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FISCAL IMPACT STATEMENT

LS 6399

BILL NUMBER: HB 1040

NOTE PREPARED: Dec 20, 2021

BILL AMENDED:

SUBJECT: Education Matters.

FIRST AUTHOR: Rep. Prescott

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: *School Curriculum and Educational Materials:* This bill defines "qualified school". It provides that a school corporation or qualified school is prohibited from subjecting any student to, or making available, disseminating, or providing to any student, any obscene matter or performance or certain matters or performances harmful to minors. It provides that each school corporation or qualified school shall provide for all students in grades 6 through 12 as part of required recitation concerning the system of government in Indiana and in the United States, instruction that socialism, Marxism, communism, totalitarianism, or similar political systems are incompatible with and in conflict with the principles of freedom upon which the United States was founded. It also provides that a school corporation or qualified school may not provide instruction that socialism, Marxism, totalitarianism, or similar political systems are compatible with the principles of freedom upon which the United States was founded.

Parental and Student Rights: This bill provides that a parent of a student or an emancipated student who attends a school corporation or qualified school may opt out of a face mask or face covering requirement. It requires the Department of Education (DOE) to develop a notice form that may be used by a parent or an emancipated student to indicate that the parent or emancipated student opts out of the face mask or face covering requirement. It provides that the Governor, a state agency, a local health board or local health officer, or a school corporation or qualified school may not require a student of a school corporation or qualified school to quarantine against COVID-19 or other communicable disease if the student is asymptomatic. It provides that the Governor, a state agency, a local health board or local health officer, or a school corporation or qualified school may not require, as a condition for employment, enrollment, attendance, or participation in a school corporation or qualified school or in a school extracurricular activity, a student to be immunized against COVID-19 or other communicable disease. It provides that, after December 31, 2020, the list of communicable diseases that require documentation of immunity for a student

may be expanded or modified only by an act of the General Assembly. It also establishes certain consent requirements regarding students.

Medical Information: This bill provides that, if the Attorney General determines that a school corporation or qualified school: (1) discloses a student education record, or any information in a student education record; or (2) has a student who is less than 18 years of age and is not emancipated participate in any medical inspection, medical treatment, mental health assessment, mental health service, psychiatric or psychological examination or test, or psychiatric or psychological treatment without the informed written consent of the student's parent; the Attorney General may assess a civil penalty against the school corporation, charter school, or laboratory school. It also provides that the parent of a student or protected right petitioner may bring a civil action for certain violations.

Protected Right Violations: This bill defines "protected right violations". It defines "protected right petitioner". It establishes procedures for a protected right petitioner to file a complaint form alleging a protected right violation occurred within a school corporation or qualified school. It provides that a protected right petitioner may appeal a school corporation's or qualified school's findings to the DOE. It requires the DOE to appoint an administrative law judge to adjudicate appeals. It requires the DOE to issue a final order. It requires the Attorney General or the Attorney General's designee to review a school corporation's or qualified school's findings or the DOE's final order. It provides that the Attorney General may assess civil penalties if the Attorney General determines a protected right violation occurred. It also provides that a school corporation or qualified school may not take retaliatory action against a protected right petitioner or an individual related to or associated with the protected right petitioner.

Student Analyses, Evaluation, and Surveys: This bill provides that, if a school corporation or qualified school uses a third party vendor in providing a personal analysis, evaluation, or survey that reveals or attempts to affect a student's attitudes, habits, traits, opinions, beliefs, or feelings, the third party vendor and the school corporation or public school may not collect or maintain the responses to or results of the analysis, evaluation, or survey in a manner that would identify the responses or results of an individual student. It also provides that the consent requirements for certain student personal analysis, evaluations, or surveys apply even if the analysis, evaluation, or survey is directly related to academic instruction.

Curriculum Posting: This bill requires, not later than June 30, 2022, and not later than June 30 each year thereafter, each qualified school to post on the qualified school's Internet web site, in a manner that is accessible by the public, certain information regarding learning materials and educational activities. It also requires the DOE to develop and post on the DOE's Internet web site a model plan for presenting the learning material or educational activity information.

Other Provisions: This bill makes changes to information that must be included on a school corporation's annual performance report. It makes changes to information that must be included on a school's longitudinal dashboard. It reconciles versions of IC 10-21-1-2 that were enacted by the 2019 General Assembly. It repeals provisions requiring the DOE to develop the Children's Social, Emotional, and Behavioral Health Plan. This bill also makes conforming amendments.

Effective Date: Upon passage; January 1, 2021 (retroactive); July 1, 2022.

Explanation of State Expenditures: *Tuition Support:* This bill may result in tuition support being withheld from school corporations or qualified schools if a school is found to have violated a protected right. Any amount withheld would result in a decrease in General Fund expenditures, with the amount being determined

by an order from an administrative law judge.

Department of Education (DOE): In the event that a petitioner files a complaint with a school corporation or qualified school and chooses to then file an appeal of the school's initial determination, the DOE must accept the appeal and appoint an administrative law judge to issue a final order. If the administrative law judge determines that the school committed a protected right violation, the final order may: withhold state tuition support from the school until the protected right violation is remedied, recommend that the State Board of Education (SBOE) revoke the school's performance based accreditation, suspend or revoke a teacher's license, or recommend that the Attorney General assess a civil penalty. Any reduction in General Fund expenditures resulting from withholding state tuition support is expected to be minor and will depend on the compliance of schools with the requirements of this bill.

The DOE must, as prescribed in this bill, develop and post on their website:

- A notice form for parents who wish to opt out of a face mask or face covering requirement;
- A complaint form for protected right petitioners to file a complaint against a school corporation or qualified school; and
- A model plan for schools to post their curricular materials information online as required by this bill.

Additionally, this bill repeals the existing Children's Social, Emotional, and Behavioral Health Plan. This will reduce the workload of the various state agencies required to create and update this plan, including the DOE, Department of Child Services, Department of Correction, and the Family and Social Services Administration.

These requirements are within the DOE's routine administrative functions and should be able to be implemented with no additional appropriations, assuming near customary agency staffing and resource levels.

Attorney General: The Attorney General must review all findings of school corporations, qualified schools, and the DOE regarding protected right complaints. If the Attorney General finds that a violation of a protected right occurred, the Attorney General may assess a civil penalty against the school. This requirement is within the Attorney General's routine administrative functions and should be able to be implemented with no additional appropriations, assuming near customary agency staffing and resource levels.

Office of Administrative Law Proceedings: This bill requires that an administrative law judge be appointed to issue a final order in an appeal of a school's determination of a protected right complaint. This requirement is within the agency's routine administrative functions and should be able to be implemented with no additional appropriations, assuming near customary agency staffing and resource levels.

State Board of Education (SBOE): This bill requires the SBOE to include in their existing dashboard, the additional requirements to be reported in the School Corporation Annual Performance Report regarding protected right violation complaints filed against schools. These data must be updated in the dashboard at least every 30 days. This requirement is within the SBOE's routine administrative functions and should be able to be implemented with no additional appropriations, assuming near customary agency staffing and resource levels.

Additional Information: This bill defines a qualified school as either a school maintained by a school corporation, a charter school, a laboratory school, the Indiana School for the Blind and Visually Impaired, or the Indiana School for the Deaf.

This bill restricts the Governor, state agencies, and local health boards and officers from making certain requirements of school corporations and qualified schools regarding COVID-19 and other communicable diseases. It also requires that the list of communicable diseases that require documentation of immunity for a student may only be expanded or modified by an act of the General Assembly.

Explanation of State Revenues: *Protected Right Violations:* Civil penalties assessed by the Attorney General, as prescribed in this bill, must be deposited into the Indiana Secured School Fund.

There could also be an increase in civil actions resulting in an increase in court fee revenue to the state General Fund. A civil costs fee of \$100 could be assessed from the defendant, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court.

In addition, some or all of the judicial salaries fee (\$20), public defense administration fee (\$5), court administration fee (\$5), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund. Proceeds from the automated record keeping fee (\$20) are deposited into the State User Fee Fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

School Curriculum and Educational Materials: This bill requires that the SBOE and the DOE may not receive or apply to receive money that requires, as a condition of receipt of the money, the adoption of programs, policies, curriculum, or any other learning material that includes, incorporates, or is based on practices prohibited in this bill.

Explanation of Local Expenditures: *Summary:* Complying with the bill's requirements will constitute a workload increase for school corporations and qualified schools, especially for schools needing to respond to protected right violation complaints. The workload impacts could vary by school corporation, and the resources required to satisfy the requirements of this bill will depend on administrative actions.

Protected Right Violations: School corporations and qualified schools must investigate each complaint form filed against the school to determine whether or not a violation occurred. In doing so, the school must designate at least one employee to respond to such complaints and must post this employee's contact information on the school's website. Once a school makes a determination regarding a complaint, the school must notify the petitioner and send a copy of the findings to the Attorney General for review.

If a school is determined to have violated a protected right, the administrative law judge may recommend that the SBOE revoke the school's performance based accreditation or suspend or revoke a teacher's license. Any such impact to a school will depend on local action.

This bill also requires that school corporations include in their School Corporation Annual Performance Report additional information regarding protected right violation complaints filed against schools.

Curriculum Posting: Starting not later than June 30, 2022, qualified schools must annually post on their website the following:

- The title and author, organization, or website associated with each learning material and educational activity;
- Once per semester, the full text or a copy, or a link to the full text, of the learning materials or

- educational activity (only when doing so will not infringe federal copyright laws); and
- Any procedures or policies in effect for the documentation, review, or approval of learning materials and educational activities.

Medical Information: This bill requires that school corporations and qualified schools must obtain written consent from the parent of a student under the age of 18 before the school may: share a student's education record with a third party; provide a third party with access to a student; or allow a student to participate in any medical inspection, treatment, mental health assessment, or psychiatric or psychological examination or test. The school must also provide the parent with a written notice describing, in detail, the treatment, service, examination, or test as prescribed in this bill. If it is determined through a protected right petition that a school corporation or qualified school failed to comply with these requirements, the Attorney General may assess a civil penalty against the school and the petitioner may bring a civil action against the school. Any such civil action may award the petitioner with court costs, reasonable attorney's fees, and actual damages resulting from the violation of up to \$5,000.

School Corporations and Qualified Schools: This bill requires that school corporations and qualified schools must:

- Obtain written consent from the parent of a student under the age of 18 before the student may participate in any instruction on human sexuality, and provide the parent with a written notice describing, in detail, the contents and nature of the instruction along with a copy of all materials the student will be provided;
- Post on their school website both the notice form regarding face coverings and the Protected Right complaint form created by the DOE;
- Provide students with classroom instruction on specific political systems as prescribed in this bill;
- Make instructional materials available for inspection by the parents of a student during the school's normal business hours;
- Provide a student's parent with a notification that learning materials and educational activity information is available for inspection; and
- Provide a student's parent with a syllabus for each class in which the student is enrolled.

As prescribed in this bill, school corporations and qualified schools may not:

- Include in their courses, course materials, classroom assignments, orientations, interventions, programs, or counseling regarding the concepts and practices prohibited by this bill;
- Use, make available, or disseminate materials or performances which are obscene or harmful to minors;
- Include or promote concepts as part of a course, or allow teachers or other school employees to promote a concept that contradicts this bill's requirements regarding socialism, Marxism, communism, totalitarianism, or similar political systems;
- Adopt diversity, equity, or inclusion plans or trainings for students or school employees that incorporate or are based on the practices prohibited by this bill;
- Adopt policies that apply differently to students or employees based on race or sex;
- Use money, property, assets, or resources for purposes that include or incorporate the prohibited practices outlined in this bill;
- Require immunization against COVID-19 or other communicable disease as a condition for employment, enrollment, attendance, or participation in extracurricular activities, unless authorized to do so by the General Assembly;

- Require a student to quarantine against COVID-19 or other communicable disease if the student is asymptomatic; and
- When using a third-party vendor, collect or maintain responses to, or results of, an analysis, evaluation, or survey that would identify the responses or results of an individual student.

Explanation of Local Revenues: *Protected Right Violations:* Any reduction in state tuition support to a school resulting from violating a protected right, as prescribed in this bill, is expected to be minor and will depend on the compliance of schools with the requirements of this bill.

The amount of any civil penalty assessed against a school for violating a protected right will depend on the number of students who are subject of a violation and how many violations the school has previously committed. A court may award the petitioner with court costs, reasonable attorney's fees, and actual damages resulting from the violations of up to \$5,000.

If additional civil actions occur due to this bill, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$100 civil costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge, depending upon the particular type of case.

Persons filing a civil case are also required to pay the following fees that are deposited in local funds.

The document storage fee (\$5) is deposited into the clerk record perpetuation fund.

The following fees are deposited into the general fund of the county in which the court is located:

Document fees (\$1 per page) are charged for preparing transcripts or copies of record or certificate under seal. A civil garnishee defendant service fee (\$10) is collected from the filing party for each defendant beyond the first three garnishee defendants cited in the lawsuit.

Curriculum Posting: A school corporation or qualified school may charge a fee for making curricular materials available to a student's parent. The fee for certification of documents may not exceed \$5 per document. The school may charge a copying fee of either \$0.10 per page for copies that are not color and \$0.25 per page for color copies, or the actual cost of copying the document, whichever is greater.

State Agencies Affected: Department of Education; State Board of Education; Attorney General; Office of Administrative Law Proceedings; Department of Child Services; Department of Correction; Family and Social Services Administration; Indiana School for the Blind and Visually Impaired; Indiana School for the Deaf; Laboratory schools.

Local Agencies Affected: School corporations; Charter schools; Trial courts; City and town courts.

Information Sources:

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