>16</sup> R.C. 3313.669(J)(2).



### **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>17</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, felonious assault, aggravated assault, conveyance or possession of a deadly weapon at school, and certain sex offenses.<sup>18</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. The State Board is also required to review the model policy and best practices at least once every four years, and update them as necessary based on the review.<sup>19</sup>

### **Investigation of employees required**

The bill requires the superintendent or the superintendent's designee, or an equivalent officer, to investigate any report of harassment, intimidation, or bullying by an administrator, employee, faculty member, teacher, consultant, or volunteer of a school district or school against a student. After the investigation, the superintendent, superintendent designee, or equivalent officer, must determine the proper course of action pursuant to current law.<sup>20</sup>

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

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<sup>17</sup> R.C. 3313.669(L).

<sup>18</sup> R.C. 3301.121 and 3313.662, neither in the bill.

<sup>19</sup> R.C. 3301.22.

<sup>20</sup> R.C. 3319.318(A).





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>21</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>22</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>23</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>24</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>25</sup>

(5) Requires the policy to be updated to include hazing;<sup>26</sup>

(6) Requires the policy to apply to grades kindergarten through twelve.<sup>27</sup>

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<sup>21</sup> R.C. 3319.318(B).

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

<sup>23</sup> R.C. 3313.666(B)(5).

<sup>24</sup> R.C. 3313.666(B)(10).

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

<sup>26</sup> R.C. 3313.666(H).

<sup>27</sup> R.C. 3313.666(B).



The bill also expands the definition of "harassment, intimidation, or bullying" that applies to public primary and secondary schools to prohibit harassment, intimidation, or bullying against administrators, employees, faculty members, teachers, consultants, and volunteers of the district or school (in addition to students) and to include hazing.<sup>28</sup>

### **Web posting of suspension and expulsion and locker room 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>29</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>30</sup>

The bill 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>31</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>32</sup>

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<sup>28</sup> R.C. 3313.666(A).

<sup>29</sup> R.C. 3313.661(A), third paragraph, and (C).

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

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

<sup>32</sup> R.C. 2903.31(D).



## **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.

The bill 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>33</sup>

Violation of either prohibition is a fourth degree felony.<sup>34</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>35</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>36</sup>

## **Background on expulsion and suspension policies in public K-12 schools**

Current law provides some mechanisms for removing students from a public school for disciplinary reasons, including suspension, expulsion, reassignment, emergency removal, and permanent exclusion. Each school district, community school, and STEM school must adopt a code of conduct for the district or school and policies for the enforcement of that code.<sup>37</sup> A student that is subject to suspension, expulsion, or

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<sup>33</sup> R.C. 2903.31(C).

<sup>34</sup> R.C. 2903.31(D).

<sup>35</sup> R.C. 3345.19(A).

<sup>36</sup> R.C. 3345.19(B)(1).

<sup>37</sup> R.C. 3313.66 and 3313.661.



permanent exclusion is entitled to specific due process procedures *prior* to imposition of the discipline, as well as an appeals process. However, in the case of emergency removal, which is temporary in nature, the student is entitled to due process following the imposition of the disciplinary action.

The district superintendent or school principal may "suspend" a student for up to ten school days for minor violations of the district's or school's code of conduct.<sup>38</sup> The superintendent (and not a principal) may also "expel" a student for up to the greater of 80 school days or the remainder of the school term for more serious violations of that code.<sup>39</sup> In addition, the superintendent must expel a student for one full year for *carrying* a firearm to school and, depending upon board policy, may expel a student for one full year for possessing a firearm or knife at school or a school-sponsored activity, for causing serious physical harm to persons or property at school or a school-sponsored activity, or making a bomb threat to a school or school-sponsored activity.<sup>40</sup>

The law also provides for due process procedures that must be followed in the case of these disciplinary actions. In general, suspensions and expulsions require prior notice to the student and the student's parent and an opportunity for the student to explain the student's actions. Suspensions and expulsions may be appealed to the district board of education, and, if applicable, the court of common pleas.<sup>41</sup>

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## HISTORY

ACTION	DATE
Introduced	09-26-17
Reported, H. Education & Career Readiness	03-15-18
Passed House (69-27)	04-11-18

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<sup>38</sup> R.C. 3313.66(A).

<sup>39</sup> R.C. 3313.66(B)(1).

<sup>40</sup> R.C. 3313.66(B)(2) to (5).

<sup>41</sup> R.C. 3313.66(D) and (E).

