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## **Oppose SB 242: The Wrong Solution to Combating Bullying in Texas Schools**

**SB 242** amends the Texas Education Code to create a new definition for bullying and grants district officials broad discretionary authority to discipline children for actions committed off-campus, in addition to on-campus.

The ACLU of Texas has long advocated for the rights of victims of bullying and harassment, and is committed to fighting for real legislative solutions to ending bullying in our schools. Because of our constant interaction with affected children, including through our legal and public education work, we are convinced the solution requires holding district officials accountable for enforcing the existing law that prohibits bullying in Texas schools. By failing to address the issue of accountability, SB 242 fails to adequately address the very real problem of bullying.

**District officials already have the authority, and duty, to protect students from bullying and harassment.** Under Chapter 37 of the Texas Education Code, school districts' student codes of conduct must prohibit bullying and harassment and "ensure that district officials enforce those prohibitions[.]"<sup>i</sup> Unfortunately, and despite clear legislative direction, district officials have failed to uphold this statutory requirement. District officials must be held accountable for their failure to enforce existing law, rather than be given additional powers that fail to address the root problem.

**SB 242 fails to ensure that district officials will enforce the existing prohibition against bullying at school.** Children from across Texas have reported to the ACLU of Texas that some district officials ignore reports of bullying. In addition to the ACLU of Texas' findings, a 2007 GLSEN survey found that only 32% of Texas students who reported incidents of bullying to district officials had effective intervention.<sup>ii</sup> In some cases, district officials actually blamed the victim. These complaints show the need for legislators to ensure that district officials are held accountable when they fail to protect their students. SB 242 does not do that.

**The vague definition for bullying may disproportionately affect minority and special education students.** The lack of guidelines for discretionary authority granted to district officials has resulted in punishments that disproportionately affect African American, Hispanic, and special education students.<sup>iii</sup> This bill permits district officials to discipline students for "interfer[ing] with a student's educational opportunities." This vague language raises serious concerns over potential abuse, and runs counter to current legislative efforts seeking to address these disparities.

**SB 242 allows district officials to unconstitutionally infringe on the rights of parents and children.**

- **Extending school authority to actions occurring off-campus infringes on the fundamental right of parents to direct the upbringing of their children free from government intervention.** The authority to discipline minors for off-campus conduct is reserved for parents, or, for criminal actions, for law enforcement. The authority of district officials to use their state-conferred power to discipline students for inappropriate behavior ends at the schoolhouse gate. By extending district officials' authority into parents' homes, SB 242 permits the violation of parents' constitutional rights.

- **Extending school authority over children’s off-campus speech violates their First Amendment rights.** The US Supreme Court has stated that school officials have limited authority to curtail students’ free speech rights to “facilitate education and maintain order” in school. Once students exit the schoolhouse gate they are no longer students, but children who happen to be students, and therefore regain whatever rights they shed upon entry. By extending school officials’ authority to include the ability to police off-campus speech, SB 242 takes the radical position that district officials’ authority to curb their students’ in-school speech extends into the community, including into parents’ homes. SB 242 will enable district officials to engage in unconstitutional content and viewpoint censorship. In reality, content- and viewpoint-based restrictions on children’s First Amendment rights are subject to strict scrutiny, just like restrictions of adults’ First Amendment rights.

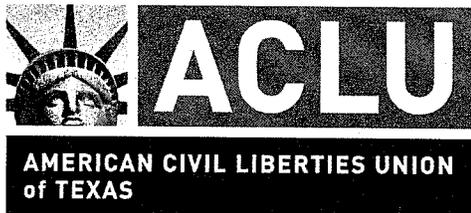
**The intent to address the serious and pressing issue of bullying in Texas schools is greatly welcomed, and SB 242 does include positive measures such as better reporting and training requirements. But, by not holding school officials accountable for failing to protect their students, SB 242 does not remedy the problem of bullying. Further, it will allow district officials to unconstitutionally infringe on the rights of parents and children. The ACLU of Texas is deeply concerned about bullying, and SB 242 fails to adequately address the problem.**

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<sup>i</sup> TEX. EDUC. CODE § 37.001(a)(7) (Under the Education Code, school district codes of conduct must “prohibit bullying[] [and] harassment ... and ensure that district officials enforce those prohibitions[.]”).

<sup>ii</sup> GLSEN Research Brief, *Inside Texas Schools: The Experiences of LGBT Students (2007)* available at <http://www.glsen.org/cgi-bin/iowa/all/library/record/2235.html?state=research&type=research>.

<sup>iii</sup> See, DEBORAH FOWLER, ET AL., *TEXAS’ SCHOOL-TO-PRISON PIPELINE — SCHOOL EXPULSION, THE PATH FROM LOCKOUT TO DROPOUT*, TEXAS APPLESEED (April 2010).



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## **Support SB 205: Ensure Safe, Accountable, Bully Free Texas Schools**

**SB 205** amends the Texas Education Code to better ensure enforcement of existing laws against bullying and harassment at school.

**District officials have the authority, and duty, to protect students from bullying and harassment.** Under Chapter 37 of the Texas Education Code, school districts are required to include a prohibition against bullying and harassment in their student codes of conduct. In addition, current law requires “that district officials enforce those prohibitions[.]”<sup>1</sup> SB 205 creates a clear statutory framework to ensure that district officials report, investigate, and respond appropriately to allegations of bullying or harassment. In addition, SB 205 requires that each school policy identify a school official responsible for ensuring the policy is implemented. By providing additional guidance to Texas’ public schools, SB 205 will ensure that all district employees are on the same page.

**SB 205 holds district employees accountable for failure to report incidents of bullying or harassment.** Children from across Texas have reported to the ACLU of Texas that some district officials ignore reports of bullying. In addition to the ACLU of Texas’ findings, a 2007 GLSEN survey found that only 32% of Texas students who reported incidents of bullying to district officials had effective intervention.<sup>2</sup> In some cases, district officials actually blamed the victim. SB 205 will help remedy this failure to protect by ensuring that those district employees who promptly report instances of bullying and harassment are immune from a cause of action for damages. Thus, SB 205 ensures that following the law will benefit both district employees and victims of bullying and harassment. As a result, SB 205 will ensure safer and more accountable schools.

**SB 205 provides the process and incentive to help ensure that allegations of bullying and harassment are reported, investigated, and remedied in all Texas public schools. The result: safe, accountable, bully free schools!**

<sup>1</sup> TEX. EDUC. CODE § 37.001(a)(7) (Under the Education Code, school district codes of conduct must “prohibit bullying[] [and] harassment ... and ensure that district officials enforce those prohibitions[.]”).

<sup>2</sup> GLSEN Research Brief, *Inside Texas Schools: The Experiences of LGBT Students (2007)* available at <http://www.glsen.org/cgi-bin/iowa/all/library/record/2235.html?state=research&type=research>.