

1-1 By: Hughes S.B. No. 1072
 1-2 (In the Senate - Filed February 21, 2023; March 3, 2023,
 1-3 read first time and referred to Committee on Education;
 1-4 April 24, 2023, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 9, Nays 3; April 24, 2023,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12			X	
1-13	X			
1-14	X			
1-15		X		
1-16		X		
1-17	X			
1-18	X			
1-19	X			
1-20	X			
1-21		X		

1-22 COMMITTEE SUBSTITUTE FOR S.B. No. 1072 By: Creighton

1-23 A BILL TO BE ENTITLED
 1-24 AN ACT

1-25 relating to local school health advisory councils and instruction
 1-26 regarding human sexuality, sexual orientation, and gender identity
 1-27 provided by public schools.

1-28 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-29 SECTION 1. Section 12.104(b), Education Code, as amended by
 1-30 Chapters 542 (S.B. 168), 887 (S.B. 1697), 915 (H.B. 3607), 974 (S.B.
 1-31 2081), and 1046 (S.B. 1365), Acts of the 87th Legislature, Regular
 1-32 Session, 2021, is reenacted and amended to read as follows:

- 1-33 (b) An open-enrollment charter school is subject to:
- 1-34 (1) a provision of this title establishing a criminal
 1-35 offense;
 - 1-36 (2) the provisions in Chapter 554, Government Code;
 1-37 and
 - 1-38 (3) a prohibition, restriction, or requirement, as
 1-39 applicable, imposed by this title or a rule adopted under this
 1-40 title, relating to:
 - 1-41 (A) the Public Education Information Management
 1-42 System (PEIMS) to the extent necessary to monitor compliance with
 1-43 this subchapter as determined by the commissioner;
 - 1-44 (B) criminal history records under Subchapter C,
 1-45 Chapter 22;
 - 1-46 (C) reading instruments and accelerated reading
 1-47 instruction programs under Section 28.006;
 - 1-48 (D) accelerated instruction under Section
 1-49 28.0211;
 - 1-50 (E) high school graduation requirements under
 1-51 Section 28.025;
 - 1-52 (F) special education programs under Subchapter
 1-53 A, Chapter 29;
 - 1-54 (G) bilingual education under Subchapter B,
 1-55 Chapter 29;
 - 1-56 (H) prekindergarten programs under Subchapter E
 1-57 or E-1, Chapter 29, except class size limits for prekindergarten
 1-58 classes imposed under Section 25.112, which do not apply;
 - 1-59 (I) extracurricular activities under Section
 1-60 33.081;

2-1 (J) discipline management practices or behavior
 2-2 management techniques under Section 37.0021;
 2-3 (K) health and safety under Chapter 38;
 2-4 (L) the provisions of Subchapter A, Chapter 39;
 2-5 (M) public school accountability and special
 2-6 investigations under Subchapters A, B, C, D, F, G, and J, Chapter
 2-7 39, and Chapter 39A;
 2-8 (N) the requirement under Section 21.006 to
 2-9 report an educator's misconduct;
 2-10 (O) intensive programs of instruction under
 2-11 Section 28.0213;
 2-12 (P) the right of a school employee to report a
 2-13 crime, as provided by Section 37.148;
 2-14 (Q) bullying prevention policies and procedures
 2-15 under Section 37.0832;
 2-16 (R) the right of a school under Section 37.0052
 2-17 to place a student who has engaged in certain bullying behavior in a
 2-18 disciplinary alternative education program or to expel the student;
 2-19 (S) the right under Section 37.0151 to report to
 2-20 local law enforcement certain conduct constituting assault or
 2-21 harassment;
 2-22 (T) a parent's right to information regarding the
 2-23 provision of assistance for learning difficulties to the parent's
 2-24 child as provided by Sections 26.004(b)(11) and 26.0081(c) and (d);
 2-25 (U) establishment of residency under Section
 2-26 25.001;
 2-27 (V) school safety requirements under Sections
 2-28 37.108, 37.1081, 37.1082, 37.109, 37.113, 37.114, 37.1141, 37.115,
 2-29 37.207, and 37.2071;
 2-30 (W) the early childhood literacy and mathematics
 2-31 proficiency plans under Section 11.185;
 2-32 (X) the college, career, and military readiness
 2-33 plans under Section 11.186; ~~and~~
 2-34 (Y) ~~[(X)]~~ parental options to retain a student
 2-35 under Section 28.02124; and
 2-36 (Z) establishing a local school health advisory
 2-37 council in which members are appointed by the governing body of the
 2-38 school and health education instruction complies with Section
 2-39 28.004.
 2-40 SECTION 2. Section 28.004, Education Code, is amended by
 2-41 amending Subsection (c) and adding Subsections (r), (s), (t), (u),
 2-42 and (v) to read as follows:
 2-43 (c) The local school health advisory council's duties
 2-44 include recommending:
 2-45 (1) the number of hours of instruction to be provided
 2-46 in:
 2-47 (A) health education in kindergarten through
 2-48 grade eight; and
 2-49 (B) if the school district requires health
 2-50 education for high school graduation, health education, including
 2-51 physical health education and mental health education, in grades 9
 2-52 through 12;
 2-53 (2) policies, procedures, strategies, and curriculum
 2-54 appropriate for specific grade levels designed to prevent physical
 2-55 health concerns, including obesity, cardiovascular disease, Type 2
 2-56 diabetes, and mental health concerns, including suicide, through
 2-57 coordination of:
 2-58 (A) health education, which must address
 2-59 physical health concerns and mental health concerns to ensure the
 2-60 integration of physical health education and mental health
 2-61 education;
 2-62 (B) physical education and physical activity;
 2-63 (C) nutrition services;
 2-64 (D) parental involvement;
 2-65 (E) instruction on substance abuse prevention;
 2-66 (F) school health services, including mental
 2-67 health services;
 2-68 (G) a comprehensive school counseling program
 2-69 under Section 33.005;

3-1 (H) a safe and healthy school environment; and
3-2 (I) school employee wellness;
3-3 (3) appropriate grade levels and methods of
3-4 instruction for human sexuality instruction;
3-5 (4) strategies for integrating the curriculum
3-6 components specified by Subdivision (2) with the following elements
3-7 in a coordinated school health program for the district:
3-8 (A) school health services, including physical
3-9 health services and mental health services, if provided at a campus
3-10 by the district or by a third party under a contract with the
3-11 district;
3-12 (B) a comprehensive school counseling program
3-13 under Section 33.005;
3-14 (C) a safe and healthy school environment; and
3-15 (D) school employee wellness;
3-16 (5) if feasible, joint use agreements or strategies
3-17 for collaboration between the school district and community
3-18 organizations or agencies;
3-19 (6) strategies to increase parental awareness
3-20 regarding:
3-21 (A) risky behaviors and early warning signs of
3-22 suicide risks and behavioral health concerns, including mental
3-23 health disorders and substance use disorders; and
3-24 (B) available community programs and services
3-25 that address risky behaviors, suicide risks, and behavioral health
3-26 concerns;
3-27 (7) appropriate grade levels and curriculum for
3-28 instruction regarding opioid addiction and abuse and methods of
3-29 administering an opioid antagonist, as defined by Section 483.101,
3-30 Health and Safety Code; ~~and~~
3-31 (8) appropriate grade levels and curriculum for
3-32 instruction regarding child abuse, family violence, dating
3-33 violence, and sex trafficking, including likely warning signs that
3-34 a child may be at risk for sex trafficking, provided that the local
3-35 school health advisory council's recommendations under this
3-36 subdivision do not conflict with the essential knowledge and skills
3-37 developed by the State Board of Education under this subchapter;
3-38 and
3-39 (9) if approved by the board of trustees, the
3-40 policies, procedures, and circumstances in which:
3-41 (A) a school district employee may discuss
3-42 matters of human sexuality with students; and
3-43 (B) a campus may host an extracurricular event
3-44 related to human sexuality.
3-45 (r) The board of trustees, using the procedure described by
3-46 Subsection (e-1), may adopt a policy allowing the local school
3-47 health advisory council to determine the circumstances in which:
3-48 (1) a school district employee may discuss matters of
3-49 human sexuality with students; and
3-50 (2) a campus may host an extracurricular event related
3-51 to human sexuality.
3-52 (s) If the board adopts a policy under Subsection (r), the
3-53 board must:
3-54 (1) notify each parent of a child enrolled in the
3-55 district of the adoption of the policy before the beginning of each
3-56 school year; and
3-57 (2) make the policy available in the same manner as
3-58 curriculum materials under Subsection (j)(1).
3-59 (t) Except as provided by Subsection (r), a school district
3-60 employee may not discuss matters of human sexuality with a student
3-61 in any class or interaction with a student other than a class
3-62 designed and approved by the board of trustees to provide human
3-63 sexuality instruction. If the board adopts a policy under
3-64 Subsection (r) to allow discussion with students regarding human
3-65 sexuality, a school district employee may discuss matters of human
3-66 sexuality with a student only in accordance with that policy.
3-67 (u) Except as provided by Subsection (r), a campus may not
3-68 host an extracurricular activity related to human sexuality. If the
3-69 board of trustees adopts a policy under Subsection (r) specifying

4-1 the circumstances in which a campus may host an extracurricular
4-2 activity related to human sexuality, the campus may host the
4-3 extracurricular activity only in accordance with that policy.

4-4 (v) If the attorney general or an appropriate district or
4-5 county attorney believes that a school district has violated or is
4-6 violating the provisions of this section, the attorney general or
4-7 district or county attorney may bring a cause of action on behalf of
4-8 the state to enjoin the district from violating the provisions of
4-9 this section. The action may be brought in a district court in
4-10 Travis County or a county in which any part of the violation or
4-11 threatened violation occurred. The court may grant any prohibitory
4-12 or mandatory relief warranted by the facts, including a temporary
4-13 restraining order, temporary injunction, or permanent injunction.

4-14 SECTION 3. Subchapter A, Chapter 28, Education Code, is
4-15 amended by adding Section 28.0043 to read as follows:

4-16 Sec. 28.0043. RESTRICTION ON INSTRUCTION REGARDING SEXUAL
4-17 ORIENTATION AND GENDER IDENTITY. (a) A school district,
4-18 open-enrollment charter school, or district or charter school
4-19 employee may not provide or allow a third party to provide
4-20 instruction, guidance, activities, or programming regarding sexual
4-21 orientation or gender identity to students enrolled in
4-22 prekindergarten through 12th grade.

4-23 (b) This section may not be construed to limit:

4-24 (1) a student's ability to engage in speech or
4-25 expressive conduct protected by the First Amendment to the United
4-26 States Constitution or by Section 8, Article I, Texas Constitution,
4-27 that does not result in material disruption to school activities;
4-28 or

4-29 (2) the ability of a person who is authorized by the
4-30 district to provide physical or mental health-related services to
4-31 provide the services to a student, subject to any required parental
4-32 consent.

4-33 SECTION 4. Section 28.004, Education Code, as amended by
4-34 this Act, applies only to a cause of action that accrues on or after
4-35 the effective date of this Act.

4-36 SECTION 5. To the extent of any conflict, this Act prevails
4-37 over another Act of the 88th Legislature, Regular Session, 2023,
4-38 relating to nonsubstantive additions to and corrections in enacted
4-39 codes.

4-40 SECTION 6. This Act takes effect immediately if it receives
4-41 a vote of two-thirds of all the members elected to each house, as
4-42 provided by Section 39, Article III, Texas Constitution. If this
4-43 Act does not receive the vote necessary for immediate effect, this
4-44 Act takes effect September 1, 2023.

4-45 * * * * *