

2019 Regular Session

SENATE BILL NO. 120

BY SENATOR MILKOVICH

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

SCHOOLS. Provides relative to bullying. (gov sig)

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AN ACT

To amend and reenact R.S. 17:416.13(D)(2)(a), (c), and (d), and (3)(f)(i), to enact R.S. 17:416.13(I) and (J), and to repeal R.S. 17:416.13(D)(3)(d)(iii), relative to student behavior and conduct; to provide relative to bullying; to provide relative to required reporting of incidences of bullying; to provide relative to record keeping; to provide relative to permitted actions by school employees to prevent bullying; to provide relative to protection of school employees from retaliation; to provide relative to parental notification; to provide relative to parental relief; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 17:416.13(D)(2)(a), (c), and (d), and (3)(f)(i) are hereby amended and reenacted and R.S. 17:416.13(I) and (J) are hereby enacted to read as follows:

§416.13. Student code of conduct; requirement; bullying; prohibition; notice; reporting; accountability

* * *

D. The State Board of Elementary and Secondary Education, in collaboration with the state Department of Education, shall develop and adopt rules and

1 regulations to implement the provisions of this Section relative to the procedures and
 2 processes to be used to report and investigate bullying and which shall include but
 3 not be limited to:

4 * * *

5 (2) Reporting. (a)(i) The governing authority of each public elementary and
 6 secondary school shall develop a procedure for the reporting of incidents of bullying.
 7 This shall include a form for the purposes of bullying reports. The form shall include
 8 an affirmation of truth of statement. Any bullying report submitted regardless of
 9 recipient shall use this form, but additional information may be provided. The form
 10 shall be available on the Department of Education's website. **The public school**
 11 **governing authority shall retain a copy of each bullying report received for at**
 12 **least four years.**

13 **(ii) Within twenty-four hours of receipt, the governing authority of each**
 14 **public elementary and secondary school shall provide a copy of each bullying**
 15 **report wherein a witness reports that the bullying behavior exhibited posed an**
 16 **imminent risk of harm to another person to the appropriate law enforcement**
 17 **agency.**

18 **(iii) Within forty-eight hours of receipt, the governing authority of each**
 19 **public elementary and secondary school shall:**

20 **(aa) Provide a copy of each bullying report received to the victim's**
 21 **parent.**

22 **(bb) Provide a copy of the second and any subsequent report of bullying**
 23 **involving the same student to the appropriate law enforcement agency.**

24 * * *

25 (c) School personnel. (i) Any teacher, counselor, bus driver, or other school
 26 employee, whether full or part time, and any parent chaperoning or supervising a
 27 school function or activity, who witnesses bullying or who learns of bullying from
 28 a student pursuant to Subparagraph (b) of this Paragraph, shall report the incident to
 29 a school official. A verbal report shall be submitted by the school employee or the

1 parent on the same day as the employee or parent witnessed or otherwise learned of
2 the bullying incident and a written report shall be filed no later than two days
3 thereafter.

4 **(ii) A school employee who witnesses an incident of bullying may take all**
5 **steps deemed necessary to stop the behavior, including reasonable force,**
6 **physical restraint, or removal of the offending student from the school grounds,**
7 **provided the force used is proportional to the level of perceived risk.**

8 **(iii) A school official may contact law enforcement and have the student**
9 **exhibiting bullying behavior immediately removed from the school grounds, if**
10 **he believes the student's behavior poses an imminent risk of harm to another**
11 **person.**

12 (d) Retaliation. **(i)** Retaliation against any person who reports bullying in
13 good faith, who is thought to have reported bullying, who files a complaint, or who
14 otherwise participates in an investigation or inquiry concerning allegations of
15 bullying is prohibited conduct and subject to discipline. School and district resources
16 shall not be used to prohibit or dissuade any person who meets the specifications of
17 this Subparagraph.

18 **(ii) No school employee shall be discharged, demoted, suspended,**
19 **threatened, harassed, or discriminated against in any manner in the terms and**
20 **conditions of his employment because of any lawful act engaged in by the**
21 **employee in furtherance of any required or authorized action taken pursuant**
22 **to this Section. Such employee may seek any and all relief to which he is entitled**
23 **under state or federal law.**

24 **(iii) No school employee shall be threatened, harassed, or discriminated**
25 **against in any manner by a business organization, government agency, or other**
26 **person because of any lawful act engaged in by the employee or on behalf of the**
27 **employee in furtherance of any required or authorized action taken pursuant**
28 **to this Section. Such employee may seek any and all relief for his injury to**
29 **which he is entitled under state or federal law.**

* * *

(3) Investigation Procedure. The State Board of Elementary and Secondary Education shall develop and adopt a procedure for the investigation of reports of bullying of a student by another student. The procedure shall include the following:

* * *

(f) Parental Relief. (i) If a parent, legal guardian, teacher, or other school official has made four or more reports of separate instances of bullying, as provided in Paragraph (2) of this Subsection, and no investigation pursuant to Paragraph (3) of this Subsection has occurred, **or a determination has been made in accordance with the provisions of this Section that a student has been the victim of bullying,** the parent or legal guardian with responsibility for decisions regarding the education of the victim about whom the report or reports have been made may exercise an ~~option to have the student enroll in or attend another school operated by the governing authority of the public elementary or secondary school in which the student was enrolled on the dates when at least three of the reports were submitted.~~ **one of the following two options:**

(aa) Have the student who was determined to be the victim of an act of bullying transferred to another school operated by the governing authority of the public elementary or secondary school in which the student was enrolled when the documented incident of bullying occurred.

(bb) Have the student who was determined to have committed the act of bullying transferred to another school operated by the governing authority of the public elementary or secondary school in which the student was enrolled when the documented incident of bullying occurred.

* * *

I.(1) No cause of action shall exist against any school employee who in good faith makes a report, cooperates or participates in any investigation, or takes any required or authorized action pursuant to the provisions of this Section. Such school employee shall have immunity from civil or criminal

1 **liability that otherwise might be incurred or imposed.**

2 **(2) The immunity provided in Paragraph (1) of this Subsection shall not**
3 **be extended to a school employee if any of the following applies to the employee:**

4 **(a) He takes any action pursuant to this Section that the employee knows**
5 **to be based upon false information.**

6 **(b) He fails to take a required action with regard to a bullying incident.**

7 **(c) He takes any action which constitutes gross negligence or willful and**
8 **wanton misconduct.**

9 **J. The removal of a student from school for bullying shall not be**
10 **considered in itself a final judicial determination of fault or wrongdoing.**

11 Section 2. R.S. 17:416.13(D)(3)(d)(iii) is hereby repealed.

12 Section 3. This Act shall be known and may be cited as the "Haley Danielle Cox and
13 the Katlin Simone Loux Act".

14 Section 4. This Act shall become effective upon signature by the governor or, if not
15 signed by the governor, upon expiration of the time for bills to become law without signature
16 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
17 vetoed by the governor and subsequently approved by the legislature, this Act shall become
18 effective on the day following such approval.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Cheryl Serrett.

DIGEST

SB 120 Original 2019 Regular Session Milkovich

Present law requires each public school governing authority to adopt a code of student conduct which includes any disciplinary action to be taken against a student who violates the code. Further requires that the code of conduct include a policy prohibiting bullying.

Present law defines "bullying" and requires that school employees receive training on how to recognize bullying behaviors and how to appropriately respond and report incidences of bullying.

Present law requires the State Board of Elementary and Secondary Education to adopt rules and regulations relative to the procedures to be used to report and investigate bullying.

Proposed law retains these provisions of present law.

Present law requires each public school governing authority to develop a reporting procedure and forms for reporting incidents of bullying.

Proposed law retains present law and additionally requires school governing authorities to retain a copy of each bullying report received for at least four years.

Proposed law further requires the governing authority of each public elementary and secondary school to provide a copy of each bullying report to the appropriate law enforcement agency, within 24 hours of receipt, wherein a witness reports that the bullying behavior exhibited posed an imminent risk of harm to another person.

Proposed law requires the governing authority of each public elementary and secondary school, within 48 hours of receipt of a bullying report, to provide a copy of such report to the victim's parent and provide a copy of the second and any subsequent report of bullying involving the same student to the appropriate law enforcement agency.

Present law allows students and parents who witness bullying or believe that bullying has occurred to report such to the school. Requires school employees who witness bullying or learn of bullying from a student to report the incident to a school official. Further requires school employees to submit a verbal report the same day the incident was witnessed or otherwise learned of and must submit a written report within two days thereafter.

Proposed law retains present law.

Proposed law authorizes a school employee who witnesses an incident of bullying to take all steps deemed necessary to stop the behavior, including reasonable force, physical restraint, or removing the offending student from the school grounds, provided the force used is proportional to the level of perceived risk.

Proposed law authorizes a school official to contact law enforcement and have the student exhibiting bullying behavior immediately removed from the school grounds, if he believes the student's behavior poses an imminent risk of harm to another person.

Present law prohibits retaliation against any person who reports bullying in good faith, files a complaint, or participates in an investigation or inquiry concerning allegations of bullying.

Proposed law retains present law and further provides that:

- (1) No school employee shall be discharged, demoted, suspended, threatened, harassed, or discriminated against in any manner in the terms and conditions of his employment because of any lawful act engaged in by the employee in furtherance of any required or authorized action taken pursuant to present and proposed law. Further provides that an employee may seek any and all relief to which he is entitled under state or federal law.
- (2) No school employee shall be threatened, harassed, or discriminated against in any manner by a business organization, government agency, or other person because of any lawful act engaged in by the employee or on behalf of the employee in furtherance of any required or authorized action taken pursuant to present or proposed law. Further provides that an employee may seek any and all relief for his injury to which he is entitled under state or federal law.

Present law requires a public school governing authority to notify the student's parent or legal guardian upon receipt of a report of bullying.

Proposed law retains present law.

Present law provides that before any student under the age of 18 is interviewed, his parent or legal guardian must be notified of the allegations made and given the opportunity to attend any interviews conducted with his child as part of an investigation.

Proposed law repeals present law.

Present law provides that after four or more reports of separate incidences of bullying, and no investigation has occurred, the parent or legal guardian of the victim has the option to have the student enroll in or attend another school.

Proposed law modifies present law by providing that the parent or legal guardian of a student who has been the victim of bullying has two options:

- (1) Have the student who was determined to be the victim of an act of bullying transferred to another school operated by the governing authority of the public elementary or secondary school in which the student was enrolled when the documented incident of bullying occurred.
- (2) Have the student who was determined to have committed the act of bullying transferred to another school operated by the governing authority of the public elementary or secondary school in which the student was enrolled when the documented incident of bullying occurred.

Proposed law provides that:

- (1) No cause of action shall exist against any school employee who in good faith makes a report, cooperates, or participates in any investigation, or takes any required or authorized action pursuant to the provisions of present and proposed law. Further provides that such school employee shall have immunity from civil or criminal liability that otherwise might be incurred or imposed.
- (2) Immunity shall not be extended to a school employee who:
 - (a) Takes any action pursuant to present and proposed law that the employee knows to be based upon false information.
 - (b) Fails to take a required action with regard to a bullying incident.
 - (c) Takes any action which constitutes gross negligence or willful and wanton misconduct.

Proposed law provides that the removal of a student from school for bullying shall not be considered in itself a final judicial determination of fault or wrong doing.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 17:416.13(D)(2)(a), (c), and (d), and (3)(f)(i); adds R.S. 17:416.13(I) and (J); repeals R.S. 17:416.13(D)(3)(d)(iii))