

2010 LEGISLATIVE SESSION

HOUSE BILL 927¹: PUBLIC SCHOOLS DISCIPLINARY TRIBUNALS; BULLYING; EXPAND DEFINITION

Amending O.C.G.A. § 20-2-751.4

First Signature: House Representative Mike Jacobs (80th)

Co-Sponsors: House Representative Joe Wilkinson (52nd), House Representative Donna Sheldon (105th), House Representative Matt Ramsey (72nd), House Representative Pam Stephenson (92nd), and House Representative Karla Drenner (86th)

Summary: House Bill 927 seeks to amend Subpart 2 of Part 2 of Article 16 of Chapter 2 of Title 20 of the Official Code of Georgia Annotated by expanding the definition of “bullying.”² The Bill also seeks to expand protection over grades K-12, to provide local school systems with the ability to reassign a student committing an act of bullying to another school, and to require the Department of Education to develop a model policy on bullying.³ The Bill further seeks to require that law enforcement be contacted in cases of assault or battery by a student.⁴

Status: Taken From the Table by House on March 16, 2010⁵

1. H.B. 927, 150th Gen. Assem., 2d Reg. Sess. (Ga. 2010) (H. Substitute), available at http://www.legis.ga.gov/legis/2009_10/pdf/hb927.pdf (last visited on Mar. 22, 2010).

2. *Id.*

3. *Id.*

4. *Id.*

5. Ga. Gen. Assem., H.B. 927 (Mar. 20, 2010), http://www.legis.ga.gov/legis/2009_10/sum/hb927.htm. [hereinafter H.B. 927 Status Sheet].

TEXT OF HOUSE BILL 927

§ 1.

It is the intent of the General Assembly that the model policy regarding bullying that is required to be promulgated by the Department of Education under this Act shall be utilized as a resource for the benefit of local school systems and shall not be used as a definition of the exclusive applicable standard of care in any civil or administrative action.

§ 2.

Subpart 2 of Part 2 of Article 16 of Chapter 2 of Title 20 of the Official Code of Georgia Annotated, relating to public school disciplinary tribunals, is amended by revising Code Section 20-2-751.4, relating to policies prohibiting bullying, as follows:

“20-2-751.4.

(a) As used in this Code section, the term ‘bullying’ means an act which occurs on school property, on school vehicles, at designated school bus stops, or at school related functions or activities, or by use of data or software that is accessed through a computer, computer system, computer network, or other electronic technology of a local school system, that is:

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

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

(3) Any intentional written, verbal, or physical act, which a reasonable person would perceive as being intended to threaten, harass, or intimidate, that:

(A) Causes another person substantial physical harm within the meaning of Code Section 16-5-23.1 or visible bodily harm as such term is defined in Code Section 16-5-23.1;

(B) Causes substantial damage to another person’s property;

(C) Has the effect of substantially interfering with a student’s education;

(D) Is so severe, persistent, or pervasive that it creates an intimidating or threatening educational environment; or

(E) Has the effect of substantially disrupting the orderly operation of the school.

(b) No later than August 1, 2011:

(1) Each local board of education shall adopt policies, applicable to students in grades six through 12, that prohibit a policy that prohibits bullying of a student by another student and shall require such prohibition to be included in the student code of conduct for middle and high schools in that school system.;

(2) Each local board policy shall require that, upon a finding by the disciplinary hearing officer, panel, or tribunal of school officials provided for in this subpart that a student in grades six through 12 has committed the offense of bullying for the third time in a school year, such student shall be assigned to an alternative school.; provided, however, that under such rules and procedures provided by law, a school system shall be authorized to assign a student who has committed one or more offenses of bullying to a school outside the student's attendance area, and a school administrator shall be authorized to assign a student who has committed one or more offenses of bullying to another classroom, for the purpose of separating the student from his or her victim;

(3) Each local board of education shall establish and publish in its local board policy a method to notify the parent, guardian, or other person who has control or charge of a student upon a finding by a school administrator that such student has committed an offense of bullying or is a victim of bullying; and

(4) Each local board of education shall ensure that students and parents of students are notified of the prohibition against bullying, and the penalties for violating the prohibition, by posting such information at each middle and high school and by including such information in student and parent handbooks.

(c) No later than January 1, 2011, the Department of Education shall develop a model policy regarding bullying, that may be revised from time to time, and shall post such policy on its website.

in order to assist local school systems. Such model policy shall include:

(1) A statement prohibiting bullying;

(2) A requirement that any teacher or other school employee who has reliable information that would lead a reasonable person to suspect that someone is a target of bullying shall immediately report it to the school principal;

(3) A requirement that each school have a procedure for the school administration to promptly investigate in a timely manner and determine whether bullying has occurred;

(4) An age-appropriate range of consequences for bullying which shall include, at minimum and without limitation, disciplinary action or counseling as appropriate under the circumstances;

(5) A procedure for a teacher or other school employee, student, parent, guardian, or other person who has control or charge of a student, either anonymously or in such person's name, at such person's option, to report or otherwise provide information on bullying activity;

(6) A requirement that a parent, guardian, or other person who has control or charge of a student who is a target of bullying or student who bullies another shall be notified;

(7) A statement prohibiting retaliation following a report of bullying; and

(8) A procedure for disseminating and publishing such policy.

(d) The Department of Education shall develop and post on its website a list of entities and their contact information which produce antibullying training programs and materials deemed appropriate by the department for use in local school systems.

(e) Any person who reports an incident of bullying in good faith shall be immune from civil liability for any damages caused by such reporting.

(f) Any school system which is not in compliance with the requirements of subsection (b) of this Code section shall be ineligible to receive state funding pursuant to Code Sections 20-2-161 and 20-2-260."

§ 3.

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

FIRST SIGNATURE’S RATIONALE

Representative Mike Jacobs, of the 80th district, introduced House Bill 927 in response to the bullying induced suicide of Jaheem Herrera.⁶ Jaheem, eleven years old, was a fifth grader at Dunaire Elementary School in Dekalb County, Georgia.⁷ Masika Bermudez, Jaheem’s mother, stated that Jaheem often told her that bullies called him “gay, ugly, and ‘the virgin’ because he was from the Virgin Islands.”⁸ Bermudez made as many as eight complaints to the school about the bullying; however, her complaints failed to prevent the ongoing harassment.⁹ On April 16, 2009, Bermudez called her son to dinner, but he did not respond.¹⁰ Bermudez found Jaheem in a closet, hanging by his belt.¹¹ It was apparent that Jaheem’s feelings of desperation drove him to take his life.¹²

In response to this incident, Representative Jacobs introduced House Bill 927 to give school systems, administrators, and teachers a clear and comprehensive definition of bullying.¹³ Equally important to Representative Jacobs is that House Bill 927 also provides parents with more tools to combat bullying of their children.¹⁴ Currently, O.C.G.A. § 20-2-751.4 defines bullying as “(1) Any willful attempt or threat to inflict injury on another person, when accompanied by an apparent present ability to do so; or (2) Any intentional display of force such as would give the victim reason to fear or expect immediate bodily

6. Telephone Interview with Rep. Mike Jacobs, H. Dist. 80 (Feb. 5, 2010) [hereinafter Jacobs Interview].

7. Mallory Simon, *My Son’s Last Day on Earth*, CNN, Apr. 24, 2009, <http://cnn.com/2009/US/04/23/bullying.suicide/>.

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. Jacobs Interview, *supra* note 6.

14. *Id.*

harm.”¹⁵ Expounding upon that definition, House Bill 927 clarifies that the act of bullying may take place “on school property, on school vehicles, at designated school bus stops, or at school related functions or activities, or by use of data or software that is accessed through a computer, computer system, computer network, or other electronic technology of a local school system.”¹⁶

The Bill further broadens the definition of bullying to include any intentional act, be it written, verbal, or physical that would lead a reasonable person to believe he is being threatened, harassed, or intimidated.¹⁷ House Bill 927 also specifies that such an intentional act must cause either substantial physical harm or visible bodily harm to another; cause substantial damage to another’s property; substantially interfere with a student’s education; be so severe, persistent, or pervasive as to create an intimidating or threatening educational environment; or substantially disrupt the orderly operation of the school.¹⁸

Additionally, House Bill 927 directs local school boards to adopt bullying policies that apply to all schools in the school system and allow school systems to reassign any student found in violation of the bullying policy to a school outside of the victim’s attendance area.¹⁹ Representative Jacobs felt compelled to introduce this Bill as a means to provide parents and schools with a more comprehensive definition of bullying and to notify schools of authorized procedures for responding to bullying.²⁰ Representative Jacobs reports that the major proponents of the Bill include the Dekalb County School District and the Department of Education.²¹

In 2009, Representative Donna Sheldon, of the 105th district, a co-sponsor of House Bill 927, introduced similar legislation, House Bill 688, during the first session of the 150th General

15. O.C.G.A. § 20-2-751.4 (2001).

16. Ga. H.B. 927 (H. Substitute).

17. *Id.*

18. *Id.*

19. *Id.*

20. Jacobs Interview, *supra* note 6.

21. *Id.*

Assembly.²² House Bill 668 also sought to require local boards of education to separate bullying students from their victims and allow reassignment to alternative schools or schools outside of their zoned attendance area.²³ Additionally, Representative Sheldon introduced the Bill to mandate that boards of education report physical assault or battery to local law enforcement administrations.²⁴ According to Representative Sheldon, although §20-2-751.4 dealt with bullying, it allowed bullies to return to the same school as their victims.²⁵ She also explained that §20-2-756(a) allowed schools to delay notifying law enforcement by dealing with bullies on their own terms.²⁶ House Bill 668 would have required school boards to notify law enforcement officials so that justice may be achieved for the victims.²⁷

As with Representative Jacobs and House Bill 927, Representative Sheldon decided to introduce House Bill 668 because a constituent had been the victim of bullying, and his injuries required reconstructive surgery.²⁸ In that incident, the

22. Ga. Gen. Assem., H.B. 668 (Mar. 20, 2010), http://www.legis.state.ga.us/legis/2009_10/sum/hb668.htm [hereinafter H.B. 668 Status Sheet].

23. Telephone Interview with Rep. Donna Sheldon, H. Dist. 105, (Dec. 14, 2009) [hereinafter Sheldon Interview].

24. H.B. 668, 150th Ga. Gen. Assem., 1st Reg. Sess. (Ga. 2009), available at http://www.legis.ga.gov/legis/2009_10/pdf/hb668.pdf. (last visited Mar. 22, 2010).

25. Sheldon Interview, *supra* note 23; see also O.C.G.A. §20-2-751.4 (2009) (“(b) Local board policies shall require that, upon a finding that a student has committed the offense of bullying for the third time in a school year, such student shall be assigned to an alternative school. Each local board of education shall ensure that students and parents of students are notified of the prohibition against bullying, and the penalties for violating the prohibition, by posting such information at each middle and high school and by including such information in student and parent handbooks.”).

26. Sheldon Interview, *supra* note 23; see also O.C.G.A. §20-2-756 (2009) (“(a) The school administration, disciplinary hearing officer, panel, tribunal of school officials, or the local board of education may, when any alleged criminal action by a student occurs, report the incident to the appropriate law enforcement agency or officer for investigation to determine if criminal charges or delinquent proceedings should be initiated.”).

27. Sheldon Interview, *supra* note 23.

28. *Id.*

school district reassigned the bully to an alternative school for the remainder of the school year.²⁹ However, the bully returned to the victim's school the subsequent year.³⁰ Representative Sheldon introduced House Bill 668 to protect victims from the intimidation created by the bullying classmate's presence at school.³¹

Representative Sheldon believes it is particularly important that schools are required to report acts of physical assault or battery to law enforcement officials.³² According to Representative Sheldon, mandatory reporting to law enforcement ensures that juvenile courts will handle incidents of violence rather than school resource officers.³³ In her view, mandatory reporting encourages adequate reprimand of the bullying student and potential deterrence from future bullying.³⁴

While House Bill 668 did not generate much legislative action,³⁵ Representative Sheldon has supported House Bill 927 as its co-sponsor.³⁶ The primary difference between the two Bills is that House Bill 668 focuses on the separation of bullies from their victims and the reporting of bullying incidents to law enforcement.³⁷ While encompassing these two goals, House Bill 927 goes further by seeking to expand and clarify the definition of bullying and to require system-wide bullying policies.³⁸

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. Sheldon Interview, *supra* note 23.

34. *Id.*

35. H.B. 668 Status Sheet, *supra* note 22 (showing the first reading of the Bill occurring on March 5, 2009, the second reading occurring on March 9, 2009, and no further action on House Bill 668 after that date).

36. H.B. 927 Status Sheet, *supra* note 5.

37. Compare Ga. H.B. 668, with Ga. H.B. 927 (H. Substitute).

38. Ga. H.B. 927 (H. Substitute).

LEGISLATIVE GENEALOGY

The first reading of House Bill 927 occurred on January 13, 2010.³⁹ The second reading of the Bill occurred on January 14, 2010.⁴⁰ The Bill was referred to the House Judiciary (Non-Civil) Committee, and on February 10, 2010, the Committee proposed a substitute to House Bill 927.⁴¹ The Substitute Bill included a deadline of January 1, 2011 for the Department of Education to develop a model policy regarding bullying and post this policy on its website.⁴² Additionally, the substitute Bill required local school boards to adopt a policy prohibiting bullying which must be included in the student code of conduct for schools in its respective school system.⁴³

Most significantly, the House Judiciary (Non-Civil) Committee removed the original provision of House Bill 927 that required the school administration to notify local law enforcement upon the commission of a physical assault or battery of a student, teacher, or school employee.⁴⁴ Instead, House Bill 927 now requires that instances of bullying are to be reported to the principal.⁴⁵ The school must investigate any reported instance of bullying to determine whether bullying, as defined by the Bill, has occurred.⁴⁶ If the school administration determines that bullying has occurred, discipline will be selected based on an age appropriate set of consequences ranging from disciplinary action to counseling.⁴⁷

39. H.B. 927 Status Sheet, *supra* note 5.

40. *Id.*

41. *Id.*

42. *Compare* Ga. H.B. 927 (H. Substitute), *with* Ga. H.B. 927, 150th Gen. Assem., 2d Reg. Sess. (Ga. 2010) (as introduced), *available at* http://www.legis.ga.gov/legis/2009_10/versions/hb927_LC_33_3364_a_2.htm (last visited Mar. 22, 2010).

43. *Compare* Ga. H.B. 927 (H. Substitute), *with* Ga. H.B. 927 (as introduced).

44. *Compare* Ga. H.B. 927 (H. Substitute), *with* Ga. H.B. 927 (as introduced).

45. Ga. H.B. 927 (H. Substitute).

46. *Id.*

47. *Id.*

On March 11, 2010, House Bill 927 was read for a third time and tabled on the same day.⁴⁸ Although the Bill was taken off the table on March 16, 2010,⁴⁹ the House Rules Committee voted to present an amended version of House Bill 927 for debate on the House floor as a part of their supplemental calendar on March 26, 2010.⁵⁰ During the debate, the point of contention centered on specific language within the bullying definition: “causing substantial damage to another person’s property.”⁵¹ One representative posed the question, “what would happen if a student broke another student’s pencil” to make a point as to the difficulty in determining what “substantial damage” entails.⁵² Because of the representatives’ inability to agree on this language, House Bill 927 did not receive sufficient votes to pass and therefore failed to survive crossover day on March 26, 2010.⁵³

Despite the fact that House Bill 927 died in the House, on March 30, 2010, Representative Jacobs offered a substitute to Senate Bill 250 which tacked the language of House Bill 927 onto Senate Bill 250, giving the anti-bullying language new life.⁵⁴ The House Substitute removed the section of the bullying

48. H.B. 927 Status Sheet, *supra* note 5.

49. *Id.*

50. *General Assembly Video Archive: House Rules Committee Part 1* (Georgia Public Broadcasting internet broadcast Mar. 26, 2010), available at http://mediam1.gpb.org/ga/leg/2010/ga-leg-house-032610_AM.wmv.

51. Interview with Mary Lou Morris, Legislative Aid for House Judiciary Non-Civil Committee, in Atlanta, Ga. (Mar. 31, 2010) [hereinafter Morris Interview]; see also Ga. H.B. 927 (H.Substitute).

52. Morris Interview, *supra* note 51.

53. *Id.*

54. Ga. Gen. Assem., S.B. 250 (Apr. 3, 2010), http://www.legis.ga.gov/legis/2009_10/sum/sb250.htm [hereinafter S.B. 250 Status Sheet]. Senate Bill 250, which was sponsored by Sen. Bill Hamrick, would make it unlawful for any person to knowingly and intentionally or recklessly disrupt or interfere with the operation of any public school, public school bus, or public school bus stop as designated by local school boards of education. S.B. 250, 150th Gen. Assem., 2d Reg. Sess. (Ga. 2010) (H. Substitute), available at http://www.legis.ga.gov/legis/2009_10/pdf/sb250.pdf (last visited Apr. 3, 2010).

definition relating to damage of another person's property.⁵⁵ As a result of removing this language,⁵⁶ the Substitute received the votes necessary to pass out of the House,⁵⁷ and the House later passed the amended version of Senate Bill 250 with a vote of 119 to 45.⁵⁸ Before Senate Bill 250 with its anti-bullying provision can become law, the Senate must pass the Bill and Governor Sonny Perdue must sign it into law.

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55. Ga. S.B. 250 (H.Substitute).

56. Morris Interview, *supra* note 51.

57. *Id.* The House voted 99 to 55 in favor of Representative Jacobs' anti-bullying Substitute. *Id.*

58. *Id.*