



OHIO LEGISLATIVE SERVICE COMMISSION

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Fiscal Note & Local Impact Statement

Bill: H.B. 360 of the 132nd G.A.

Status: As Passed by the House

Sponsor: Rep. Greenspan

Local Impact Statement Procedure Required: Yes

Subject: Disciplinary policies and procedures for bullying and hazing at public schools and colleges

State Fiscal Highlights

- The bill's penalty enhancements for hazing may result in a small number of additional offenders sentenced to a state prison or juvenile correctional facility. The fiscal effect would be no more than a minimal annual increase in the GRF institutional operating expenses of the departments of Rehabilitation and Correction and Youth Services.

Local Fiscal Highlights

- The bill generally requires public districts and schools to issue in-school suspensions to and, for certain subsequent offenses, expel students for harassment, intimidation, or bullying. The bill, therefore, may shift more students into an educational setting at the school during the period of a suspension. This may lead to an increase in costs associated with in-school suspension instruction or monitoring, depending on the rates and method of discipline in each district or school.
- The bill permits public districts and schools to offer counseling and academic support to students suspended or expelled for harassment, intimidation, or bullying and to the victims of such offenses and to develop community service plans or impose appropriate additional measures for the disciplined students, potentially increasing costs for those that opt to do so.
- The bill may increase the administrative duties of public districts and schools to update policies and procedures regarding harassment, intimidation, or bullying.
- The bill's changes to the criminal offense of hazing may have a minimal net annual fiscal effect on local criminal and juvenile justice systems. A relatively small number of new cases requiring adjudication may arise or shift subject matter jurisdictions. The result may be a small increase or decrease in the annual operating costs and revenues generated by these systems.

Detailed Fiscal Analysis

Overview

The bill changes the laws governing school disciplinary policies and procedures with respect to harassment, intimidation, and bullying at public schools and colleges. Notably, the bill generally requires public districts and schools to issue an in-school suspension to a student for harassment, intimidation, and bullying for first and second offenses, unless an out-of-school suspension or expulsion is determined to be more appropriate, and then suspend or expel the student for a third such offense in the same school year. It also requires public districts and schools to update policies prohibiting such behavior, including hazing, toward district personnel, consultants, volunteers, and teachers.

In addition, the bill permits public districts and schools to offer or coordinate counseling or intervention services and offer tutoring and academic support for both the individual suspended or expelled and for the victim of the offense and to develop community service plans or impose appropriate additional measures for students suspended or expelled under the bill. The bill also requires state institutions of higher education to adopt a policy regarding harassment, intimidation, and bullying and modifies and enhances the criminal penalty for hazing. The fiscal implications of these provisions are discussed below.

School discipline for harassment, intimidation, or bullying

In general, continuing law permits public districts and schools to suspend students from school for up to ten school days and, subject to certain exceptions, expel students for up to 80 school days for violations of the district's or school's code of conduct. Continuing law generally provides district boards of education and school governing authorities with discretion in determining the types of misconduct for which a student may be suspended, expelled, or removed from school, though the board or governing authority must adopt a policy that specifies the district or school's guidelines.

Suspension and expulsion under the bill

The bill requires each school district and community or STEM school to modify its discipline policy to generally require that its superintendent or chief administrator impose a tiered system of sanctions on a student that has committed the offense of harassment, intimidation, or bullying, as illustrated in Table 1 below.

| Table 1. Proposed Tiered Sanctions for Harassment, Intimidation, or Bullying | | |
|---|----------------------------|-----------------|
| Offense Frequency | Type of Discipline* | Duration |
| First offense during a school year | In-school suspension | Up to 10 days |
| Second offense in the same school year | In-school suspension | Up to 30 days |
| Third offense in the same school year | Suspension or expulsion | Up to 182 days |

*For a first offense or second offense in the same school year, the bill permits a district or school to impose an out-of-school suspension or expulsion if it determines it is more appropriate. The bill also permits a school administrator to petition the district board to approve an alternative form of discipline for the student in lieu of suspension or expulsion under certain conditions.

If there are fewer days remaining in the school year than the number of days for which the student is suspended or expelled, the superintendent must apply the remaining part of the period of the suspension or expulsion to the following school year. These provisions of the bill do not apply to students in grades kindergarten through three and students with a developmental disability. A district or school's authority under continuing law to discipline such students still applies.

School responsibilities and optional activities

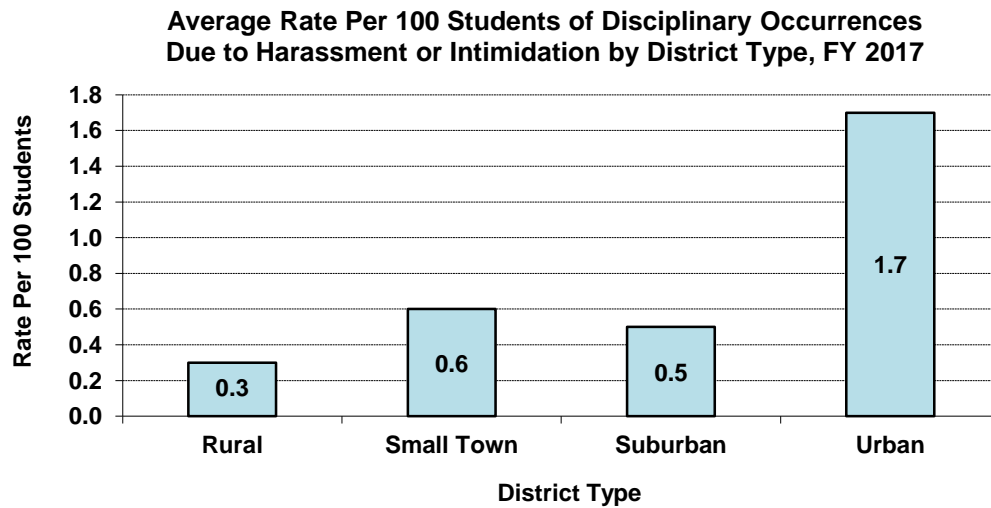
During a student's suspension or expulsion, the bill requires a district or school to (1) permit the student to complete all missed school work (the district or school may, but is not required to, offer tutoring and academic support to the student for this purpose), (2) permit the student to take any required state assessments in the student's regular school setting, and (3) prohibit the student from participating in any extracurricular activities. The bill also permits a district or school to provide counseling or intervention services for the disciplined student as long as the student's parent, guardian, or custodian gives permission (however, if the district or school does not offer counseling, the district or school may coordinate with community organizations that can provide counseling and help identify counseling resources). The district may also offer counseling services and academic support to the victim of the offense, but the victim is not required to participate. The student who is suspended or expelled must complete all missed schoolwork, as determined by the superintendent, before returning to school, or make sufficient progress towards completing that requirement. In addition, students suspended or expelled under the bill may be required to complete community service according to a plan developed by the student's district or school or other additional measures determined appropriate by the district board of education.

Fiscal effects

As a point of reference, public districts and schools reported a statewide total of 17,026 occurrences of discipline for harassment or intimidation for the 2016-2017 school year (i.e., FY 2017) to the Ohio Department of Education (ODE). Table 2 below displays the number and percentage of the various disciplinary actions by public districts and schools for harassment or intimidation that year.

| Table 2. Discipline Imposed by Public Districts and Schools for Harassment or Intimidation, 2016-2017 School Year | | |
|--|--------------------|-------------------|
| Discipline Imposed | Occurrences | Percentage |
| Out-of-school Suspension | 10,952 | 64.3% |
| In-school Suspension | 3,939 | 23.1% |
| In-school Alternative Discipline | 1,125 | 6.6% |
| Emergency Removal | 820 | 4.8% |
| Expulsion | 190 | 1.1% |
| TOTAL | 17,026 | 100% |

In the majority (10,952 or 64.3%) of reported cases, intimidation or harassment resulted in an out-of-school suspension. A further 3,939 (23.1%) of cases involved an in-school suspension, where a student attends school but is assigned a special placement that allows the student to do school work. Districts and schools reported 1,125 (6.6%) cases where a student was assigned an in-school alternative discipline, in which a student attends a special class, program, or building that specifically addresses the behavior that resulted in discipline. In 820 (4.8%) cases, a student was removed from curricular activities or from school premises because the student's presence posed a continuing danger to persons or property or an ongoing threat of disrupting the academic process. A subsequent hearing determined if the student was to be suspended, expelled, or reinstated to school. Very few (190 or 1.1%) cases involved expulsion. In general, the frequency of the problem varies across the state. See the chart below, which illustrates, by district type, the average rate per 100 students of disciplinary occurrences due to harassment or intimidation reported by school districts to ODE for FY 2017.¹ Urban districts tended to have the highest rates of discipline, averaging 1.7 occurrences per 100 students, while other district types average between 0.3 and 0.6 occurrences per 100 students.



In-school suspension instruction or monitoring

As indicated in Table 2, public districts and schools currently tend to impose out-of-school suspensions for students disciplined for harassment or intimidation. The bill, however, requires an in-school suspension for the first two offenses within a school year unless the district or school determines an out-of-school suspension or expulsion is more appropriate. As a result, the bill may shift more students into an educational setting at the school during the period of a suspension, which may lead to an increase in costs associated with in-school suspension instruction or monitoring. For many districts

¹ When a district or school reports less than ten cases of discipline in a particular category, ODE masks the data to protect student privacy. The data for such districts is not reflected in the chart.

and schools, it appears that this provision may cost only a minimal amount, as the rate of occurrence is relatively low. However, for urban districts in particular, where the rates of discipline tend to be higher, there could be a significant cost to comply with the bill. The cost to districts and schools would depend on the number of students disciplined and the method of discipline. It is possible some districts or schools may find it necessary to hire additional staff to comply with the bill. If so, the statewide average salary of a teacher in Ohio was about \$58,000 in FY 2017 while that for a teaching aide was about \$19,700. Assuming that fringe benefit costs amount to about 39% of salary, the total payroll costs for each new position would be about \$82,000 and \$27,400, respectively.

Optional services and activities

Public districts and schools may incur additional costs if they opt to provide or coordinate counseling and provide tutoring and academic support to (1) students who would have been suspended anyway under a district's current disciplinary policies, (2) students that the district would newly suspend or expel under the bill's requirement, and (3) victims of harassment, intimidation, and bullying that agree to receive the offered services. They may also incur additional costs if they opt to require community service or impose other measures for students disciplined under the bill. Additional details are provided below.

Counseling. According to the American School Counselor Association (ASCA), school counselors may appropriately provide counseling to students who have disciplinary problems. Thus, it seems reasonable to assume that school counselors could provide counseling to suspended or expelled students or the victims of those students opting for it. Most school districts have at least one counselor on staff. However, the provision of these services would be likely to increase staff workload for the districts and schools opting to offer it. On a statewide basis, counselor workload already exceeds ASCA's recommended ratio of one school counselor per 250 students. ODE data indicate that traditional districts employed one counselor for every 451 students in FY 2017. If a district opts to hire additional staff, each additional full-time school counselor position would cost approximately \$85,991 annually, based on the statewide average salary of counselors reported by school districts in FY 2017 (\$61,864) and assuming 39% of salary for fringe benefit costs. Alternatively, districts and schools may partner with community organizations to identify counseling resources and to provide services routinely performed by school counselors, the cost of which would depend on the particulars of the arrangement.

Tutoring and academic support. If a district or school decides to offer tutoring and academic support services during a student's suspension or expulsion or to a victim and the district or school elects to provide a tutor, the minimum cost would be about \$150 per week but would vary based on a district or school's hourly tutoring rate, according to the Buckeye Association of School Administrators (BASA). For example, if a student were suspended for a full ten school days on a first offense, the cost for that

student could be \$300 and if that student were suspended for a full 30 days on the second offense, the cost for that student could be an additional \$900. If a student were to commit a third offense within the same school year and be expelled for the maximum 182 school days (about 36 weeks), the cost would be an additional \$5,400.

Community service. Under continuing law, public districts and schools may develop a program and guidelines to require students to perform community service in conjunction with a suspension or expulsion. The bill also specifically permits a district or school to require a student that is suspended or expelled for harassment, intimidation, or bullying to perform community service during the term of the discipline. If the child's district or school opts to require community service in these cases, it must develop a community service plan that includes specific goals and timelines under which the student must perform community service during the term determined by the district or school. The development of these plans may increase the administrative costs for public districts and schools that choose to require community service. The extent of any increase will depend on the number of disciplinary occurrences and the manner in which the plans are implemented.

District policies prohibiting harassment, intimidation, or bullying

In addition, the bill may increase the administrative duties of public districts and schools to update their policies and procedures regarding harassment, intimidation, or bullying. Current law requires public districts and schools to establish policies that prohibit harassment, intimidation, or bullying of other students and specify procedures for school personnel in reporting, documenting, responding to, and investigating incidents, including disciplinary procedures for any student guilty of that behavior. The bill requires public districts and schools to update these policies to also (1) prohibit harassment, intimidation, or bullying of school administrators, employees, faculty members, teachers, consultants, or volunteers, (2) define harassment, intimidation, or bullying to include hazing, (3) require maintenance of a record for each incident under the policy verifying that the custodial parent or guardian was notified of an incident, (4) 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, and (5) require school boards to review the policy at least once every three years, updating it as necessary based on the review.

State Board of Education model policy and best practices

Under continuing law, the State Board of Education must develop a model policy to prohibit harassment, intimidation, or bullying in order to assist school districts in developing their own policies.² The bill may increase the administrative costs of the

² The State Board's model policy is available online at <https://saferschools.ohio.gov/content/anti-harassment-intimidation-and-bullying-model-policy>.

State Board and ODE by also requiring the State Board to provide each school district with evidence-based best practices regarding policies to prohibit that behavior and to review the model policy and best practices at least once every four years and update them as necessary based on the review.

Criminal penalty for hazing

The bill modifies the definition of hazing and enhances the criminal penalty for those that commit this offense. Under current law, hazing is any act of *initiation* into any student or other organization that creates substantial risk of causing mental or physical harm to any person, including coercing another, including the victim, to do any such act. The bill broadens the definition of hazing to include any act to *continue or reinstate* membership in or affiliation with any student or other organization that creates substantial risk of causing mental or physical harm to any person. Current law prohibits a person from recklessly participating in the hazing of another and prohibits administrators, employees, or faculty members of public or private educational institutions from recklessly permitting the hazing of any person. In addition to modifying the definition of hazing, the bill expands the current law prohibition against recklessly permitting hazing by including in the provision teachers, consultants, alumni, and volunteers of an educational institution and administrators, employees, faculty members, teachers, consultants, alumni, and volunteers of any other organization.

The bill increases the penalty for reckless hazing from a misdemeanor of the fourth degree to a misdemeanor of the second degree. However, the bill also creates a new distinction for knowingly participating in or permitting hazing that causes serious physical harm with a still stiffer penalty, a felony of the fourth degree. Table 3 below summarizes the maximum penalties available to sentencing authorities for hazing crimes under current law and the bill.

| Table 3. Comparison of Maximum Fines and Sentences for Hazing | | |
|---|---|--|
| Offense | Current Law | Proposed |
| Recklessly participating in or recklessly permitting the hazing of another person | 4th degree misdemeanor: Fine of up to \$250 Jail stay of up to 30 days | 2nd degree misdemeanor: Fine of up to \$750 Jail stay of up to 90 days |
| Knowingly participating in or knowingly permitting hazing that causes serious physical harm (new distinction in the bill) | | 4th degree felony: Fine of up to \$5,000 Prison term of up to 18 months |

By expanding the definition of hazing offenses, certain conduct that may be more difficult to prosecute under current law will become somewhat easier to prosecute. As a result, the bill may lead to additional cases for criminal justice systems to prosecute and adjudicate. In addition, some individuals may face more severe sanctions for hazing offenses. Since no statewide tabulation of hazing charges is readily available, it is problematic to precisely estimate the number of these cases that could be elevated from a fourth degree misdemeanor to either a second degree misdemeanor or a fourth degree

felony or how many additional cases may be created in Ohio courts. For informational purposes, LSC fiscal staff reviewed charge data available from the Franklin County Municipal Court and the Montgomery County Clerk of Courts. There were no hazing charges filed in either jurisdiction in 2015 or 2016. However, an Internet search reveals isolated cases of criminal hazing charges filed elsewhere in the state in recent years. Thus, it appears that the filing of hazing charges appears to be a relatively infrequent event, making it unlikely that the bill will create many additional criminal or juvenile delinquency cases.

Local fiscal effects

The bill's penalty enhancements and the possibility of additional cases may increase the annual costs that a municipal court, court of common pleas, or county court incurs in processing cases, as it may extend the time and effort required to prosecute, defend, and adjudicate them. Some of the additional cost could be offset with additional court cost and fine revenues. Also, cases of a person knowingly participating in or permitting hazing that cause serious physical harm will be elevated out of the misdemeanor subject matter jurisdiction of a municipal court or a county court and into the felony subject matter jurisdiction of a court of common pleas. Thus, elevating such cases could simultaneously: (1) increase county criminal justice system expenditures related to investigating, prosecuting, adjudicating, defending (if the offender is indigent), and sanctioning certain offenders, while decreasing analogous municipal criminal justice system expenditures, and (2) generate additional court cost and fine revenues for counties, while causing a loss in analogous municipal court cost and fine revenues. Since there are likely to be relatively few cases affected by the bill, any associated fiscal effects are likely to be minimal.

State fiscal effects

As a result of the bill's penalty changes, additional offenders could be sentenced to a state prison or juvenile correctional facility. The annual incarceration costs for the Department of Rehabilitation and Correction (DRC) are likely to be no more than minimal. This is because a relatively small increase in an existing prison population of 50,000-plus does not generate a significant increase in DRC's annual GRF-funded incarceration expenditures. Although DRC's annual cost per inmate currently averages \$26,365, the marginal cost of adding a relatively small number of additional offenders to that population is lower, between \$3,000 and \$4,000 per offender per year.

The Department of Youth Services' (DYS) average daily population in FY 2017 was 494. The marginal cost to add a juvenile to that population is around \$30 per day, or about \$10,000 or so per year. This suggests that adding a relatively small number of juveniles to that population in any given year will result in no more than a minimal increase in DYS's annual institutional care and custody costs.

A few additional felony and misdemeanor convictions stemming from the bill may generate a negligible annual amount of state court cost revenue that is collected locally and forwarded for deposit to the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020). State court costs for a felony total \$60, of which Fund 5DY0 receives \$30 and Fund 4020 receives \$30. Such costs for a misdemeanor total \$29, of which Fund 5DY0 receives \$20 and Fund 4020 receives \$9.

State institutions of higher education

The bill requires state institutions of higher education to adopt a policy regarding harassment, intimidation, or bullying and hazing. The policy must include penalties for such behavior, including sanctions, fines, the withholding of a diploma or transcript, probation, suspension, and expulsion. It appears that most state institutions have policies in place that are similar to the policy required in the bill. Those state institutions of higher education that have not adopted a policy that meets the bill's requirements may incur some administrative costs to put such a policy in place and to enforce it.