

KANSAS
ASSOCIATION



OF
SCHOOL
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Testimony before the
Senate Committee on Education

on

SB 278

by

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Madam Chair, Members of the Committee:

Thank you for this opportunity to testify in opposition to **SB 278**.

New Section 1

When handling allegations of bullying, Kansas statutes give school districts broad authority to discipline students at school, on school property or at school sponsored events. However, for a school district to discipline students for behaviors that occur outside of school, K.S.A. 72-8901 allows the school to discipline students only for “conduct which, if the pupil is an adult, constitutes the commission of a felony or, if the pupil is a juvenile, would constitute the commission of a felony if committed by an adult.”

Outside of school property, school sponsored events and school activities, Kansas law protects the rights of parents to exercise primary responsibility over the “control and upbringing” of their child. K.S.A. 38-141

Current Kansas law gives districts wide authority to discipline students. Kansas law provides for a short term suspension of up to 10 days, extended suspension for up to 90 school days and expulsion for up to 186 school days. To expel a student for up to 90 days or to expel a student for 186 days, Kansas law requires written notice to the parents and students have 8 due process

rights and a hearing is required. The district has the burden of proof at this hearing and the student has a right to have counsel at the hearing, a right to confront and cross-examine witnesses, and a right to a fair and impartial decision based on substantial evidence. The decision of the hearing officer may be appealed to the board of education and to the district court. K.S.A. 72- 8903.

School districts use progressive discipline and short term suspension for 1-10 days to change student behaviors. A district can impose short term suspension by bringing the student into the office and providing them with the following 4 rights: the right to be present, the right to be informed of the charges, the right to be informed of the basis of the accusation, and the right to make statements in mitigation of the charges or accusation. If the behavior reoccurs or gets more serious as the school year progresses, then the district would move towards proposing a long term suspension or expulsion.

The law also requires that in order to discipline students for off-campus conduct, there must be a “nexus” between the off-campus conduct and the school. The district has the burden in a student discipline hearing to show that the off-campus behavior has caused actual disruption at school. *Tinker v. Des Moines Indep. Sch. Dist.*, 393 U.S. 503 (1969); *Layshock v. Hermitage Sch. Dist.*, 59 F.3d 249 (3rd Cir. 2010)

Reporting Timelines

SB 278 inserts many new timeline requirements that create problems for the day-to day operation of school buildings. These restrictive timelines may not be able to be met due to other student health or discipline issues or school and student schedules and will create the opportunity for increased litigation against school districts. In working with school districts on the legal issues of investigating bullying complaints, the issue is not timely investigation but how to deal with the “He said-She said” statements when there are no witnesses other than the two students involved.

Many school districts have had to reduce the number of principals and counseling staff as budgets have tightened and this, coupled with the myriad of other responsibilities, building level principals are required to do, sets school districts up for increased litigation challenges. The average size school district in Kansas has 524 students and the superintendent may also be the principal at one of the other schools, a substitute bus driver, a substitute teacher and the curriculum or human resource director, substitute coach or lunch room assistant.

P. 1, Lines 35-36: It needs to be clearly stated that any recommended counseling and services would be at the parent’s expense. Many schools have cut counseling positions or the counselor is shared between two or three schools.

P2, Lines 1-5: This language does not reflect current law. Many times bullying may also be racial or sexual harassment which is prohibited under Title IX. The Office of Civil Rights requires school districts to take prompt, appropriate, immediate action to stop the harassment. Districts are obligated to investigate and respond, whether the harassment is reported in writing or not.

P2, Lines 9-16: Beginning the investigation within one school day is not practical. What if the student is absent, witnesses are absent or at a school sponsored activity or unavailable because of a test or the teacher or administrator is out of the district? If the behavior occurs offsite, just trying to visit with parents and others who may have seen the offending text, e-mail or Facebook many times takes at least 7-14 days. Likewise completing the investigation within 10 days is not practical due to individual student schedules, activities, tests and the schedules of witnesses, whether students, parents or staff members.

If a complaint alleges that one or more adults bullied another adult, school districts generally ask an independent investigator from outside the district to conduct the investigation and interviews. In these cases, it usually takes at least 30 days to schedule all the interviews, follow-up interviews and draft the findings of fact and recommendations.

P2, Lines 17-23: I recommend lines 21-23 be removed. Schools can recommend to parents counseling and other interventions; however, the rights of parents under Kansas law to direct and determine the upbringing of their child is paramount. K.S.A. 38-141. If this language is retained, it needs to be clarified that the intervention services or “order counseling” is at the parents expense.

School Districts have been very responsive to providing training to staff and others but these efforts have been curtailed due to lack of state funding for training activities and travel.

P 2, Lines 29-43: I recommend this language be deleted as wide dissemination of the report could result in retaliation against the students involved. Additionally, parents may perpetuate the ongoing disagreement as to the findings and conclusions of the report.

School districts work hard to prevent individual, identifiable information about students from becoming public as required by K.S.A. 72-6214 and the federal Family Education Rights and Privacy Act (FERPA). (20 U.S.C. §1232g; 34 CFR Part 99).

Certain types of bullying behaviors may also constitute criminal behavior under Kansas criminal laws. School districts discipline students to change behaviors, create a safe learning environment and hold the student accountable to follow the rules of conduct before they become adults. Schools advise parents and employees of their right to file criminal complaints but requiring these investigative reports to be released could result in further acts by the students, witnesses and parents at school and at school activities that may disrupt the learning environment. Additionally, releasing this report could result in more school employees being subpoenaed to testify in criminal cases and actually create more retaliation incidents.

I recommend that the hearing before the board be deleted. This provision is in conflict with K.S.A. 72-8901 *et seq.* which provides that any student long term suspended or expelled can appeal the discipline decision to the board of education and thereafter to the district court under K.S.A. 60-2101d.

The issue in most bullying investigations is whether the behavior occurred and what should be the discipline imposed. Principals struggle with decisions where one student said it happened and the other adamantly denies it. Allowing this decision to be appealed to the board would result in parents who believe, “My child has never or would never do anything wrong” or parents

who believe “anything less than imprisonment is wrong” and would allow parents to continue to challenge the findings.

Line 39: Requiring the appeal hearing to be held within 10 days is not practical as most school boards meet only once a month and school board members do not receive any pay or compensation for their service on school boards. Additional flexibility needs to be provided in scheduling the appeal hearing.

P3 -Lines 4-9: I recommend these lines be deleted. Kansas has 289 school districts and most administrators have many cases per year when the parents do not agree with the principal’s discipline decisions. The purpose of school discipline in handling bullying, sexual harassment and racial harassment is to take prompt, appropriate, immediate action to make sure it stops. These appeal provisions would prolong the “factual debate” and be disruptive to the students and interfere with their learning from the experience and moving forward.

The additional investigation, reporting, appealing and record keeping requirements in this bill would require school districts to hire an additional person or two in larger schools or at a minimum, assign these duties to existing employees. I recommend the legislature look at the resources and cost to implement and comply with this law as schools are currently struggling with all the current federal and state mandates that are not adequately funded.

New Sec. 3

I recommend New Section 3 be deleted. Contacting parents within 24 hours and offering “options to protect their child from further bullying and harassment” even before the allegation has been investigated to determine whether it actually happened is not tenable. Children do, at times, manipulate their parents and exaggerate behaviors particularly when they want to create sympathy or get the parent to be their “advocate and friend.”

P. 5, Lines 36-43; P. 6, Lines 1-2: I recommend the list of possible responses in lines 36-43 on page 5 and Lines 8-16 be deleted. The goal of public education is to help students change their behaviors and to learn how to treat each other with dignity and respect. Principals who work with individual students attempt to gear the discipline to get a change in behavior and what works for one child may not be effective with another one. Likewise, schools have no authority to discipline or order parents to do anything.

P. 6, Lines 4-9: I recommend this language be deleted. It will create additional litigation and creates a disincentive for school teachers to go into school administration.

P. 6, Line 13: I recommend you delete “counseling” or at least say that it is at the parents “expense.” The “shall” should be changed to “may” particularly for parents who have no insurance or are experiencing loss of a job or other financial constraints. Also, is it the intent of the bill to keep kids out of school until they receive counseling? If so, many students would be missing educational opportunities if their parents do not or cannot afford counseling.

P. 7, Lines 9-43; P. 8, Lines 1-31: I recommend the definition of “cyberbullying” be deleted. Current Kansas law on bullying is broad enough to address all the behaviors school districts encounter. School districts do not need expanded definitions or tighter timeline restrictions but

rather the financial resources to hire the staff to complete the investigations and deal with parents who want to second-guess educational discipline decisions. School districts deal with student and staff behaviors in order to help students learn to treat each other with dignity and respect and to exercise tolerance and restraint and any listing of "behaviors" or trying to define "substantial disruption" can be limiting. Any definition soon becomes outdated particularly when dealing with creative students and the new opportunities for student mischief outside of the school day that technology has created outside of the school day.

Preventing bullying is a high priority with Kansas building principals and superintendents. However, investigating allegations is time consuming and imposing appropriate discipline can often be controversial with the parents of the victim and the parents of the accused.

Kansas has 447,091 students enrolled in 1,344 school buildings throughout the state including 786 elementary schools, 176 middle schools, 39 junior highs and 343 high schools. Kansas has 289 school districts and the median district enrollment is 508 students. Approximately 49 percent of students are enrolled in a school in the five largest counties in Kansas.

Every district strives to provide a safe and secure learning environment free from bullying, sexual and racial harassment. However, with 447,091 students in the state's 1,344 public school buildings, it is hard for teachers and school administrators to predict student behaviors on any given day. Therefore, flexibility is needed in order for school administrators to get all the facts and act responsibly when investigating all allegations thoroughly when handling complaints of bullying.

Thank you for your consideration.