

FIRST REGULAR SESSION

# HOUSE BILL NO. 937

## 93RD GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES KRAUS (Sponsor), AVERY, JOHNSON (47), MCGHEE, JONES, SHOEMYER, THRELKELD, NOLTE, JOLLY AND CHAPPELLE-NADAL (Co-sponsors).

Read 1<sup>st</sup> time March 31, 2005 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

1474L.011

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### AN ACT

To repeal section 160.261, RSMo, and to enact in lieu thereof two new sections relating to bullying in public schools, with penalty provisions.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Section 160.261, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 160.261 and 160.775, to read as follows:

160.261. 1. The local board of education of each school district shall clearly establish a written policy of discipline, including the district's determination on the use of corporal punishment and the procedures in which punishment will be applied. A written copy of the district's discipline policy and corporal punishment procedures, if applicable, shall be provided to the pupil and parent or legal guardian of every pupil enrolled in the district at the beginning of each school year and also made available in the office of the superintendent of such district, during normal business hours, for public inspection. All employees of the district shall annually receive instruction related to the specific contents of the policy of discipline and any interpretations necessary to implement the provisions of the policy in the course of their duties, including but not limited to approved methods of dealing with acts of school violence, disciplining students with disabilities and instruction in the necessity and requirements for confidentiality.

2. **The written policy of discipline required under this section shall be made in addition to the written policy prohibiting harassment, intimidation, or bullying at school required under section 160.775.**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16           **3.** The **written** policy of **discipline** shall require school administrators to report acts of  
17 school violence to teachers and other school district employees with a need to know. For the  
18 purposes of this chapter or chapter 167, RSMo, "need to know" is defined as school personnel  
19 who are directly responsible for the student's education or who otherwise interact with the  
20 student on a professional basis while acting within the scope of their assigned duties. As used  
21 in this section, the phrase "act of school violence" or "violent behavior" means the exertion of  
22 physical force by a student with the intent to do serious physical injury as defined in subdivision  
23 (6) of section 565.002, RSMo, to another person while on school property, including a school  
24 bus in service on behalf of the district, or while involved in school activities. The policy shall  
25 at a minimum require school administrators to report, as soon as reasonably practical, to the  
26 appropriate law enforcement agency any of the following felonies, or any act which if committed  
27 by an adult would be one of the following felonies:

- 28           (1) First degree murder under section 565.020, RSMo;
- 29           (2) Second degree murder under section 565.021, RSMo;
- 30           (3) Kidnapping under section 565.110, RSMo;
- 31           (4) First degree assault under section 565.050, RSMo;
- 32           (5) Forcible rape under section 566.030, RSMo;
- 33           (6) Forcible sodomy under section 566.060, RSMo;
- 34           (7) Burglary in the first degree under section 569.160, RSMo;
- 35           (8) Burglary in the second degree under section 569.170, RSMo;
- 36           (9) Robbery in the first degree under section 569.020, RSMo;
- 37           (10) Distribution of drugs under section 195.211, RSMo;
- 38           (11) Distribution of drugs to a minor under section 195.212, RSMo;
- 39           (12) Arson in the first degree under section 569.040, RSMo;
- 40           (13) Voluntary manslaughter under section 565.023, RSMo;
- 41           (14) Involuntary manslaughter under section 565.024, RSMo;
- 42           (15) Second degree assault under section 565.060, RSMo;
- 43           (16) Sexual assault under section 566.040, RSMo;
- 44           (17) Felonious restraint under section 565.120, RSMo;
- 45           (18) Property damage in the first degree under section 569.100, RSMo;
- 46           (19) The possession of a weapon under chapter 571, RSMo;
- 47           (20) Child molestation in the first degree pursuant to section 566.067, RSMo;
- 48           (21) Deviate sexual assault pursuant to section 566.070, RSMo;
- 49           (22) Sexual misconduct involving a child pursuant to section 566.083, RSMo; or
- 50           (23) Sexual abuse pursuant to section 566.100, RSMo;

52 committed on school property, including but not limited to actions on any school bus in service  
53 on behalf of the district or while involved in school activities. The policy shall require that any  
54 portion of a student's individualized education program that is related to demonstrated or  
55 potentially violent behavior shall be provided to any teacher and other school district employees  
56 who are directly responsible for the student's education or who otherwise interact with the  
57 student on an educational basis while acting within the scope of their assigned duties. The policy  
58 shall also contain the consequences of failure to obey standards of conduct set by the local board  
59 of education, and the importance of the standards to the maintenance of an atmosphere where  
60 orderly learning is possible and encouraged.

61 [3.] 4. The policy shall provide that any student who is on suspension for any of the  
62 offenses listed in subsection 2 of this section or any act of violence or drug-related activity  
63 defined by school district policy as a serious violation of school discipline pursuant to subsection  
64 9 of this section shall have as a condition of his or her suspension the requirement that such  
65 student is not allowed, while on such suspension, to be within one thousand feet of any public  
66 school in the school district where such student attended school unless:

67 (1) Such student is under the direct supervision of the student's parent, legal guardian,  
68 or custodian;

69 (2) Such student is under the direct supervision of another adult designated by the  
70 student's parent, legal guardian, or custodian, in advance, in writing, to the principal of the school  
71 which suspended the student;

72 (3) Such student is in an alternative school that is located within one thousand feet of a  
73 public school in the school district where such student attended school; or

74 (4) Such student resides within one thousand feet of any public school in the school  
75 district where such student attended school in which case such student may be on the property  
76 of his or her residence without direct adult supervision.

77 [4.] 5. Any student who violates the condition of suspension required pursuant to  
78 subsection 3 of this section may be subject to expulsion or further suspension pursuant to the  
79 provisions of sections 167.161, 167.164, and 167.171, RSMo. In making this determination  
80 consideration shall be given to whether the student poses a threat to the safety of any child or  
81 school employee and whether such student's unsupervised presence within one thousand feet of  
82 the school is disruptive to the educational process or undermines the effectiveness of the school's  
83 disciplinary policy. Removal of any pupil who is a student with a disability is subject to state  
84 and federal procedural rights.

85 [5.] 6. The policy shall provide for a suspension for a period of not less than one year,  
86 or expulsion, for a student who is determined to have brought a weapon to school, including but  
87 not limited to the school playground or the school parking lot, brought a weapon on a school bus

88 or brought a weapon to a school activity whether on or off of the school property in violation of  
89 district policy, except that:

90 (1) The superintendent or, in a school district with no high school, the principal of the  
91 school which such child attends may modify such suspension on a case-by-case basis; and

92 (2) This section shall not prevent the school district from providing educational services  
93 in an alternative setting to a student suspended under the provisions of this section.

94 [6.] **7.** For the purpose of this section, the term "weapon" shall mean a firearm as defined  
95 under 18 U.S.C. 921 and the following items, as defined in section 571.010, RSMo: a blackjack,  
96 a concealable firearm, an explosive weapon, a firearm, a firearm silencer, a gas gun, a knife,  
97 knuckles, a machine gun, a projectile weapon, a rifle, a shotgun, a spring gun or a switchblade  
98 knife; except that this section shall not be construed to prohibit a school board from adopting a  
99 policy to allow a Civil War reenactor to carry a Civil War era weapon on school property for  
100 educational purposes so long as the firearm is unloaded. The local board of education shall  
101 define weapon in the discipline policy. Such definition shall include the weapons defined in this  
102 subsection but may also include other weapons.

103 [7.] **8.** All school district personnel responsible for the care and supervision of students  
104 are authorized to hold every pupil strictly accountable for any disorderly conduct in school or on  
105 any property of the school, on any school bus going to or returning from school, during  
106 school-sponsored activities, or during intermission or recess periods.

107 [8.] **9.** Teachers and other authorized district personnel in public schools responsible for  
108 the care, supervision, and discipline of schoolchildren, including volunteers selected with  
109 reasonable care by the school district, shall not be civilly liable when acting in conformity with  
110 the established policy of discipline developed by each board under this section, or when reporting  
111 to his or her supervisor or other person as mandated by state law acts of school violence or  
112 threatened acts of school violence, within the course and scope of the duties of the teacher,  
113 authorized district personnel or volunteer, when such individual is acting in conformity with the  
114 established policies developed by the board. Nothing in this section shall be construed to create  
115 a new cause of action against such school district, or to relieve the school district from liability  
116 for the negligent acts of such persons.

117 [9.] **10.** Each school board shall define in its discipline policy acts of violence and any  
118 other acts that constitute a serious violation of that policy. Acts of violence as defined by school  
119 boards shall include but not be limited to exertion of physical force by a student with the intent  
120 to do serious bodily harm to another person while on school property, including a school bus in  
121 service on behalf of the district, or while involved in school activities. School districts shall for  
122 each student enrolled in the school district compile and maintain records of any serious violation  
123 of the district's discipline policy. Such records shall be made available to teachers and other

124 school district employees with a need to know while acting within the scope of their assigned  
125 duties, and shall be provided as required in section 167.020, RSMo, to any school district in  
126 which the student subsequently attempts to enroll.

127 [10.] **11.** Spanking, when administered by certificated personnel of a school district in  
128 a reasonable manner in accordance with the local board of education's written policy of  
129 discipline, is not abuse within the meaning of chapter 210, RSMo. The provisions of sections  
130 210.110 to 210.165, RSMo, notwithstanding, the division of family services shall not have  
131 jurisdiction over or investigate any report of alleged child abuse arising out of or related to any  
132 spanking administered in a reasonable manner by any certificated school personnel pursuant to  
133 a written policy of discipline established by the board of education of the school district. Upon  
134 receipt of any reports of child abuse by the division of family services pursuant to sections  
135 210.110 to 210.165, RSMo, which allegedly involves personnel of a school district, the division  
136 of family services shall notify the superintendent of schools of the district or, if the person named  
137 in the alleged incident is the superintendent of schools, the president of the school board of the  
138 school district where the alleged incident occurred. If, after an initial investigation, the  
139 superintendent of schools or the president of the school board finds that the report involves an  
140 alleged incident of child abuse other than the administration of a spanking by certificated school  
141 personnel pursuant to a written policy of discipline or a report made for the sole purpose of  
142 harassing a public school employee, the superintendent of schools or the president of the school  
143 board shall immediately refer the matter back to the division of family services and take no  
144 further action. In all matters referred back to the division of family services, the division of  
145 family services shall treat the report in the same manner as other reports of alleged child abuse  
146 received by the division. If the report pertains to an alleged incident which arose out of or is  
147 related to a spanking administered by certificated personnel of a school district pursuant to a  
148 written policy of discipline or a report made for the sole purpose of harassing a public school  
149 employee, a notification of the reported child abuse shall be sent by the superintendent of schools  
150 or the president of the school board to the juvenile officer of the county in which the alleged  
151 incident occurred. The report shall be jointly investigated by the juvenile officer or a law  
152 enforcement officer designated by the juvenile officer and the superintendent of schools or, if  
153 the subject of the report is the superintendent of schools, by the juvenile officer or a law  
154 enforcement officer designated by the juvenile officer and the president of the school board or  
155 such president's designee. The investigation shall begin no later than forty-eight hours after  
156 notification from the division of family services is received, and shall consist of, but need not  
157 be limited to, interviewing and recording statements of the child and the child's parents or  
158 guardian within two working days after the start of the investigation, of the school district  
159 personnel allegedly involved in the report, and of any witnesses to the alleged incident. The

160 juvenile officer or a law enforcement officer designated by the juvenile officer and the  
161 investigating school district personnel shall issue separate reports of their findings and  
162 recommendations after the conclusion of the investigation to the school board of the school  
163 district within seven days after receiving notice from the division of family services. The reports  
164 shall contain a statement of conclusion as to whether the report of alleged child abuse is  
165 substantiated or is unsubstantiated. The school board shall consider the separate reports and  
166 shall issue its findings and conclusions and the action to be taken, if any, within seven days after  
167 receiving the last of the two reports. The findings and conclusions shall be made in substantially  
168 the following form:

169 (1) The report of the alleged child abuse is unsubstantiated. The juvenile officer or a law  
170 enforcement officer designated by the juvenile officer and the investigating school board  
171 personnel agree that the evidence shows that no abuse occurred;

172 (2) The report of the alleged child abuse is substantiated. The juvenile officer or a law  
173 enforcement officer designated by the juvenile officer and the investigating school district  
174 personnel agree that the evidence is sufficient to support a finding that the alleged incident of  
175 child abuse did occur;

176 (3) The issue involved in the alleged incident of child abuse is unresolved. The juvenile  
177 officer or a law enforcement officer designated by the juvenile officer and the investigating  
178 school personnel are unable to agree on their findings and conclusions on the alleged incident.

179 [11.] **12.** The findings and conclusions of the school board shall be sent to the division  
180 of family services. If the findings and conclusions of the school board are that the report of the  
181 alleged child abuse is unsubstantiated, the investigation shall be terminated, the case closed, and  
182 no record shall be entered in the division of family services' central registry. If the findings and  
183 conclusions of the school board are that the report of the alleged child abuse is substantiated, the  
184 division of family services shall report the incident to the prosecuting attorney of the appropriate  
185 county along with the findings and conclusions of the school district and shall include the  
186 information in the division's central registry. If the findings and conclusions of the school board  
187 are that the issue involved in the alleged incident of child abuse is unresolved, the division of  
188 family services shall report the incident to the prosecuting attorney of the appropriate county  
189 along with the findings and conclusions of the school board, however, the incident and the names  
190 of the parties allegedly involved shall not be entered into the central registry of the division of  
191 family services unless and until the alleged child abuse is substantiated by a court of competent  
192 jurisdiction.

193 [12.] **13.** Any superintendent of schools, president of a school board or such person's  
194 designee or juvenile officer who knowingly falsifies any report of any matter pursuant to this  
195 section or who knowingly withholds any information relative to any investigation or report

196 pursuant to this section is guilty of a class A misdemeanor.

197 [13.] **14.** In order to ensure the safety of all students, should a student be expelled for  
198 bringing a weapon to school, violent behavior, or for an act of school violence, that student shall  
199 not, for the purposes of the accreditation process of the Missouri school improvement plan, be  
200 considered a dropout or be included in the calculation of that district's educational persistence  
201 ratio.

**160.775. 1. For purposes of this section, the following terms mean:**

2 (1) "At school", anywhere on school property or property adjacent to school  
3 property, on a school bus or other school vehicle, or at a school-sponsored activity or event  
4 regardless of whether such event is held on school property;

5 (2) "Harassment, intimidation, or bullying", any written, verbal, or physical act,  
6 or gesture, that a reasonable person under the circumstances should know will have the  
7 effect of harming a pupil or damaging his or her property or placing a pupil in reasonable  
8 fear of harm to his or her person or damage to his or her property, or that has the effect  
9 of insulting or demeaning any pupil or group of pupils in such a way as to disrupt or  
10 interfere with the school's educational mission or the education of any pupil. Harassment,  
11 intimidation, or bullying includes, but is not limited to, a written, verbal, or physical act,  
12 or gesture, described in this section that is perceived as being motivated for the harasser,  
13 intimidator, or bully, for any reason, towards harassing, intimidating, or bullying any  
14 target or victim.

15 **2.** Prior to September 1, 2006, the local board of education of each school district  
16 shall establish and adopt a written policy prohibiting harassment, intimidation, or bullying  
17 at school. The content of the policy shall be determined locally, but the policy shall contain  
18 at a minimum the components of subsection 3 of this section. School districts may consult  
19 with parents, guardians, school employees, school volunteers, pupils, school administrators,  
20 and community representatives in the process of adopting such policy.

21 **3.** Each school district's policy shall include the following components:

22 (1) A statement prohibiting harassment, intimidation, or bullying of any student  
23 on school property, on a school bus or other school vehicle, or at a school-sponsored  
24 activity or event regardless of whether such event is held on school property;

25 (2) A definition of harassment, intimidation, or bullying no less inclusive than the  
26 definition in subsection 1 of this section;

27 (3) A description of the type of behavior expected from each student;

28 (4) Consequences and appropriate remedial action for a person who commits an  
29 act of harassment, intimidation, or bullying;

30 (5) A procedure for reporting an act of harassment, intimidation, or bullying,

31 including a provision that permits a person to anonymously report an act of harassment,  
32 intimidation, or bullying, provided that such anonymous report shall not provide the sole  
33 basis for proceeding with formal disciplinary action;

34 (6) A requirement that school personnel report prohibited incidents of which they  
35 are aware;

36 (7) A procedure for responding to any reported act of harassment, intimidation, or  
37 bullying;

38 (8) A procedure for prompt investigation of reports of violations and complaints,  
39 identifying either the principal or principal's designee as the person responsible for the  
40 investigation;

41 (9) A requirement that parents or guardians of any student involved in an incident  
42 prohibited under this section be notified;

43 (10) The range of ways in which a school will respond if an incident of harassment,  
44 intimidation, or bullying is identified;

45 (11) A procedure for documenting any incident of harassment, intimidation, or  
46 bullying that is reported;

47 (12) A statement that prohibits reprisal or retaliation against any person who  
48 reports an act of harassment, intimidation, or bullying, and the consequences and  
49 appropriate remedial action for a person who engages in that type of reprisal or  
50 retaliation;

51 (13) A strategy for protecting a victim from additional harassment, intimidation,  
52 or bullying, and from retaliation following a report;

53 (14) A procedure for counseling students who have been victims or targets of  
54 bullying;

55 (15) Consequences and appropriate remedial action for a person found to have  
56 falsely accused another as a means of retaliation or as a means of harassment, intimidation,  
57 or bullying;

58 (16) A disciplinary or counseling procedure for any student guilty of harassment,  
59 intimidation, or bullying;

60 (17) A requirement that any information relating to a reported incident is  
61 confidential, and exempt from disclosure under the provisions of chapter 610, RSMo; and

62 (18) A statement of how the policy is to be publicized, including notice that the  
63 policy applies to participation in school-sponsored activities.

64 4. To assist local school boards in developing policies for prevention of harassment,  
65 intimidation, or bullying, the department of elementary and secondary education shall  
66 develop a model policy applicable to grades kindergarten through twelve. The model



67 policy shall be issued by December 1, 2005, and posted on the department of elementary  
68 and secondary education web site.

69       **5. Notice of the school board's policy shall appear in any school board or school**  
70 **publication that sets forth the comprehensive rules, procedures, and standards of conduct**  
71 **for its schools, and shall appear in its student handbook in the next published version after**  
72 **the adoption of the policy.**

73       **6. A school administrator, employee, student, or volunteer shall not engage in**  
74 **reprisal, retaliation, or false accusation against a victim, witness, or one with reliable**  
75 **information about an act of harassment, intimidation, or bullying.**

76       **7. A school administrator, employee, student, or volunteer who has witnessed, or**  
77 **who has reliable information that a student has been subject to, harassment, intimidation,**  
78 **or bullying, whether verbal or physical, shall report the incident to the appropriate school**  
79 **official designated in the school district's policy.**

80       **8. A school employee, student, or volunteer is personally immune from a cause of**  
81 **action for damages arising from reporting harassment, intimidation, or bullying, or any**  
82 **failure to remedy the reported harassment, intimidation, or bullying, if such person:**

83       **(1) In good faith promptly reports an incident of harassment, intimidation, or**  
84 **bullying;**

85       **(2) Makes the report to the appropriate school official designated by the school**  
86 **district's policy; and**

87       **(3) Makes the report in compliance with the procedures as specified in policy**  
88 **prohibiting harassment, intimidation, or bullying.**

89       **9. School districts, schools, and local school boards may form bullying prevention**  
90 **task forces, programs, and other initiatives involving school staff, students, teachers,**  
91 **administrators, volunteers, parents, law enforcement, and community members.**

92       **10. Each local board of education and school district shall do the following:**

93       **(1) Incorporate into its employee and volunteer training programs training on**  
94 **harassment, intimidation, or bullying policy to school employees and volunteers who have**  
95 **direct contact with students; and**

96       **(2) Develop a process for educating students on the harassment, intimidation, or**  
97 **bullying policy.**

98       **11. Except as provided in subsection 8 of this section, nothing in this section shall**  
99 **be construed to prevent a victim from seeking redress under any other provision of law,**  
100 **either civil or criminal. This section does not create or alter any tort liability.**