

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – This bill places a mandate on local school districts to implement rules prohibiting discrimination and harassment.

Promote personal responsibility – This bill encourages lawsuits based on perceived grievances.

B. EFFECT OF PROPOSED CHANGES:

Background

Current law directs district school boards to provide policies relating to student discipline and school safety¹. The policies are required to address several issues, including:

- Prohibition against student possession of a firearm or weapon while on school property or in attendance at a school function, which may also result in criminal prosecution.
- A code of conduct that explains the responsibilities and rights of students with regard to respect for persons and property.
- Notice that violence against any district school board personnel is subject to disciplinary action.
- Notice that violation of the sexual harassment policy is subject to disciplinary action.
- Policies to be followed for assignment of violent or disruptive students to alternative programs.

Within the requirements established by s. 1006.07, F.S., school districts have the flexibility to establish their own codes of conduct and disciplinary policies.

The Florida Educational Equity Act² currently prohibits discrimination against a student or employee in the state system of public K-20 education. Discrimination is also governed by federal civil rights code. Under the Florida Educational Equity Act, discrimination is prohibited on the basis of race, ethnicity, national origin, gender, disability, or marital status.

Most districts have established policies that cover violence, harassment, and discrimination. The School Environmental Safety Incident Reporting system collects data on 21 types of incidents of crime, violence, and disruptive behaviors that occur on school grounds, on school transportation, and at off-campus, school-sponsored events. Data on harassment incidents (both threat/intimidation and sexual harassment) show that such incidents have declined from 4.87 incidents per 1,000 students in 2001-02 to 3.75 incidents per 1,000 students in 2003-04.³

Prohibitions against Harassment, Discrimination, or Violence

The bill establishes the Student Safety and Campus Violence Prevention Act (the Act), which prohibits harassment and discrimination in specified school settings and requires districts to adopt policies which adhere to specific minimum requirements.

The bill prohibits harassment, discrimination, or violence against any student or school employee, or the possession of a lethal weapon by any student or school employee in the following settings:

- During the conduct of any education program or activity by any educational institution that receives or benefits from state or federal financial assistance, and

¹ Section 1006.07, F.S.

² Section 1000.05, F.S.

³ Florida Department of Education. SESIR and Discipline Data Statewide and by School District, 2003-2004 Report. Available at <http://www.firn.edu/doe/besss/sesir/sesir0304.htm>

- On any school bus traveling to or from a school or a school-related or school-sponsored program or activity.

It is unclear whether the requirement that the prohibition apply to any institution that receives or benefits from state or federal financial assistance would make it applicable to any nonpublic school that serves students attending on vouchers, on corporate tax credit scholarships, or under the Voluntary Prekindergarten Education Program.

It appears that the bill would prohibit any school safety officer who is an employee of the school district from carrying a “lethal weapon” at a school. “Lethal weapon” is not defined in the bill or elsewhere in statute. Section 1006.12, F.S. expressly authorizes school safety officers to carry weapons when performing official duties.

The bill prohibits harassment and discrimination that can include, but is not limited to, that which is reasonably perceived as being motivated by the actual or perceived characteristics of disability, sex, gender, or any of the characteristics listed under the Hate Crimes Reporting Act⁴, which include race, religion, ethnicity, color, ancestry, sexual orientation, or national origin. Prohibited conduct also includes retaliation against a student for asserting or alleging a violation.

The categories covered in the bill that are not currently categories of prohibited discrimination or related terms under the Florida Educational Equity Act are religion and sexual orientation. Many districts already address these characteristics in their district policies on harassment and discrimination.

The bill defines harassment as any gesture or written, verbal, or physical act that is reasonably perceived as being motivated by any actual or perceived characteristic listed in the Hate Crimes Reporting Act, and that:

- Places a student in reasonable fear of harm to his or 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 the school.

The bill prohibits harassment and discrimination that includes, but need not be limited to, conduct reasonably perceived to be motivated by certain characteristics. However the bill defines harassment to specifically include only conduct which is reasonably perceived as being motivated by certain characteristics, and further limits the characteristics to only those listed in the Hate Crimes Reporting Act. The definition of harassment excludes conduct motivated by disability, sex or gender as well as conduct that may not be motivated by a specific characteristic.

The effect is that violence and discrimination may be prohibited regardless of motivation, but would include motivation based on the characteristics of disability, sex or gender, while harassment as defined must include a reasonable perception of motivation based on specified characteristics which do not include disability, sex or gender. Policies to prohibit such conduct or behavior may therefore be confusing for students, parents, and school employees.

The bill provides that the Act does not:

- Preclude the student’s taking any other appropriate action provided by law;
- Limit rights or responsibilities provided under any other provision of law; or
- Limit the rights afforded to all persons by the United States Constitution or the State Constitution.

⁴ Section 877.19, F.S.

School Board and Educational Institution Policies

The bill requires each local school district, by August 1, 2005, to adopt a policy prohibiting discrimination and harassment on school property, at a school-sponsored function, or on a school bus. The district is required to invite community input.

The bill specifies ten minimum requirements for the policy:

- A statement prohibiting discrimination and harassment.
- A definition of harassment that must be no less inclusive than the definition in the Act.
- A description of the type of behavior expected from each student and school employee.
- The consequences and appropriate remedial action for a person who commits an act of discrimination or harassment.
- A procedure for reporting an act of discrimination or harassment, including a provision that allows anonymous reporting. However, formal disciplinary action may not be based solely on an anonymous report.
- A procedure for the prompt investigation of reports of serious violations and complaints.
- The range of ways in which a school will respond after an incident is confirmed.
- A statement that prohibits reprisals or retaliation against any person who reports an act of discrimination or harassment, with appropriate consequences and remedial action.
- The consequences and appropriate remedial action for a person found to have falsely accused another.
- A statement of how the policy is to be publicized, including notice that the policy applies to participation in school-sponsored functions.

The bill requires the State Board of Education to adopt model policies to assist school districts. The bill also requires that local school districts must provide notice of their adopted policies in any school district publication that sets forth the comprehensive rules, procedures, and standards of conduct, and in any student or school employee handbook.

All educational institutions covered under the Act, which includes any school who receives or benefits from state or federal financial assistance, must develop and implement methods and strategies for training personnel on identifying, preventing, and responding to all forms of harassment, discrimination, and violence as defined in this section.

Remedies Outside the School Setting

The bill provides that the Act does not prohibit a victim from seeking redress under any other available law, civil or criminal.

The bill requires the school to advise a person who has filed a complaint with the school of civil law remedies, including but not limited to injunctions, restraining orders or other remedies or orders that may be available. The bill requires that the school make this information available by publication in appropriate informational materials.

The bill does not specify that the complaint must be verified prior to the school being required to advise the person filing the complaint of civil remedies available. School personnel do not have the expertise to provide advice to persons filing complaints on civil remedies that may be available for their specific situations. It is unclear whether the provision of published materials are sufficient to fill the requirement that the person filing the complaint "be advised" by the school.

The bill provides that the Act does not require an exhaustion of the administrative complaint process before civil law remedies may be pursued.

The bill provides that a school employee or volunteer who promptly reports an incident of discrimination or harassment who makes the report in compliance with the procedures set forth in the district's policy is immune from a cause of action for damages arising out of any failure to remedy the report incident.

The bill does not define "promptly." School personnel who do not meet the undefined standard of promptness, or who in some way make a report that does not exactly comply with the procedures set forth in the district's policy would be potentially subject to liability under this provision.

C. SECTION DIRECTORY:

Section 1. Creates an unnumbered section of law, the "Student Safety and Campus Violence Prevention Act," to require each school district to adopt a policy prohibiting discrimination and harassment in specified locations and activities, to provide minimum requirements for the policy, to require the State Board of Education to issue model policies and to require educational institutions to instruct personnel in responding to discrimination and harassment.

Section 2. Provides for severability.

Section 3. Provides an effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not appear to have a fiscal impact on state government revenues.

2. Expenditures:

Please see FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

Please see FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a fiscal impact on the private sector.

D. FISCAL COMMENTS:

School districts may incur costs in revising their discrimination and harassment policies to meet the requirements of the bill, and in providing the required training to teachers, school administrators, and counseling staff.

While indeterminate, the major fiscal impact of the bill would be the increase in litigation expenses due to the lawsuits that appear to be encouraged by the bill.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a municipality or county to spend funds or to take any action requiring the expenditure of funds

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill includes the provision that the section does not "limit rights or responsibilities provided under any other provision of law" twice, once in subsection (4) and once in subsection (6)(b).

The language regarding when and where the prohibition of harassment applies is inconsistent between subsection (3), which establishes the prohibition, and subsection (7), which requires school districts to adopt certain policies. Subsection (3) applies the prohibition "during the conduct of any education program or activity... as well as on any school bus traveling to or from a school or a school-related or school-sponsored program or activity." Subsection (7) requires the districts to adopt policies prohibiting harassment "on school property, at a school-sponsored function, or on a school bus."

Subsection (9) requires the State Board of Education to develop model policies by a "no later than" date, but does not specify the date.

Subsection (12)(c) provides for immunity from a cause of action for an employee or volunteer who promptly reports an incident to the appropriate school designated by the local school district's policy. The intent is most likely that the employee or volunteer must promptly report an incident to the appropriate school official designated by the local school district's policy.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES