



Analysis of Senate Bill 1357

Effective: September 1, 2003

The following is an analysis of Senate Bill 1357 that amends the Texas Education Code, Sections 28.004 and 38.013. This law is now in effect. The Texas Education Code that can be accessed through the Texas Education Agency Internet site as of September 2003 had not been updated to reflect this change. The language in this law takes precedence. Text in the Texas Education Code not expressly amended by this law remains in effect. We have identified that text in this document by using smaller text in the color red and italics.

The Texas Education Code is the body of law that governs the Texas public education system.

The comments found in this document are interpretations and does not reflect any official interpretations by the Texas Education Agency, or the Attorney General.

The purpose of this document is to help the general public understand this law in the hope that through understanding they can better support schools in ensuring that Texas public school students have access to quality school health programming.

The actual law is in the left hand column. Any text that has been underlined is new language that has been added to the Texas Education Code. Any text that has been struck through is language that has been removed from the Texas Education Code. Any smaller text in red and italics is language not in Senate Bill 1357 but is in the section of the Texas Education Code and remains unchanged and in effect.

The Law

Commentary

<p style="text-align: center;">S.B. No. 1357</p> <p style="text-align: center;">AN ACT</p> <p>relating to local school health advisory councils, health education instruction, and coordinated health programs for elementary school students.</p>	<p>Clearly, the Texas Legislature values the benefits that quality school health programming can provide our children. They also see it as an important component of the education process. They have established a process for guiding schools while allowing for a great deal of local decision-making. Because in Texas we strongly believe in local control, effective and functioning school health advisory councils are extremely important.</p>
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<p>BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:</p> <p>SECTION 1. The heading to Section 28.004, Education Code, is amended to read as follows:</p> <p>Sec. 28.004. LOCAL SCHOOL HEALTH [EDUCATION] ADVISORY COUNCIL AND HEALTH EDUCATION INSTRUCTION.</p>	<p>As you read through this legislation, you will discover that some parts are missing. This is due to the fact that some existing text was not changed by this law, therefore that text remains in effect. In order to help identify text not affected by SB1357, we have included them in this document but the text appears in italics and in red.</p> <p>By the simple act of dropping the word “education”, the legislature has significantly broadened the duties of a council. This allows them to better address all school health concerns in a complete and comprehensive manner.</p>
<p><i>Texas Education Code As Amended By Senate Bill 19; 77th Legislature (Still in effect. Not changed by SB 1357)</i></p> <p><i><u>(l) The State Board of Education, after consulting with educators, parents, and medical professionals, by rule may require a student enrolled in kindergarten or a grade level below grade seven in an elementary school setting to participate in daily physical activity as part of a school district’s physical education curriculum or through structured activity during a school campus’s daily recess, except that the board may not require more than 30 minutes of daily physical activity. If the board adopts rules under this subsection, the board must provide for an exemption for a student who is unable to participate in daily physical activity because of illness or disability.</u></i></p>	<p><i>The State Board of Education (SBOE) acted on this issue by passing a new SBOE rule (19 TAC §74.32) that became effective September 1, 2002, reads as follows:</i></p> <p><i>§74.32. Physical Activity Programs for Elementary School Students.</i></p> <p><i>In accordance with Texas Education Code, §28.002, all students enrolled in full-day kindergarten or Grades 1-6 in an elementary school setting are required to participate in physical activity for a minimum of either 30 minutes daily or 135 minutes weekly under the following conditions:</i></p> <p><i>(1) participation must be in a Texas Essential Knowledge and Skills (TEKS)-based physical education class or a TEKS-based structured activity; and</i></p> <p><i>(2) each school district shall establish procedures for providing the required physical activity that must consider the health-related education needs of the student and the recommendations of the local health advisory council.</i></p>
<p>SECTION 2. Section 28.004, Education Code, is amended by amending Subsections (a) through (e) and adding Subsection (k) to read as follows:</p>	<p>It is this section of the Texas Education Code which is most affected by SB1357.</p>

<p>(a) The board of trustees of each school district shall establish a local school health [education] advisory council to assist the district in ensuring that local community values are reflected in the district's health education instruction.</p>	<p>Every school district is required to have a school health advisory council. The law doesn't stipulate how often they should meet or how long they should exist. However, since the duties of a council are so extensive and important, this should be a permanent body and they should meet a minimum of six times during the year.</p>
<p>(b) A school district must consider the recommendations of the local school health [education] advisory council before changing the district's health education curriculum or instruction.</p>	<p>Councils do not have the authority to make policy decisions. They can only make recommendations. Ideally, they should make their recommendations directly to the local school board, in keeping with established district procedures and upon consultation with the superintendent. A wise strategy would be to ensure that there are at least two champions on the local school board that are aware of and support the work of the council.</p>
<p>(c) The local school health [education] advisory council's duties include recommending:</p>	<p>This law greatly expanded the duties of a council, thus making it possible for them to take a comprehensive approach to school health issues.</p>
<p>(1) the number of hours of instruction to be provided in health education;</p>	<p>Having the ability to recommend the number of hours students are provided health instruction is important. A good measure would be approximately one hour each week. Keep in mind that it is possible to teach health while teaching another subject through integration of content areas. For example, students can analyze food labels while using math skills.</p>

<p>(2) [health education] curriculum appropriate for specific grade levels [that may include a coordinated health education program] designed to prevent obesity, cardiovascular disease, and Type 2 [H] diabetes through coordination of:</p> <p>(A) health education; (B) physical education <u>and physical activity</u>; (C) <u>nutrition</u> [nutritional] services; (D) parental involvement; and (E) instruction to prevent the use of tobacco; [and]</p>	<p>Although a council may address all health curriculum, it is particularly important for a council to address these diseases. The problems of obesity and the other diseases listed are largely a result of lifestyle behaviors. The major public health problems are lifestyle related and are linked to behavior patterns established early in life.</p> <p>If a school establishes policies and practices that address these components of a coordinated school health program, this will have a significant impact on the health behaviors of children that will last them a lifetime.</p>
<p>(3) appropriate grade levels and methods of instruction for human sexuality instruction; <u>and</u></p>	<p>This is an example of where a local council has the duty to consider local values and needs related to these issues.</p>
<p><u>(4) strategies for integrating the curriculum components specified by Subdivision (2) with the following elements in a coordinated school health program for the district:</u></p> <p><u>(A) school health services;</u> <u>(B) counseling and guidance services;</u> <u>(C) a safe and healthy school environment; and</u> <u>(D) school employee wellness.</u></p>	<p>It is important for health to be taught in the classroom, but for it to be effective; it must be reinforced and supported throughout the school environment.</p> <p>The components listed here are important aspects of a quality coordinated school health program.</p>

<p>(d) The board of trustees shall appoint members to the local school health [education] advisory council. A majority of the members must be persons who are parents of students enrolled in the district and who are not employed by the district. The board of trustees also may appoint one or more persons from each of the following groups or a representative from a group other than a group specified under this subsection:</p> <ul style="list-style-type: none"> (1) public school teachers; (2) public school administrators; (3) district students; (4) health care professionals; (5) the business community; (6) law enforcement; (7) senior citizens; (8) the clergy; and (9) nonprofit health organizations. 	<p>Members to a council are appointed. The exact process is not defined by the law. Some councils are identified and appointed by the school board while others are identified by the Superintendent who submits a list of prospective members to the school board for approval. The exact process for identifying members to the council is not as important as ensuring that the best and most qualified individuals are recruited. The most effective councils are ones where the members were very carefully selected and oriented to roles and responsibilities.</p> <p>It is important to note that the majority of members must be parents with children in that school district <u>and are not employed by the school system</u>. The reason for this is that it ensures that the community is involved in the decision making process and that their values and concerns are addressed.</p> <p>The representatives listed here are only suggestions, thus the use of the word “may”. However, the more diverse and representative of the community a council is, the more effective they will be. In addition, councils need the expertise that these types of representative can bring to the decision making process.</p>
<p>(e) Any course materials and instruction relating to human sexuality, sexually transmitted diseases, or human immunodeficiency virus or acquired immune deficiency syndrome shall be selected by the board of trustees with the advice of the local school health [education] advisory council and must:</p>	<p>The issue of human sexuality is one in which the Legislature wished to be most prescriptive. They especially wanted to make sure that the school board was involved in the selection of course materials related to this issue.</p>

<p>(1) present abstinence from sexual activity as the preferred choice of behavior in relationship to all sexual activity for unmarried persons of school age;</p>	<p>Although abstinence must be presented as the “preferred choice”, it does not prevent other choices from being addressed.</p>
<p>(2) devote more attention to abstinence from sexual activity than to any other behavior;</p>	
<p>(3) emphasize that abstinence from sexual activity, if used consistently and correctly, is the only method that is 100 percent effective in preventing pregnancy, sexually transmitted diseases, infection with human immunodeficiency virus or acquired immune deficiency syndrome, and the emotional trauma associated with adolescent sexual activity;</p>	
<p>(4) direct adolescents to a standard of behavior in which abstinence from sexual activity before marriage is the most effective way to prevent pregnancy, sexually transmitted diseases, and infection with human immunodeficiency virus or acquired immune deficiency syndrome; and</p>	
<p>(5) teach contraception and condom use in terms of human use reality rates instead of theoretical laboratory rates, if instruction on contraception and condoms is included in curriculum content.</p>	

<p><u>(k) A school district shall make available for reasonable public inspection:</u></p>	<p>The next few parts of the law require schools to provide to the public the information listed. This is important, because it provides parents with the means to ensure that their school system is following the law and the intent of the Legislature in addressing the issue of coordinated school health. Although this is not the ideal way to provide for accountability, it does in a small way help. There are currently no significant penalties for school systems who don't follow the requirements of this law.</p>
<p><u>(1) a statement of the policies adopted to ensure that students in elementary grades engage in at least 30 minutes per school day or 135 minutes per school week of physical activity; and</u></p>	<p>By asking to see exactly what your school system's policy is related to providing structured daily physical activity, you can ensure that students are getting what they need. Studies show that students that are physically active are better learners. Many schools simply count recess as physical activity. It is important to note that students are required to be provided <u>physical activity</u>, which is not necessarily physical education.</p>
<p><u>(2) a statement of:</u> <u>(A) the number of times during the year the district's school health advisory council has met;</u></p>	<p>Although it may seem like a simple thing to require, we know that in order to be effective, a council must meet regularly. If your school's council only meets once or twice, then this is a good measurement of their effectiveness.</p>
<p><u>(B) whether the district has adopted and enforces policies to ensure that district campuses comply with agency vending machine and food service guidelines for restricting student access to vending machines; and</u></p>	<p>The Texas Department of Agriculture has issued new policies regulating vending machines and school food service programs. By obtaining your school's policies related to this issue, you could again determine if the intent of the law is being followed according to the policy and in practice.</p>

<p><u>(C) whether the district has adopted and enforces policies and procedures that prescribe penalties for the use of tobacco products by students and others on school campuses or at school-sponsored or school-related activities.</u></p>	<p>For many years now, tobacco products have been prohibited on school property; however, many schools may not have policies related to enforcement of this law. This may be particularly the case at school-sponsored activities such as athletic events. This law affects adults as well as students.</p>
<p>Texas Education Code As Amended By Senate Bill 19; 77th Legislature (Still in effect. Not changed by SB 1357)</p> <p><i>(f) A school district may not distribute condoms in connection with instruction relating to human sexuality.</i></p> <p><i>(g) A school district that provides human sexuality instruction may separate students according to sex for instructional purposes.</i></p> <p><i>(h) The board of trustees shall determine the specific content of the district's instruction in human sexuality, in accordance with Subsections (e), (f), and (g).</i></p> <p><i>(i) A school district shall notify a parent of each student enrolled in the district of:</i></p> <p style="padding-left: 40px;"><i>(1) the basic content of the district's human sexuality instruction to be provided to the student; and</i></p> <p style="padding-left: 40px;"><i>(2) the parent's right to remove the student from any part of the district's human sexuality instruction.</i></p> <p><i>(j) A school district shall make all curriculum materials used in the district's human sexuality instruction available for reasonable public inspection.</i></p>	<p><i>The text on the left is from previous legislation and was not affected by SB 1357.</i></p>
<p>SECTION 3. Section 38.013, Education Code, as added by Chapter 907, Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:</p>	<p>Note that we have switched to an entirely different section of the Texas Education Code.</p>

<p>Sec. 38.013. COORDINATED HEALTH PROGRAM FOR ELEMENTARY SCHOOL STUDENTS. (a) The agency shall make available to each school district <u>one or more [a] coordinated health programs [program]</u> designed to prevent obesity, cardiovascular disease, and Type 2 [H] diabetes in elementary school students. <u>Each [The] program must provide for coordinating:</u></p> <p>(1) health education; (2) physical education and physical activity; (3) nutrition services; and (4) parental involvement.</p>	<p>The “agency” refers to the Texas Education Agency. They are required to make “available” one or more programs to address the issues listed. However, what this means is open to broad interpretation. It could mean that all the agency must do is to inform schools of programs they recommend. It doesn’t mean that the agency must pay for the program or physically provide them to schools.</p> <p>Because this part of the law is so vague, it gives the Texas Education Agency a great deal of leeway. This has the effect of minimizing the potential benefits of this part of the law.</p>
<p><u>(a-1) The commissioner by rule shall adopt criteria for evaluating a coordinated health program before making the program available under Subsection (a). Before adopting the criteria, the commissioner shall request review and comment concerning the criteria from the Texas Department of Health’s School Health Advisory Committee.</u></p>	<p>Ultimately, it is the responsibility of the Commissioner of Education to adopt criteria for choosing the programs of choice. There is no absolute requirement for public input, especially from experts in the field of school health.</p> <p>Although this law requires review and comment by the state School Health Advisory Council, a separate law passed by the Legislature abolished a large number of state advisory councils, including this one. Therefore there is not a state School Health Advisory Council anymore.</p>
<p><u>The commissioner may make available under Subsection (a) only those programs that meet criteria adopted under this subsection.</u> (b) The agency shall notify each school district of the availability of the <u>programs [program]</u>.</p>	<p>The use of the word “may” could be considered a loophole, since in legal terms, it is not as strong as using the word “shall.”</p> <p>The agency is required to provide notification, but this simply means that all the agency needs to do is to send a list of approved programs to school districts. Again, beyond this, the agency isn’t required to provide any support.</p>

<p>Texas Education Code As Amended By Senate Bill 19; 77th Legislature (Still in effect. Not changed by SB 1357)</p> <p>Sec. 38.014. IMPLEMENTATION OF COORDINATED HEALTH PROGRAM FOR ELEMENTARY SCHOOL STUDENTS.</p> <p>(a) Each school district shall:</p> <p>(1) participate in appropriate training for the implementation of the program approved by the agency under Section 38.013; and</p> <p>(2) implement the program in each elementary school in the district.</p> <p>(b) The agency, in cooperation with the Texas Department of Health, shall adopt a schedule for regional education service centers to provide necessary training under this section.</p> <p>SECTION 4. This Act applies beginning with the 2001-2002 school year.</p> <p>SECTION 5. Not later than September 1, 2007, each school district must participate in the training required by Section 38.014, Education Code, as added by this Act.</p>	<p><i>This section in the Texas Education Code has created a great deal of confusion and differing interpretations.</i></p> <p><i>It requires school districts to participate in a training program related to the approved programs for coordinated school health. It doesn't specify to what extent a district must participate or who should be trained.</i></p> <p><i>It is clear that the programs must be implemented in each elementary school. This refers to elementary school campuses and not elementary grade levels. For example, if sixth grade is part of a middle school campus, students are exempt. If the sixth grade is part of an elementary school campus, they are <u>not</u> exempt.</i></p> <p><i>The dates have also created confusion. <u>Everything in both the previous Senate Bill 19 and the recent Senate Bill 1357 is currently in effect.</u></i></p> <p><i>The <u>only</u> exception is that schools have until 2007 to participate in the required training.</i></p> <p><i>Some school districts have interpreted this to mean that they are not required to have school health advisory councils until that date.</i></p>
<p>SECTION 4. This Act takes effect September 1, 2003.</p>	<p>Obviously, this law is currently in effect and schools are required to follow the requirements. Unfortunately, there are no significant penalties for schools that do not implement these requirements.</p>
<p>I hereby certify that S.B. No. 1357 passed the Senate on May 8, 2003, by the following vote: Yeas 31, Nays 0.</p>	
<p>I hereby certify that S.B. No. 1357 passed the House on May 28, 2003, by a non-record vote.</p>	