

House Bill 940

By: Representatives Hugley of the 133rd and Morgan of the 39th

A BILL TO BE ENTITLED
AN ACT

1 To amend Part 2 of Article 16 of Chapter 2 of Title 20 of the Official Code of Georgia
2 Annotated, relating to discipline of students in elementary and secondary education, so as to
3 enact the "Jaheem Herrera-Bianca Walton Safe School Climate Act"; to provide for
4 legislative findings and intent; to provide for definitions; to prohibit bullying, harassing, or
5 intimidating behavior on school property and at other school related events; to provide that
6 each local board of education shall establish a policy relating to bullying behavior; to require
7 certain provisions in the policy; to provide for training on bullying behavior for school
8 system personnel; to provide for a model bullying policy by the State Board of Education;
9 to provide for statutory construction; to revise provisions for purposes of conformity; to
10 provide for related matters; to repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 style="text-align:center">**SECTION 1.**

13 This Act shall be known and may be cited as the "Jaheem Herrera-Bianca Walton Safe
14 School Climate Act."

15 style="text-align:center">**SECTION 2.**

16 (a) The Georgia General Assembly finds that:

17 (1) A safe and civil environment in school is necessary in order for students to learn and
18 achieve high academic standards;

19 (2) Bullying, harassment, and intimidation, like other disruptive or violent behaviors, is
20 conduct that disrupts both a student's ability to learn and a school's ability to educate its
21 students in a safe environment;

22 (3) Bullying, harassing, and intimidating behaviors create a climate that fosters violence
23 in our schools;

24 (4) It is essential to enact a law that seeks to protect the health and welfare of Georgia
25 students and improve the learning environment for Georgia students; and

26 (5) To do so, state and national data and anecdotal evidence have established the need to
 27 identify the most vulnerable targets and potential victims of bullying, harassment, and
 28 intimidation.

29 (b) The sole purpose of this law is to protect all children from bullying, harassment, and
 30 continual intimidation and no other legislative purpose is intended nor should any other
 31 intent be construed from passage of this Act.

32 SECTION 3.

33 Part 2 of Article 16 of Chapter 2 of Title 20 of the Official Code of Georgia Annotated,
 34 relating to discipline of students in elementary and secondary education, is amended by
 35 repealing Code Section 20-2-751.4, relating to policies prohibiting bullying, assignment to
 36 alternative school, and notice, in its entirety and reserving said Code section as follows:

37 "20-2-751.4.

38 ~~(a) As used in this Code section, the term "bullying" means:~~

39 ~~(1) Any willful attempt or threat to inflict injury on another person, when accompanied~~
 40 ~~by an apparent present ability to do so; or~~

41 ~~(2) Any intentional display of force such as would give the victim reason to fear or~~
 42 ~~expect immediate bodily harm.~~

43 ~~(b) Each local board of education shall adopt policies, applicable to students in grades six~~
 44 ~~through 12, that prohibit bullying of a student by another student and shall require such~~
 45 ~~prohibition to be included in the student code of conduct for middle and high schools in~~
 46 ~~that school system. Local board policies shall require that, upon a finding that a student has~~
 47 ~~committed the offense of bullying for the third time in a school year, such student shall be~~
 48 ~~assigned to an alternative school. Each local board of education shall ensure that students~~
 49 ~~and parents of students are notified of the prohibition against bullying, and the penalties~~
 50 ~~for violating the prohibition, by posting such information at each middle and high school~~
 51 ~~and by including such information in student and parent handbooks.~~

52 ~~(c) Any school system which is not in compliance with the requirements of this Code~~
 53 ~~section shall be ineligible to receive state funding pursuant to Code Sections 20-2-161 and~~
 54 ~~20-2-260. Reserved."~~

55 SECTION 4.

56 Said part is further amended in Code Section 20-2-751.5, relating to student codes of
 57 conduct, safety rules on school buses, and distribution, by revising subsections (a) and (b)
 58 as follows:

59 "(a) Each student code of conduct shall contain provisions that address the following
 60 conduct of students during school hours, at school related functions, and on the school bus
 61 in a manner that is appropriate to the age of the student:

- 62 (1) Verbal assault, including threatened violence, of teachers, administrators, and other
 63 school personnel;
- 64 (2) Physical assault or battery of teachers, administrators, and other school personnel;
- 65 (3) Disrespectful conduct toward teachers, administrators, and other school personnel,
 66 including use of vulgar or profane language;
- 67 (4) Verbal assault of other students, including threatened violence or sexual harassment
 68 as defined pursuant to Title IX of the Education Amendments of 1972;
- 69 (5) Physical assault or battery of other students, including sexual harassment as defined
 70 pursuant to Title IX of the Education Amendments of 1972;
- 71 (6) Disrespectful conduct toward other students, including use of vulgar or profane
 72 language;
- 73 (7) Verbal assault of, physical assault or battery of, and disrespectful conduct, including
 74 use of vulgar or profane language, toward persons attending school related functions;
- 75 (8) Failure to comply with compulsory attendance as required under Code Section
 76 20-2-690.1;
- 77 (9) Willful or malicious damage to real or personal property of the school or to personal
 78 property of any person legitimately at the school;
- 79 (10) Inciting, advising, or counseling of others to engage in prohibited acts;
- 80 (11) Marking, defacing, or destroying school property;
- 81 (12) Possession of a weapon, as provided for in Code Section 16-11-127.1;
- 82 (13) Unlawful use or possession of illegal drugs or alcohol;
- 83 (14) Willful and persistent violation of the student code of conduct;
- 84 (15) Bullying, harassing, or intimidating behavior as defined by Code Section ~~20-2-751.4~~
 85 20-2-760;
- 86 (16) Marking, defacing, or destroying the property of another student; and
- 87 (17) Falsifying, misrepresenting, omitting, or erroneously reporting information
 88 regarding instances of alleged inappropriate behavior by a teacher, administrator, or other
 89 school employee toward a student.

90 With regard to paragraphs (9), (11), and (17) of this subsection, each student code of
 91 conduct shall also contain provisions that address conduct of students during off-school
 92 hours.

93 (b)(1) In addition to the requirements contained in subsection (a) of this Code section,
 94 each student code of conduct shall include comprehensive and specific provisions

95 prescribing and governing student conduct and safety rules on all public school buses.

96 The specific provisions shall include but not be limited to:

97 (A) Students shall be prohibited from acts of physical violence as defined by Code
 98 Section 20-2-751.6, bullying, harassing, or intimidating behavior as defined by
 99 ~~subsection (a) paragraph (1)~~ of Code Section ~~20-2-751.4~~ 20-2-760, physical assault or
 100 battery of other persons on the school bus, verbal assault of other persons on the school
 101 bus, disrespectful conduct toward the school bus driver or other persons on the school
 102 bus, and other unruly behavior;

103 (B) Students shall be prohibited from using any electronic devices during the operation
 104 of a school bus, including but not limited to cell phones; pagers; audible radios, tape or
 105 compact disc players without headphones; or any other electronic device in a manner
 106 that might interfere with the school bus communications equipment or the school bus
 107 driver's operation of the school bus; and

108 (C) Students shall be prohibited from using mirrors, lasers, flash cameras, or any other
 109 lights or reflective devices in a manner that might interfere with the school bus driver's
 110 operation of the school bus.

111 (2) If a student is found to have engaged in physical acts of violence as defined by Code
 112 Section 20-2-751.6, the student shall be subject to the penalties set forth in such Code
 113 section. If a student is found to have engaged in bullying, harassing, or intimidating
 114 behavior as defined by ~~subsection (a) paragraph (1)~~ of Code Section ~~20-2-751.4~~ 20-2-760
 115 or in physical assault or battery of another person on the school bus, the local school
 116 board policy shall require a meeting of the parent or guardian of the student and
 117 appropriate school district officials to form a school bus behavior contract for the student.
 118 Such contract shall provide for progressive age-appropriate discipline, penalties, and
 119 restrictions for student misconduct on the bus. Contract provisions may include but shall
 120 not be not limited to assigned seating, ongoing parental involvement, and suspension
 121 from riding the bus. This subsection is not to be construed to limit the instances when a
 122 school code of conduct or local board of education may require use of a student bus
 123 behavior contract."

124 **SECTION 5.**

125 Said part is further amended by adding a new subpart to read as follows:

126 "Subpart 2A

127 20-2-760.

128 As used in this part, the term:

129 (1) 'Bullying, harassing, or intimidating behavior' or 'act of bullying, harassment, or
130 intimidation' means any pattern of gestures or written, electronic, or verbal
131 communications, or any physical act or any threatening communication, that takes place
132 on school property, at an official school bus stop, at any school sponsored activity or
133 event whether or not it is held on school premises, or on a school bus or any other school
134 related vehicle, or at any other program or function where the school is responsible for
135 the child, and that:

136 (A) Places a student or school employee in actual and reasonable fear of harm to his
137 or her person or damage to his or her property; or

138 (B) Creates or is certain to create a hostile environment by substantially interfering
139 with or impairing a student's educational performance, opportunities, or benefits.

140 This term includes, but is not limited to, acts reasonably perceived as being motivated by
141 any actual or perceived differentiating characteristic, such as race, color, religion,
142 ancestry, national origin, gender, socioeconomic status, academic status, gender identity,
143 physical appearance, sexual orientation, or mental, physical, developmental, or sensory
144 disability, or by association with a person who has or is perceived to have one or more
145 of these characteristics.

146 (2) 'Hostile environment' means that the victim subjectively views the conduct as
147 bullying, harassing, or intimidating behavior and the conduct is objectively severe or
148 pervasive enough that a reasonable person would agree that it is bullying, harassing, or
149 intimidating behavior.

150 20-2-761.

151 (a) No student or school employee shall be subjected to bullying, harassing, or
152 intimidating behavior by school employees or students.

153 (b) No person shall engage in any act of reprisal or retaliation against a victim, witness,
154 or a person who has or reports reliable information about an act of bullying, harassing, or
155 intimidating behavior.

156 (c) A school employee who has witnessed or has reliable information that a student or
157 school employee has been subject to any act of bullying, harassing, or intimidating
158 behavior shall report the incident to the appropriate school official.

159 (d) A student or volunteer who has witnessed or has reliable information that a student or
160 school employee has been subject to any act of bullying, harassing, or intimidating
161 behavior shall report the incident to the appropriate school official.

162 20-2-762.

163 (a) No later than December 31, 2010, each local board of education shall adopt a policy
164 prohibiting bullying, harassing, or intimidating behavior. The local board shall involve
165 parents and guardians, school employees, school administrators, school volunteers,
166 students, administrators, law enforcement representatives, and community representatives
167 in the process of creating the policy. Policies adopted pursuant to this Code section shall
168 be continuously reviewed and may be revised as necessary.

169 (b) The policy shall contain, at a minimum, the following components:

170 (1) A statement prohibiting bullying, harassing, or intimidating behavior;

171 (2) A definition of bullying, harassing, or intimidating behavior no less inclusive than
172 that set forth in this part;

173 (3) A description of appropriate student behavior;

174 (4) Consequences and appropriate remedial action for a person who commits an act of
175 bullying, harassment, or intimidation. Each local board shall determine appropriate
176 consequences; provided, however, that local board policies shall require that, upon a
177 finding that a student in grades six through 12 who has committed the offense of bullying
178 for the third time in a school year shall be assigned to an alternative school;

179 (5) A procedure for reporting and documenting an act of bullying, harassment, or
180 intimidation including a provision that permits a person to report such an act
181 anonymously. The procedures shall identify the appropriate school personnel responsible
182 for receiving a report. This paragraph shall not be construed to permit formal disciplinary
183 action solely on the basis of an anonymous report;

184 (6) A procedure for prompt investigation of reports of serious violations and complaints
185 of any act of bullying, harassment, or intimidation, identifying either the principal or the
186 principal's designee as the person responsible for the investigation;

187 (7) A statement that prohibits reprisal or retaliation against any person who reports an
188 act of bullying, harassment, or intimidation, and the consequence and appropriate
189 remedial action for a person who engages in reprisal or retaliation;

190 (8) A statement of how the policy is to be disseminated and publicized, including notice
191 that the policy applies to participation in school sponsored functions;

192 (9) A process for discussing the school system's bullying, harassing, or intimidating
193 behavior policy with students;

194 (10) A strategy for protecting the victim from additional bullying, harassing, or
195 intimidating behavior and from retaliation following a report; and

196 (11) Consequences and appropriate remedial action for persons found to have falsely
197 accused another.

198 (c) Nothing in this part shall prohibit a local school system from adopting a policy that
199 includes components beyond the minimum components provided in this Code section or
200 that is more inclusive than the requirements of this part.

201 (d) Notice of the local policy shall appear in the student code of conduct established
202 pursuant to Code Section 20-2-751.5 and any other school publication that sets forth the
203 comprehensive rules, procedures, and standards of conduct for schools within the school
204 and in any student and school employee handbook.

205 (e) Information regarding the local policy against bullying, harassing, or intimidating
206 behavior shall be incorporated into a school's employee training program.

207 (f) To the extent funds are appropriated for these purposes, a local school system shall, by
208 March 1, 2011, provide training on the local policy to school employees and volunteers
209 who have significant contact with students.

210 (g) Schools shall develop and implement methods and strategies for promoting school
211 environments that are free of bullying, harassing, or intimidating behavior.

212 (h) Local boards of education may establish bullying prevention programs or other
213 initiatives and may involve parents and guardians, school employees, school
214 administrators, school volunteers, students, administrators, law enforcement
215 representatives, and community representatives.

216 (i) To assist local boards of education in developing a policy pursuant to this Code section,
217 the State Board of Education shall, no later than September 1, 2010, develop model policies
218 applicable to students in kindergarten through grade 12 and teacher preparation program
219 standards on the identification and prevention of bullying, harassing, or intimidating
220 behavior. In addition, the state board shall provide necessary training programs and
221 technical assistance to school systems in carrying out the requirements of this part.

222 20-2-763.

223 (a) This part shall not be construed to permit school officials to punish student expression
224 or speech based on an undifferentiated fear or apprehension of disturbance or out of a
225 desire to avoid the discomfort and unpleasantness that could accompany an unpopular
226 viewpoint.

227 (b) This part shall not be construed to prevent a victim of bullying, harassing, or
228 intimidating behavior from seeking redress under any other available law, either civil or
229 criminal.

230 (c) This part shall not be construed to require an exhaustion of the administrative
231 complaint process before civil or criminal law remedies may be pursued regarding
232 bullying, harassing, or intimidating behavior.

233 (d) This part shall not be construed to create or alter any civil cause of action for monetary
234 damages against any person or school system nor shall it constitute grounds for any claim
235 or motion raised by either the state or defendant in any proceedings, except that the defense
236 of immunity shall be retained and may be asserted in any action arising out of this part.
237 (e) The provisions of this part shall be liberally construed to give effect to its purposes.
238 (f) Nothing in this part shall be construed to create any classification, protected class,
239 suspect category, or preference beyond those existing in present statute or case law."

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SECTION 6.

241 All laws and parts of laws in conflict with this Act are repealed.