**South Carolina General Assembly**

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**H. 3261**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Matthews and S. Williams

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Summary: Safe and Supportive School Environment Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

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12/18/2018 House Referred to Committee on **Education and Public Works**

1/8/2019 House Introduced and read first time ([House Journal‑page 147](file:///h:\hj\20190108.docx))

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3/26/2019 House Committed to Committee on **Judiciary** ([House Journal‑page 32](file:///h:\hj\20190326.docx))

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**VERSIONS OF THIS BILL**

[12/18/2018](file:///p:\pprever\2019-20\3261_20181218.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 8 TO TITLE 59 SO AS TO ENACT THE “SAFE AND SUPPORTIVE SCHOOL ENVIRONMENT ACT”; TO PROVIDE THAT THE POLICY OF THIS STATE IS TO PROVIDE ALL PUBLIC SCHOOL STUDENTS WITH SAFE AND SUPPORTIVE SCHOOL ENVIRONMENTS IN WHICH ALL MEMBERS OF THE SCHOOL COMMUNITY ARE TREATED WITH RESPECT; TO PROVIDE RELATED POLICIES FOR PROHIBITED ACTS OF HARASSMENT BASED ON RACE, COLOR, RELIGION, CREED, NATIONAL ORIGIN, MARITAL STATUS, SEX, SEXUAL ORIENTATION, GENDER IDENTITY, OR DISABILITY; TO PROVIDE RELATED PROCEDURES FOR REPORTING AND INVESTIGATING ALLEGED VIOLATIONS, TO PROVIDE PENALTIES FOR VIOLATIONS, AND TO PROVIDE THE ENFORCEMENT OF THESE PROVISIONS MUST BE CONSISTENT WITH FIRST AMENDMENT RIGHTS UNDER THE UNITED STATES CONSTITUTION; AND TO REPEAL ARTICLE 3, CHAPTER 63, TITLE 59 RELATING TO THE “SAFE SCHOOLS CLIMATE ACT”.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act must be known and may be cited as the “Safe and Supportive School Environment Act”.

SECTION 2. Title 59 of the 1976 Code is amended by adding:

“CHAPTER 8

Safe and Supportive School Environments

Article 1

General Provisions

Section 59‑8‑110. (A) The State of South Carolina is committed to providing all of its public school students with a safe and supportive school environment in which all members of the school community are treated with respect.

(B) It is the policy of this State to prohibit the:

(1) harassment of students based on race, color, religion, creed, national origin, marital status, sex, sexual orientation, gender identity, physical appearance, or disability; and

(2) bullying of students.

(C) Public schools promptly shall address all complaints of harassment and bullying according to the provisions of this chapter, and shall take appropriate action against any person, subject to the jurisdiction of the school, who violates the provisions of this chapter.

(D) No provision of this chapter may be construed to prohibit punishment of a student for conduct that violates one or more of the board’s disciplinary policies or the school’s code of conduct, even if the conduct does not rise to the level of harassment, bullying, or otherwise.

Section 59‑8‑120. For the purposes of this chapter.

(1) ‘Bullying’ means any overt act or combination of acts, including an act conducted by electronic means, directed against a student by another student or group of students and which:

(a) is repeated over time;

(b) is intended to ridicule, humiliate, or intimidate the student; and

(c)(i) occurs during the school day on school property, on a school bus, or at a school‑sponsored activity, or before or after the school day on a school bus or at a school‑sponsored activity; or

(ii) does not occur during the school day on school property, on a school bus or at a school‑sponsored activity and can be shown to pose a clear and substantial interference with another student’s right to access educational programs.

(2) ‘Complaint’ means an oral or written report of information provided by a student or any person to an employee alleging that a student has been subjected to conduct that may rise to the level of harassment or bullying.

(3) ‘Complainant’ means a student who has provided oral or written information about conduct that may rise to the level of harassment or bullying, or a student who is the target of alleged harassment or bullying.

(4) ‘Designated employee’ means an employee who has been designated by the school to receive complaints of harassment and bullying pursuant to the provisions of this or his designee.

(5) ‘Employee’ includes any person employed directly by or retained through a contract with the district, an agent of the school, a school board member, a student teacher, an intern, or a school volunteer. For purposes of this chapter, ‘agent of the school’ includes supervisory union staff.

(6) ‘Equity coordinator’ is the person responsible for implementation of Title IX (regarding sex‑based discrimination) and Title VI (regarding race‑based discrimination) for the district and for coordinating the district’s compliance with Title IX and Title VI in all areas covered by the implementing regulations.

(7) ‘Harassment’ means an incident or incidents of verbal, written, visual, or physical conduct, including any incident conducted by electronic means, based on or motivated by a student’s or a student’s family member’s actual or perceived race, creed, color, national origin, marital status disability, sex, sexual orientation, or gender identity, that has the purpose or effect of objectively and substantially undermining and detracting from or interfering with a student’s educational performance or access to school resources or creating an objectively intimidating hostile, or offensive environment. Harassment includes:

(a) sexual harassment as defined in item (13);

(b) racial harassment as defined in item (15); and

(c) harassment of members of other protected categories as defined in item (8).

(8) ‘Harassment of members of other protected categories’ means conduct directed at the characteristics of a student’s or a student’s family member’s actual or perceived creed, national origin, marital status, disability, sex, sexual orientation, or gender identity and includes the use of epithets, stereotypes, slurs, comments, insults, derogatory remarks, gestures, threats, graffiti, displays, or circulation of written or visual materials, taunts on manner of speech, and negative references to customs related to any of these protected categories.

(9) ‘Notice’ means a written complaint or oral information that harassment or bullying may have occurred which has been provided to a designated employee from another employee, the student allegedly subjected to the harassment or bullying, another student, a parent or guardian, or any other individual who has reasonable cause to believe the alleged conduct may have occurred. If the school learns of possible harassment or bullying through other means, for example, if information about harassment or bullying is received from a third party (such as from a witness to an incident or an anonymous letter or telephone call), different factors will affect the school’s response. These factors include the source and nature of the information; the seriousness of the alleged incident; the specificity of the information; the objectivity and credibility of the source of the report; whether any individuals can be identified who were subjected to the alleged harassment; and whether those individuals want to pursue the matter. In addition, for purposes of violations of federal antidiscrimination laws, notice may occur when an employee of the district, including any individual who a student could reasonably believe has this authority or responsibility, knows or in the exercise of reasonable care should have known about potential unlawful harassment or bullying.

(10) ‘Organization’ means an athletic team, association, corporation, order, society, corps, cooperative, club, or other similar group, whose members primarily are students at an educational institution, and which is affiliated with the educational institution.

(11) ‘Retaliation’ means an adverse action by any person against a person who has filed a complaint of harassment or bullying or against a person who assists or participates in an investigation, proceeding or hearing related to the harassment complaint. Such adverse action may include conduct by a school employee directed at a student in the form of intimidation or reprisal such as diminishment of grades, suspension, expulsion, change in educational conditions, loss of privileges or benefits, or other unwarranted disciplinary action. Retaliation may also include conduct by a student directed at another student in the form of further harassment, intimidation, and reprisal.

(12) ‘School administrator’ means a superintendent, principal or his designee, assistant principal, or the district’s Equity Coordinator.

(13) ‘Sexual harassment’ means:

(a) unwelcome conduct of a sexual nature, that includes sexual violence/sexual assault, sexual advances, requests for sexual favors, and other verbal, written, visual or physical conduct of a sexual nature, and includes situations when one or both of the following occur:

(i) submission to that conduct is made either explicitly or implicitly a term or condition of a student’s education, academic status, or progress; or

(ii) submission to or rejection of such conduct by a student is used as a component of the basis for decisions affecting that student; and

(b) sexual harassment also may include student‑on‑student conduct or conduct of a nonemployee third party that creates a hostile environment. A hostile environment exists where the harassing conduct is severe, persistent or pervasive so as to deny or limit the student’s ability to participate in or benefit from the educational program on the basis of sex.

(14) ‘Student Conduct Form’ is a form used by students, staff, or parents, to provide, in written form, information about inappropriate student behaviors that may constitute harassment or bullying.

(15) ‘Racial harassment’ means conduct directed at the characteristics of a student’s or a student’s family member’s actual or perceived race or color, and includes the use of epithets, stereotypes, racial slurs, comments, insults, derogatory remarks, gestures, threats, graffiti, display, or circulation of written or visual material, and taunts on manner of speech and negative references to cultural customs.

Section 59‑8‑130. A superintendent or his designee shall:

(1) adopt procedures, consistent with the provisions of Section 59‑8‑310 and Section 59‑8‑320, for reporting and investigating incidents of harassment, bullying, or both;

(2) annually select two or more designated employees to receive complaints of bullying, harassment, or both at each school campus and publicize their availability in any publication of the district that sets forth the comprehensive rules, procedures, and standards of conduct for the school;

(3) designate an equity coordinator to oversee all aspects of the implementation of this chapter as it relates to obligations imposed by federal law regarding discrimination; provided this role also may be assigned to any or all of the designated employees;

(4) respond to notifications of possible violations of this chapter in order to promptly and effectively address all complaints of bullying, harassment, or both; and

(5) take action on substantiated complaints and initiate appropriate responses pursuant to Section 59‑8‑150.

Article 3

Reporting and Investigation Procedures

Section 59‑8‑310. (A)(1) A student who believes that he has been harassed, bullied, or both under this chapter, or who witnesses or has knowledge of conduct that he reasonably believes might constitute harassment, bullying, or both should promptly report the conduct to a designated employee or any other school employee.

(2) A school employee who witnesses conduct that he reasonably believes might constitute harassment, bullying, or both immediately shall:

(a) take reasonable action to stop the conduct and to prevent its recurrence; and

(b) report it to a designated employee and immediately complete a Student Conduct Form.

(3) A school employee who overhears or directly receives information about conduct that might constitute harassment, bullying, or both immediately shall report the information to a designated employee and immediately complete a Student Conduct Form. If one of the designated employees is a person alleged to be engaged in the conduct complained of, the incident immediately must be reported to the other designated employee or the school administrator.

(4) Any other person who witnesses conduct that he reasonably believes might constitute harassment, bullying, or both under this chapter promptly should report the conduct to a designated employee.

(B) Designated employees shall document incidents reported pursuant to subsection (A). If the complaint is oral, the designated employee shall promptly reduce the complaint to writing in a Student Conduct Form, including the time, place, and nature of the alleged conduct, the identity of the complainant, alleged perpetrator, and any witnesses. Both the complainant and the alleged perpetrator may present witnesses and other evidence in support of their position.

(C) A person who knowingly makes a false accusation regarding harassment, bullying, or both may be subject to disciplinary action up to and including suspension and expulsion with regard to students, or up to and including discharge with regard to employees. There may be no adverse action taken against a person for reporting a complaint of harassment, bullying, or both when the person has a good faith belief that harassment, bullying, or both occurred or is occurring.

Section 59‑8‑320. (A) Upon notice of information that harassment, bullying, or both may have occurred, the designated employee shall:

(1) promptly reduce any oral information to writing, including the time, place, and nature of the conduct, and the identity of the participants and complainant;

(2) promptly inform the school administrator of the information; and

(3) if the school administrator determines the information alleges conduct which may constitute harassment or bullying, the school administrator shall, as soon as reasonably possible, provide a copy of the chapter on harassment and bullying and these procedures to the complainant and accused individual, or if either is a minor, cause a copy to be provided or delivered to their respective parent or guardian.

(B)(1) Upon initiation of an investigation, the designated employee shall notify in writing both the complainant and accused individual, or if either is a minor inform their respective parent or guardian, that:

(a) an investigation has been initiated;

(b) retaliation is prohibited;

(c) all parties have certain confidentiality rights; and

(d) they will be informed in writing of the outcome of the investigation.

(2) All notifications are subject to state laws and federal laws protecting the confidentiality of personally identifiable student information. Pursuant to 34 C.F.R. Part 99.30, a school administrator may seek the consent of the parent or guardian of the accused student, or the accused eligible student (if 18 or older, the accused student has the ability to consent), in order to inform the complainant of any disciplinary action taken in cases where the school determined that an act of harassment, bullying, or other misconduct occurred. The parent or guardian or eligible student shall provide a signed and dated written consent before an educational agency or institution discloses personally identifiable information from the student’s education records.

Section 59‑8‑330. (A) Unless special circumstances are present and documented, such as reports to the Department of Social Services or law enforcement, the school administrator shall, no later than one school day after notice to a designated employee, initiate or cause to be initiated, an investigation of the allegations, which the school administrator reasonably believes may constitute harassment or bullying. The school administrator shall assign a person to conduct the investigation. No provision of this chapter may be construed to preclude the school administrator from assigning himself or a designated employee as the investigator. A person who is the subject of a complaint may not conduct such an investigation.

(B) In some circumstances it may be appropriate for the school to take interim measures during the investigation of a complaint. For instance, if a student alleges that he or she has been sexually assaulted by another student, the school may decide to place the students immediately in separate classes, transportation, or both pending the results of the school’s investigation. Similarly, if the alleged harasser is a teacher, allowing the student to transfer to a different class may be appropriate. In all cases, the school shall make every effort to prevent disclosure of the names of all parties involved except to the extent necessary to carry out the investigation. In all cases where physical harm has resulted, or where the targeted student is known to be expressing suicidal ideation or experiencing serious emotional harm, a safety plan must be put in place. Safety plans also must be considered in cases where the targeted student is known to have difficulty accessing the educational programs at the school as a result of the inappropriate behavior. Restraining orders and their enforcement also may be appropriate interim measures.

(C) The United States Constitution guarantees due process to students and district employees who are accused of certain types of infractions, including but not limited to sexual harassment under Federal Title IX. The rights established under Title IX must be interpreted consistent with any federally guaranteed due process rights involved in a complaint proceeding, including, but not limited to, the ability of the complainant and the accused to present witnesses and other evidence during an investigation. The district shall ensure that steps to accord due process rights do not restrict or unnecessarily delay the protections provided by Title IX to the complainant.

(D) In determining whether the conduct constitutes a violation of this chapter, the investigator shall consider the surrounding circumstances, the nature of the behavior, past incidents or past or continuing patterns of behavior, the relationships between the parties involved and the context in which the alleged incidents occurred. The complainant and accused must be provided the opportunity to present witnesses and other evidence during an investigation. The school also shall consider the impact of relevant off‑campus conduct on the school environment where direct harm to the welfare of the school can be demonstrated or the conduct can be shown to pose a clear and substantial interference with another student’s equal access to educational programs. Whether a particular action constitutes a violation of the provisions of this chapter requires determination based on all the facts and surrounding circumstances.

(E) No later than five school days from the filing of the complaint with the designated employee, unless special circumstances are present and documented, the investigator shall submit a written initial determination to the school administrator.

(F) The investigator shall prepare a written report to include a statement of the findings of the investigator regarding whether the allegations have been substantiated, and regarding whether the alleged conduct constitutes harassment, bullying, or both. The report, when referencing student conduct, is a student record and therefore confidential.

(G) Notice must be provided to students and parents or guardians. Within five school days of the conclusion of the investigation, the designated employee shall notify in writing both the complainant and accused individual, or if either is a minor, inform their respective parent or guardian:

(1) that the investigation has been completed;

(2) whether or not the investigation concluded that a violation of the provisions of this chapter occurred and which prohibited conduct was violated; and

(3) that federal privacy law prevents disclosure of any discipline imposed as a result of the investigation unless the parent or guardian of the accused student, the accused eligible student, or both consents to such disclosure.

(H) In addition to the provisions of subsection (G), notice must be provided to the complainant student, or if a minor, to his parents or guardian, in writing of their rights to:

(1) an internal review by the school of its initial determination as a result of its investigation regarding whether harassment occurred;

(2) request an independent review of the school’s final determination regarding whether harassment occurred within thirty days of the final determination or, although a final determination was made that harassment indeed occurred, the school’s response to that harassment was inadequate to correct the problem, and the review will be conducted by an investigator selected by the superintendent from a list developed by the State Department of Education.

(I) In addition to the provisions of subsection (G), notice must be provided to the accused student, or if a minor, to his parents or guardian, in writing of their rights to appeal to the district.

(J) In cases where the investigation has identified other conduct that may constitute a violation of other school disciplinary policies or codes of conduct, the designated employee shall report such conduct to the school administrator for action in accordance with relevant school policies or codes of conduct.

Article 5

Responses to Findings of Violations

Section 59‑8‑510. In cases where bullying, harassment, or both are substantiated, the district shall take prompt and appropriate remedial action reasonably calculated to:

(1) stop the bullying, harassment, or both;

(2) prevent its recurrence; and

(3) remedy the impact of the offending conduct on the victim.

Section 59‑8‑520. With respect to students:

(1) first time offenders may, in the discretion of the school principal depending on the severity of the circumstances:

(a) receive diversity appreciation training based on a program the State Department of Education shall develop; or

(b) be subject to discipline for gross misbehavior pursuant to the provisions of Article 3, Chapter 63, Title 59; and

(2) second time offenders must be subject to discipline for gross misbehavior and persistent disobedience pursuant to the provisions of Article 3, Chapter 63, Title 59.

Section 59‑8‑530. With respect to teachers:

(1) first time offenders may, in the discretion of the school principal depending on the severity of the circumstances:

(a) receive diversity appreciation training based on a program the State Department of Education shall develop; or

(b) be subject to suspension or dismissal pursuant to the provisions of Article 5, Chapter 25, Title 59;

(2) second time offenders must:

(a) be considered to have manifested an evident unfitness for teaching and must be dismissed pursuant to the provisions of Article 5, Chapter 25, Title 59; and

(b) may be considered to have engaged in unprofessional conduct for the purposes of Section 59‑25‑530, subjecting his teaching certificate to suspension or revocation.

Article 7

First Amendment Rights

Section 59‑8‑710. It is the intent of the State for districts to apply and enforce this chapter in a manner that is consistent with student rights to free expression under the First Amendment of the United States Constitution. The purpose of this chapter is to prohibit:

(1) conduct or communication that:

(a) is directed at a person’s protected characteristics as defined below and that has the purpose or effect of substantially disrupting the educational learning process, access to educational resources, or both; or

(b) creates a hostile learning environment; and

(2) prohibit conduct intended to ridicule, humiliate or intimidate students in a manner as defined under this chapter.”

SECTION 2. Article 3, Chapter 63, Title 59 of the 1976 Code is repealed.

SECTION 3. This act takes effect upon approval of the Governor.

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