

BILL ANALYSIS

Senate Research Center
87R16491 KJE-F

C.S.S.B. 442
By: Hughes
Education
3/26/2021
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Committee Substitute Amendments to the Filed Version

Open Meetings and Public Information laws removed

School health advisory councils will not be subject to Open Meetings (Chapter 551, Government Code) and Public Information (Chapter 552, Government Code) laws. Instead, the bill has additional meeting transparency provisions in Subsections (d-1) and (d-2) related to posting, public participation, and recordkeeping.

Complex curriculum review removed

Subsection (e-2) of the filed bill was drafted too broadly and could potentially involve public schools in a highly complex curriculum review process. The intent was just to reference the standards in Section 31.023(b): 1) free from factual errors; 2) subject and grade level appropriate; and 3) reviewed by academic experts. These three items alone are referenced in the committee substitute.

Instruction schedule more flexible

Subsection (i)(2) related to the instruction schedule is amended to allow for a general schedule of instruction instead of the instruction to be delivered on each date. This change will give teachers more flexibility to adjust lesson plans.

Copyright protection

**Language in the bill requiring the general dissemination of copyrighted material (either by posting on the school's website or by emailing or mailing a copy to parents) is removed.*

- 1) Curriculum that does not have copyright protections will be posted on a public school's website and shared with parents upon request.
- 2) Curriculum that is copyrighted will be available for review by a parent at the school during regular business hours, available for purchase by the parent from the publisher, or available for online review to a parent who establishes a password-protected account with the public school to view the curriculum in a manner in which the curriculum cannot be copied or its review otherwise violate the copyright.

Definitions added for "human sexuality instruction" and "curriculum materials."

Section 2 applies the school health advisory council statute (Section 28.004, Education Code) to open-enrollment charter schools.

General Overview of SB 442 as Substituted

School health advisory councils must have five members, and all members must be appointed by the school board. Currently, school boards only appoint five members of the council and there is no upper limit to the number of members. School health advisory councils must post notice of meetings 72 hours prior to the meeting, open meetings to the public and allow public comment, prepare and keep minutes of the meeting, make a recording of the meeting, and post this information on the school's website (these transparency provisions take the place of subjecting the council to the Open Meetings and Public Information laws).

The school board must adopt a policy regarding the adoption of human sexuality curriculum, and the board and school health advisory council must address this topic in several public meetings. Before adopting a human sexuality curriculum, the school board must ensure that the curriculum is free from factual errors, subject and grade-level appropriate, and reviewed by academic experts.

Schools must provide to parents a detailed description of the curriculum and a general schedule on which it will be taught. This allows parents to remove a child from certain portions of the curriculum, a right they currently have under state law. Human sexuality curriculum that is not copyrighted will be made generally available to parents. Curriculum that is copyrighted will be available for review in a way that protects the copyright.

Section 28.004, the section covered by this bill, is applied to open-enrollment charter schools (page 7 line 4 to page 9 line 14).

C.S.S.B. 442 amends current law relating to local school health advisory councils and health education provided by public schools, including requirements regarding human sexuality instruction.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 28.004, Education Code, by amending Subsections (d), (d-1), (h), (i), (i-1), and (j) and adding Subsections (d-2), (e-1), (e-2), (e-3), (j-1), and (p), as follows:

(d) Requires that the local school health advisory council (council) consist of at least five members, with each member appointed by the board of trustees (board). Deletes existing text requiring that the board of trustees appoint at least five members to the local school health advisory council.

(d-1) Requires the local school health advisory council to meet at least four times each year. Requires the council, for each meeting, to:

(1) at least 72 hours before the meeting:

(A) post notice of the date, hour, place, and subject of the meeting on a bulletin board in the central administrative office of each campus in the school district; and

(B) ensure that the notice required under Paragraph (A) is posted on the district's Internet website, if the district has an Internet website;

(2) allow the public to attend the meeting and provide an opportunity for public comment;

(3) prepare and maintain minutes of the meeting that state the subject and content of each deliberation and each vote, order, decision, or other action taken by the council during the meeting;

(4) make an audio or video recording of the meeting; and

(5) not later than the 10th day after the meeting, submit the minutes and audio or video recording of the meeting to the district.

(d-2) Requires a school district, as soon as practicable after receipt of the minutes and audio or video recording under Subsection (d-1)(5), to post the minutes and audio or video recording on the district's Internet website, if the district has an Internet website.

(e-1) Requires the board of trustees to adopt a policy establishing a process for the adoption of curriculum materials for the school district's human sexuality instruction. Requires that the policy require:

(1) the board to adopt a resolution convening the local school health advisory council for the purpose of making recommendations regarding the curriculum materials;

(2) the local school health advisory council to:

(A) after the board's adoption of the resolution under Subdivision (1), hold at least two public meetings, at which an opportunity for public comment is provided, on the curriculum materials before adopting recommendations; and

(B) provide the recommendations adopted under Paragraph (A) to the board at a public meeting of the board, at which an opportunity for public comment is provided; and

(3) the board, after receipt of the local school health advisory council's recommendations under Subdivision (2), to take action on the adoption of the recommendations by a record vote at a public meeting.

(e-2) Requires that curriculum materials proposed to be adopted for the school district's human sexuality instruction be made available as provided by Subsection (j)(1) or (2)(A) or (C), as applicable.

(e-3) Requires the board of trustees, before adopting curriculum materials for the school district's human sexuality instruction, to ensure that the curriculum materials are:

(1) free from factual errors;

(2) suitable for the subject and grade level for which the curriculum materials are intended; and

(3) reviewed by academic experts in the subject and grade level for which the curriculum materials are intended.

(h) Requires the board of trustees to determine the specific content of the district's instruction in human sexuality, in accordance with Section 28.004 (Local School Health Advisory Council and Health Education Instruction), rather than in accordance with Subsections (e) (relating to certain course materials and instruction selected by the board of trustees with the advice of the local school health advisory council), (f) (relating to prohibiting a school district from distributing condoms in connection with human sexuality instruction), and (g) (relating to authorizing a school district to separate students according to sex for sexuality instruction purposes).

(i) Requires that the written notice provided to a parent of each student enrolled in the district of the board of trustees' decision regarding whether the district will provide human sexuality instruction to district students, if the instruction will be provided, include:

(1) a statement informing the parent of the human sexuality instruction requirements under state law, rather than a summary of the basic content of the district's human sexuality instruction to be provided to the student, including a statement informing the parent of the instructional requirements under state law;

(2) a detailed description of the content of the district's human sexuality instruction and a general schedule on which the instruction will be provided;

(3) a statement of the parent's right to certain actions, including, at the parent's discretion, to review or purchase a copy of curriculum materials as provided by Subsection (j), and to use the grievance procedure as provided by Subsection (i-1) or the appeals process under Section 7.057 (Appeals) concerning a complaint of a violation of this section;

(4) a statement that any curriculum materials in the public domain used for the district's human sexuality instruction are required to be posted on the district's Internet website, if the district has an Internet website, and the Internet website address at which the curriculum materials are located; and

(5) creates this subdivision from existing text and makes no further changes.

Makes nonsubstantive changes.

(i-1) Authorizes a parent to use the grievance procedure adopted under Section 26.011 (Complaints) concerning a complaint of a violation of this section, rather than of Subsection (i).

(j) Requires a school district to make all curriculum materials used in the district's human sexuality instruction available as follows, rather than by reasonable public inspection:

(1) for curriculum materials in the public domain:

(A) providing a copy of the curriculum materials by mail or e-mail to a parent of a student enrolled in the district on the parent's request; and

(B) posting the curriculum materials on the district's Internet website, if the district has an Internet website; and

(2) for copyrighted curriculum materials, allowing a parent of a student enrolled in the district to:

(A) review the curriculum materials at the student's campus at any time during regular business hours;

(B) purchase a copy of the curriculum materials from the publisher as provided by the district's purchase agreement for the curriculum materials under Subsection (j-1); or

(C) review the curriculum materials online through a secure electronic account in a manner that prevents the curriculum materials from being copied and that otherwise complies with copyright law.

(j-1) Requires a school district, if the district purchases from a publisher copyrighted materials for use in the district's human sexuality instruction, to ensure that the purchase agreement provides for a means by which a parent of a student enrolled in the district may purchase a copy of the curriculum materials from the publisher at a price that does not exceed the price per unit paid by the district for the curriculum materials.

(p) Provides that in this section, "curriculum materials" includes the curriculum, teacher training materials, and any other materials used in providing instruction, and "human sexuality instruction," "instruction in human sexuality," and "instruction relating to human sexuality" include instruction in reproductive health.

SECTION 2. Reenacts Section 12.104(b), Education Code, as amended by Chapters 262 (H.B. 1597), 464 (S.B. 11), 467 (H.B. 4170), and 943 (H.B. 3), Acts of the 86th Legislature, Regular Session, 2019, and amends it as follows:

(b) Provides that an open-enrollment charter school is subject to a prohibition, restriction, or requirement, as applicable, imposed by this title or a rule adopted under this title, relating to certain subjects, including establishing a local school health advisory council and providing health education instruction under Section 28.004.

SECTION 3. (a) Provides that, except as provided by Subsection (b) of this section, this Act applies beginning with the 2021-2022 school year.

(b) Provides that Section 28.004(j-1), Education Code, as added by this Act, applies only to a purchase agreement entered into, amended, or renewed on or after September 1, 2021.

SECTION 4. Provides that, to the extent of any conflict, this Act prevails over another Act of the 87th Legislature, Regular Session, 2021, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 5. Effective date: upon passage or September 1, 2021.