

Committee Report

REGULAR CALENDAR

March 23, 2021

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Majority of the Committee on Education to which
was referred HB 140,**

**AN ACT relative to private rights of action regarding
pupil safety. Having considered the same, report the
same with the recommendation that the bill OUGHT TO
PASS.**

Rep. Erica Layon

FOR THE MAJORITY OF THE COMMITTEE

**MAJORITY
COMMITTEE REPORT**

Committee:	Education
Bill Number:	HB 140
Title:	relative to private rights of action regarding pupil safety.
Date:	March 23, 2021
Consent Calendar:	REGULAR
Recommendation:	OUGHT TO PASS

STATEMENT OF INTENT

Prior to 2010, parents could sue if their child's school neglected their duty of care to protect students from bullying. This bill returns that power to parents and restores the penalty to make our anti-bullying laws more than a suggestion. There is a high burden of proof to demonstrate gross negligence or willful misconduct leading to demonstrated injury. The likely outcome from passage of this bill is school districts paying closer attention to RSA 193-F, not an influx of lawsuits.

Vote 12-8.

Rep. Erica Layon
FOR THE MAJORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

Education

HB 140, relative to private rights of action regarding pupil safety. **MAJORITY: OUGHT TO PASS. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. Erica Layon for the **Majority** of Education. Prior to 2010, parents could sue if their child's school neglected their duty of care to protect students from bullying. This bill returns that power to parents and restores the penalty to make our anti-bullying laws more than a suggestion. There is a high burden of proof to demonstrate gross negligence or willful misconduct leading to demonstrated injury. The likely outcome from passage of this bill is school districts paying closer attention to RSA 193-F, not an influx of lawsuits. **Vote 12-8.**

REGULAR CALENDAR

March 23, 2021

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Minority of the Committee on Education to which
was referred HB 140,**

**AN ACT relative to private rights of action regarding
pupil safety. Having considered the same, and being
unable to agree with the Majority, report with the
following resolution: RESOLVED, that it is
INEXPEDIENT TO LEGISLATE.**

Rep. David Luneau

FOR THE MINORITY OF THE COMMITTEE

MINORITY COMMITTEE REPORT

Committee:	Education
Bill Number:	HB 140
Title:	relative to private rights of action regarding pupil safety.
Date:	March 23, 2021
Consent Calendar:	REGULAR
Recommendation:	INEXPEDIENT TO LEGISLATE

STATEMENT OF INTENT

When it comes to student safety, current law does not prevent a private right of action against a school district or chartered public school in the case of negligence. This bill is unnecessary and expands the cause of action by any person aggrieved by any violation of RSA 193-F, including technical violations when nobody was injured and when no bullying occurred, provided a school official committed that technical violation with “gross negligence” which is a term state law does not define. The bill also allows the plaintiff to recover attorney’s fees for such technical and victimless violations, creating an incentive to sue school districts for harmless mistakes.

Rep. David Luneau
FOR THE MINORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

Education

HB 140, relative to private rights of action regarding pupil safety. **INEXPEDIENT TO LEGISLATE.**

Rep. David Luneau for the **Minority** of Education. When it comes to student safety, current law does not prevent a private right of action against a school district or chartered public school in the case of negligence. This bill is unnecessary and expands the cause of action by any person aggrieved by any violation of RSA 193-F, including technical violations when nobody was injured and when no bullying occurred, provided a school official committed that technical violation with “gross negligence” which is a term state law does not define. The bill also allows the plaintiff to recover attorney’s fees for such technical and victimless violations, creating an incentive to sue school districts for harmless mistakes.

Original: House Clerk
Cc: Committee Bill File

Voting Sheets

HOUSE COMMITTEE ON EDUCATION

EXECUTIVE SESSION on HB 140

BILL TITLE: relative to private rights of action regarding pupil safety.

DATE: March 11, 2021

LOB ROOM: 301/303

MOTIONS: **OUGHT TO PASS**

Moved by Rep. Layon

Seconded by Rep. A. Lekas

Vote: 12-8

CONSENT CALENDAR: YES

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep Barbara Shaw, Clerk



2021 SESSION

Education

Bill #: HB 140 Motion: OTF AM #: _____ Exec Session Date: 3-11-2021

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Ladd, Rick M. Chairman	✓		
Cordelli, Glenn Vice Chairman	✓		
Boehm, Ralph G.	✓		
Allard, James C.	✓		
Lekas, Alicia D.	✓		
Moffett, Michael	✓		
Hobson, Deborah L.	✓		
Andrus, Louise	✓		
Ford, Oliver J.	✓		
Layon, Erica J.	✓		
Soti, Julius F.	✓		
Myler, Mel		✓	
Luneau, David J.		✓	
Shaw, Barbara E. Clerk	✓		
Cornell, Patricia		✓	
Tanner, Linda L.		✓	
Ellison, Arthur S.		✓	
Mullen, Sue M.		✓	
Ley, Douglas A.		✓	
Woodcock, Stephen L.		✓	
TOTAL VOTE:	12	8	

Hearing Minutes

HOUSE COMMITTEE ON EDUCATION

PUBLIC HEARING ON HB 140

BILL TITLE: relative to private rights of action regarding pupil safety.

DATE: February 23, 2021

LOB ROOM: 201/203 **Time Public Hearing Called to Order:** 9:45 AM

Time Adjourned: 10:55 AM

Committee Members: Reps. Ladd, Cordelli, Shaw, Boehm, Allard, A. Lekas, Moffett, Hobson, Andrus, Ford, Layon, Soti, Myler, Luneau, Cornell, Tanner, Ellison, Mullen, Ley and Woodcock

Bill Sponsors:

Rep. Cordelli
Rep. Verville
Rep. Osborne

Rep. Ladd
Rep. Shaw
Rep. Layon

Rep. Boehm
Rep. A. Lekas
Sen. Ward

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

***Rep. Cordelli – Bill Sponsor**

- Gross negligence – shall be private act
- Multiple
- In chapter law RSA 193 – children have a right to attend safe schools – intent of legislation to protect – protect children from a hostile environment

***Shannon Bouchard – Mother**

- Related personal account of daughter’s plight in her school district regarding bullying

Gerald Zelin – Lawyer

- Special education specialist
- Sometimes kids misinterpret remarks as bullying
- Would allow lawsuit
- HB 1335 defeated last year
- This bill is a recipe for frivolous lawsuits
- Needs to be amended to show actual injury that occurred by negligence of the school district (what it did or didn’t do)
- A technical error should not result in a lawsuit
- Are ways to enforce statutes already in place
- Craft a more narrow bill that would be used if bullying does occur and the effects of the district are negligence
- Statute or bill should be more specific to the offence and districts actions will

Peggy Douglas – Lawyer – Opposed

- Disputes statements of Attorney Zelin
- A lawsuit against a school student must show willful misconduct of the districts or intentional harm of RSA 193-f4 implementation
- Aggrieved could change to injured but probably doesn’t make a difference
- Municipality immunity statute has an exception if private right of actions apply
- If RSA 193-F is repealed would allow no action unless outrageous action occurs

Barrett Christina – Opposed

- 193-F2 2010 gives greater guidance to school districts regarding bullying and cyber bullying
- Accountability of bullying falls on parents
- Intervention by district is limited
- Language of bill is flawed
- Victim and perpetrator are both able to sue districts
- Ascertaining damages are difficult
- Should be expanded to all schools related to monies supplies by districts
- Private right of action always allowed by law
- Bullying is not by itself - whole category of offenses
- Better school districts reporting is in place

Marissa Chase – AA of Justice

- Not any lawsuits filed against the existing law
- Lawyers must take cases that are proven liable and can prevail
- Don't have frivolous lawsuits in NH
- NH law does not recognize degrees of negligence
- Responsibility is the only factor against immunity

***Carl Ladd – NHSAA**

- 4 Attorneys – 4 different definitions of gross negligence
- Opening up a whole new slew of lawsuits
- No clear definitions of gross negligence
- School administrators spend hours on reviewing cases
- Privacy laws often prevent revealing information
- Language of bill regarding this should be much more narrow

Respectfully submitted,

Rep. Barbara Shaw, Clerk

HOUSE COMMITTEE ON EDUCATION

BILL TITLE: PUBLIC HEARING on Bill # HB 140
relative to private rights of action regarding pupil
DATE: 2-23-2021

ROOM: 201-203

Time Public Hearing Called to Order: 9:45 AM

Time Adjourned: 10:55 AM

(please circle if present) all present

Committee Members: Reps. Ladd, Cordelli, Shaw, Boehm, Allard, A. Lekas, Moffett, Hobson, Andrus, Ford, Layon, Soti, Myler, Luneau, Cornell, Tanner, Ellison, Mullen, Ley and Woodcock

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

① Rep Glenn Cordelli - sponsor

* written testimony

• gross negligence - shall be private actions

• multiple

• in Chapter Law ^{BSA 193} - children have a right to attend safe schools - intent of legislature

to protect - protect children from a hostile environment

② Shannon Barchard - mother

* written testimony

• related personal account of daughter's plight in ~~the~~ Manchester School District her school district regarding bullying

③ Gerald Zeleni - lawyer

• special education specialist

• sometimes kids misinterpret remarks as bullying

• would allow a lawsuit

• ITB 1335 defeated last year

- this bill is a recipe for frivolous lawsuits
- needs to be amended to show actually injury that occurred by negligence of the school district (what it did or did not do)
- a technical error should not result in a lawsuit
- are ways to enforce statutes already in place
- craft a more narrow bill that would be used if bullying does occur and the effects of the district are negligence
- statute or bill should be more specific to the offense and districts actions
- will

④ Peggy Douglas - lawyer - opposed

- disputes statements of Atty Zelin
- a lawsuit against a school student must show willful misconduct of the district or intentional harm of RSA 193-F4 implementation
- aggrieved could be changed to injured but probably doesn't make a difference
- municipality community statute has an exception if private right of actions apply
- If RSA 193-F is ~~app~~ repeal would allow no action unless outrageous action occurs

* written testimony submitted

⑤ Barrett Christina - opposed

- 193-F2 2010 gives greater guidance to school districts regarding bullying & cyberbullying

(page 3)

- accountability of bullying falls on parents
- intervention by district is limited
- language of bill is flawed
- victim and perpetrator is are both able to sue districts
- ascertaining damages are difficult
- should be expanded to all schools related to monies supplied by district
- private right of action always allowed by law
- bullying is not by itself - whole category of offenses
- better school district reporting is in place

⑥ Marissa Chase - AA of Justice

- not any lawsuits filed against the existing law
- lawyers must take cases that are proven liable and can prevail
- don't have frivolous lawsuits in NH
- NH law does not recognize degrees of ~~neg~~ negligence
- responsibility is the only factor against immunity

⑦ Carl Zadel - NHSAA

- 4 attorneys - 4 different definitions of gross negligence

(page 4)

- opening up a whole new slew of lawsuits
 - no clear definitions of gross negligence
 - school administrators spend hours on reviewing cases.
 - Privacy laws often prevent revealing information
 - language of bill regarding this should be much more narrow.
- * will be submitting written testimony

~~8.~~

Respectfully submitted,
Rep Barbara Shaw

House Remote Testify

Education Committee Testify List for Bill HB140 on 2021-02-23

Support: 19 Oppose: 34 Neutral: 0 Total to Testify: 5

<u>Name</u>	<u>City, State</u> <u>Email Address</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>	<u>Testifying</u>	<u>Signed Up</u>
Zelin, Gerald	Portsmouth, NH gzelin@dwmlaw.com	A Member of the Public	The NH Association of Special Education Administrators	Oppose	Yes (5m)	2/22/2021 4:38 PM
Douglass, Megan	Bedford, NH mdouglass@nhlawoffice.com	A Member of the Public	Myself	Support	Yes (5m)	2/22/2021 5:08 PM
Christina, Barrett	Concord, NH bchristina@nhsba.org	A Lobbyist	NH School Boards Association	Oppose	Yes (2m)	2/22/2021 9:59 AM
Ladd, Carl	Northumberland, NH carl@nhsaa.org	A Lobbyist	New Hampshire School Administrators Association	Oppose	Yes (2m)	2/19/2021 2:36 PM
Bouchard, Shannon	Sandown, NH Bouchardshannon92@gmail.com	A Member of the Public	Myself	Support	Yes (10m)	2/19/2021 9:47 AM
Hansen, Peter	Amherst, NH Inhhiker@comcast.net	A Member of the Public	Myself	Support	No	2/19/2021 11:39 AM
Morasse, Amanda	Barnstead, NH kaendraarcaya@gmail.com	A Member of the Public	Myself	Support	No	2/20/2021 3:09 PM
Bryans, Ed	Marlborough, NH Xxedbryansxx@gmail.com	A Member of the Public	Myself	Support	No	2/20/2021 4:47 PM
Pagliarulo, Krista	Hudson, NH Pagmet@hotmail.com	A Member of the Public	Myself	Support	No	2/20/2021 6:29 AM
Culliton, Penny	Temple, NH pculliton@comcast.net	A Member of the Public	Myself	Support	No	2/21/2021 10:58 AM
Everett, Robert	Hudson, NH Rje7@hotmail.com	A Member of the Public	Myself	Support	No	2/20/2021 11:24 PM
Bruce, Susan	Concord, NH susanb.red@mac.com	A Member of the Public	Myself	Oppose	No	2/21/2021 2:13 PM
Covert, Susan	Contoocook, NH scovert@comcast.net	A Member of the Public	Myself	Support	No	2/21/2021 5:46 PM

Rich, Cecilia	Somersworth, NH cecilia.rich@leg.state.nh.us	An Elected Official	Myself	Oppose	No	2/21/2021 11:47 PM
Howland, Curt	Manchester, NH howland@priss.com	A Member of the Public	Myself	Support	No	2/21/2021 7:48 PM
Stevens, Representative Deb	Nashua, NH debstevens4ward7@gmail.com	An Elected Official	My 10K constituents	Oppose	No	2/21/2021 10:14 PM
Almy, Susan	Lebanon, NH susan.almy@comcast.net	An Elected Official	Myself	Oppose	No	2/21/2021 10:15 PM
Bartlett, Rep Christy	Concord, NH christydbartlett@gmail.com	An Elected Official	Merrimack 19	Oppose	No	2/21/2021 10:25 PM
Larson, Ruth	Alton, NH ruthlarson@msn.com	A Member of the Public	Myself	Support	No	2/21/2021 10:33 PM
Cutshall, Catherine	Bedford, NH vivadofamily@aol.com	A Member of the Public	Myself	Oppose	No	2/22/2021 5:32 AM
Vivado, Mauricio	Bedford, NH maumoj@aol.com	A Member of the Public	Myself	Oppose	No	2/22/2021 5:33 AM
Levesque, Cassandra	Barrington, NH cassandra.levesque@leg.state.nh.us	An Elected Official	Myself	Oppose	No	2/22/2021 5:43 PM
Ward, Senator Ruth	Stoddard, NH ruth.ward@leg.state.nh.us	An Elected Official	Senate District 8	Support	No	2/22/2021 5:43 PM
Cann, Emily	Sanbornton, NH emily_cann@hotmail.com	A Member of the Public	Myself	Support	No	2/22/2021 10:38 PM
Hamblet, Joan	Portsmouth, NH joan.hamblet@leg.state.nh.us	A Member of the Public	Myself	Oppose	No	2/22/2021 8:25 PM
Seeley, Dana	Goffstown, NH danaseeley1712@gmail.com	A Member of the Public	Myself	Oppose	No	2/22/2021 8:53 PM
Jones, Stephanie	Bedford, NH stephaniermjones@gmail.com	A Member of the Public	Myself	Oppose	No	2/22/2021 9:36 PM
Bellemare, Bridey	Concord, NH bbellemare@nhasp.org	A Lobbyist	The New Hampshire Association of School Principals	Oppose	No	2/23/2021 7:14 AM
Groetzing, Tonda	Farmington, NH groetzing6@aol.com	A Member of the Public	Myself	Support	No	2/23/2021 7:29 AM
Dontonville, Roger	Enfield, NH rdontonville@gmail.com	An Elected Official	Myself	Oppose	No	2/23/2021 8:20 AM
Downing, George	Keene, NH Gdowning@sau29.org	An Elected Official	Myself	Oppose	No	2/23/2021 8:42 AM

Henrichon, Margaret	Bedford, NH mhenrichon@comcast.net	A Member of the Public	Myself	Oppose	No	2/23/2021 9:00 AM
Howard Jr., Raymond	Alton, NH brhowardjr@yahoo.com	An Elected Official	Myself	Support	No	2/23/2021 9:02 AM
Chase, Wendy	Rollinsford, NH wendy.chase@leg.state.nh.us	An Elected Official	Myself	Oppose	No	2/23/2021 9:09 AM
Ryan, Moira	Londonderry, NH army51kilo@hotmail.com	A Member of the Public	Myself	Support	No	2/23/2021 12:19 PM
McBeath, Rebecca	Portsmouth, NH bmcb@comcast.net	An Elected Official	Myself	Oppose	No	2/23/2021 11:34 AM
Burbidge, Kate	Londonderry, NH katlyn.burbidge@gmail.com	A Member of the Public	Myself	Support	No	2/19/2021 10:26 AM
Pitarys, Tara	Londonderry, NH nhmommyof4@yahoo.com	A Member of the Public	Myself	Oppose	No	2/19/2021 1:04 PM
Greene, Bob	Hudson, NH bob.greene@leg.state.nh.us	An Elected Official	Myself	Support	No	2/19/2021 1:13 PM
Graham, Nancy	West Lebanon, NH nancygraham806@gmail.com	A Member of the Public	Myself	Oppose	No	2/22/2021 7:06 AM
Zaenglein, Eric	Amherst, NH henley11@comcast.net	A Member of the Public	Myself	Oppose	No	2/22/2021 7:11 AM
Zaenglein, Barbara	Amherst, NH bzaenglein@gmail.com	A Member of the Public	Myself	Oppose	No	2/22/2021 7:47 AM
Carole, Kimberly	Bedford, NH Mskimberlycarole@gmail.com	A Member of the Public	Myself	Oppose	No	2/22/2021 8:08 AM
Gilman, Rep. Julie	Exeter, NH julie.gilman@leg.state.nh.us	An Elected Official	Town of Exeter	Oppose	No	2/22/2021 9:09 AM
Hamer, Heidi	Manchester, NH heidi.hamer@leg.state.nh.us	An Elected Official	Myself	Oppose	No	2/22/2021 9:09 AM
Mangipudi, Latha	Nashua, NH Latha.mangipudi@leg.state.N.H.us	An Elected Official	Hills 35	Oppose	No	2/22/2021 9:44 AM
Wyatt, Timothy	HUDSON, NH timwyatt1@juno.com	A Member of the Public	Myself	Oppose	No	2/22/2021 9:52 AM
Donovan, Julie	BEDFORD, NH julie.donovan@juno.com	A Member of the Public	Myself	Oppose	No	2/22/2021 9:54 AM
Frew, Jerry	Concord, NH jerry@nhsaa.org	A Lobbyist	NHSAA	Oppose	No	2/22/2021 11:05 AM

Bouchard, Donald	MANCHESTER, NH donaldjbouchard@gmail.com	An Elected Official	Myself	Oppose	No	2/22/2021 12:41 PM
D, Kristina	Danville, NH Tina.na.na@gmail.com	A Member of the Public	Myself	Support	No	2/22/2021 1:07 PM
Thomas, Sally	Bedford, NH Sallythomas@comcast.net	A Member of the Public	Myself	Oppose	No	2/22/2021 1:36 PM
Lane, Connie	Concord, NH connie.lane@leg.state.nh.us	An Elected Official	Merrimack 12	Oppose	No	2/22/2021 2:04 PM

Testimony

Dear Education Committee,

My name is Stephanie Lundy of Alton, NH. I am currently an infant/toddler float at a daycare center in Wolfeboro and will soon be graduating with my Associates Degree in Early Childhood Education from New Hampshire Technical Institute.

I learned of your bill from Megan Douglass, of Douglas, Leonard & Garvey; my mother works with her. I would like to support this bill because I believe it is important to hold schools accountable for allowing bullying situations to escalate and lead to injury.

HB140 stood out to me because it is for the protection of students and families who experience bullying. Throughout my high school experience, I witnessed numerous accounts of bullying, with rarely any consequences.

What starts as “teasing” in our early years by those who “like us” say our teachers, may eventually become something called ACE’s, Adverse Childhood Experiences, and make it hard for children to get out of as they grow. An example of a child being stuck in these experiences is that their stress system becomes harder to control and shut off (IHDCYH Talks, 2018).

According to the article in the Union Leader, HB140 was sparked by a 12-year-old girl who was assaulted in the cafeteria and her family was not allowed to hold the school accountable. It is heartbreaking to me that the family did not know of another incident that happened earlier that same week, which, if they had known, might have stopped the next incident from happening (Union Leader, 2021). Why didn’t any adult staff intervene, step up and put a stop to this?

In my schooling I have learned the importance of caring for the physical and mental health of children. I was surprised to hear that some feel HB140 would be a burden on schools because I am being taught that caring for the mental health of children is a part of my job.

In a workplace setting, someone being bullied has the option to find themselves a new job. In a school setting, children might have to suffer for many years with bullying. It is the responsibility of the adults supervising those children to intervene. This is not an extra burden for educators but is part of their job.

HB140 is a way to give families a right to sue in the case of bullying that leads to injury, as well as even more reason for teachers and staff to be alert of what is happening with their students, and to protect them. Thank you for your time and effort, and I look forward to following this bill into the next hearing.

Respectfully,



Stephanie Lundy

NEW HAMPSHIRE SCHOOL ADMINISTRATORS
ASSOCIATION

CHAMPIONS FOR CHILDREN



February 22, 2021

Rep. Rick Ladd, Chair
House Education Committee
Legislative Office Building
Concord, NH 03301

RE: HB257

Dear Chairman Ladd and Members of House Education,

Thank you for taking my testimony regarding HB257. NHSAA is *opposed* to this legislation. I would like to outline our major concerns.

1. **Part I** This legislation seems vague and overbroad. There is no definition of "public school." Does this mean the local school board, superintendent, custodian or someone or something else?

There is also no clear definition of what "campaign" means – does it mean calling people, talking to them in the local diner or the transfer station, answering questions at a board meeting? Could it extend to public hearings – could it mean that addressing questions regarding the necessity of certain elements of a proposed budget, bond or CBA would be considered "campaigning"?

Depending upon the interpretation, this legislation could prohibit school board members and superintendents from advocating for the district's own operating budget once it is placed on the school district warrant, nor could it advocate for a building project or collective bargaining agreement. This would place the district in the position of working hundreds of hours to create an operating budget proposal, a bond project, or a

collective bargaining agreement and not be able to support and defend it to the public. This would seem to abrogate both the fiscal and legal responsibility of the community's elected representatives.

2. **Part II** School and district administrators continually highlight the importance of maintaining professional neutrality and even-handedness in teaching controversial issues, such as political campaigns, elections, and social issues. This provision is already addressed in local school board policy and should be left to local districts to address and remediate as appropriate.
3. **Part III** This right is already affirmed by US Supreme Court in several decisions, including *Tinker v. Des Moines (1969)*, *Bethel v. Fraser (1986)*, and *Hazelwood v. Kuhlmeier (1988)*. Student already have the right to freedom of speech and freedom of the press, as long as they do not lead to substantial disruption of the school setting.

NHSAA views this legislation as perhaps very well intended, but severely vague and would limit (if not eliminate) elected and appointed officials from exercising their fiscal and legal responsibilities.

NHSAA respectfully requests that you vote HB257 as Inexpedient to Legislate.

Respectfully submitted,



Dr. Carl M. Ladd
Executive Director of NHSAA

February 22, 2021

Via email and first class mail

Rep. Rick Ladd, Chair
House Education Committee
Legislative Office Building, Room 207
33 North State Street
Concord, NH 03301

Re: HB 140 (allowing lawsuits for violations of the anti-bullying statute)

Dear Representative Ladd:

I am writing on behalf of the New Hampshire Association of Special Education Administrators (NHASEA), which represents special education directors employed by school districts throughout the State.

The NHASEA opposes HB 140. The bill proposes to amend RSA 193-F:9 by allowing lawsuits for *any* violation of RSA 193-F, the anti-bullying statute. The bill also allows a prevailing plaintiff to recover attorney's fees.

RSA 193-F:9 currently provides as follows:

Nothing in this chapter shall supersede or replace existing rights or remedies under any other general or special law, including criminal law, nor shall this chapter create a private right of action for enforcement of this chapter against any school district or chartered public school, or the state.

This provision operates in tandem with RSA 193-F:7, which states:

A school administrative unit employee, school employee, chartered public school employee, regular school volunteer, pupil, parent, legal guardian, or employee of a company under contract to a school, school district, school administrative unit, or chartered public school, shall be immune from civil liability for good faith conduct arising from or pertaining to the reporting, investigation, findings, recommended response, or implementation of a recommended response under this chapter. The department of education shall be immune from civil liability for its good faith conduct in making recommendations under this chapter.

HB 140 would repeal RSA 193-F:9 and replace it with the following language:

Any person aggrieved as a result of *gross negligence or willful misconduct* in violation of *any provision of this chapter* may initiate an action against a school district or chartered public school and may recover court costs and reasonable attorney's fees as the prevailing party. Nothing in this section shall supercede [sic] or replace existing rights or remedies under any other law.

(Emphasis added.) ¹

The NHASEA opposes HB 140 for the following reasons.

First, the bill is overbroad. It allows a lawsuit by anyone “aggrieved” by “any” violation of RSA 193-F, *regardless of whether there was actual bullying and regardless of whether the violation proximately caused physical or emotional injury.*

RSA 193-F includes many technical provisions. For example:

- The statute directs every local school board to adopt a policy prohibiting bullying and cyberbullying. RSA 193-F:4, II.
- This policy must include procedures for: (a) reporting incidents of suspected bullying; (b) notifying parents of those reports; (c) investigating such reports; and (d) remedial action. RSA 193-F:4, II.
- The statute imposes short deadlines for school officials to notify a suspected victim’s parents and to complete investigations. RSA 193-F:4, II(i)-(j).
- School districts must provide training for students and staff regarding bullying. RSA 193-F:5.
- Each school district must annually report to the State Department of Education all “substantiated incidents” of bullying. RSA 193-F:6.

HB 140, allowing an award of attorney’s fees for “any” violation of RSA 193-F, will invite lawsuits alleging technical violations that ultimately caused no harm.

Second, the bill violates Part 1, Article 28-a of the New Hampshire Constitution, which prohibits the State from imposing new unfunded mandates on school districts. This constitutional provision became effective in 1984. RSA 193-F was first enacted in 2000 and amended in 2010. While the statute serves a laudable purpose, the legislature did not appropriate funds to defray the costs of compliance. HB 140 compounds that constitutional violation by imposing substantial new costs on school districts, such as liability for attorney’s fees.

Third, the bill relies on an undefined term. HB 140 permits lawsuits alleging “gross negligence” and allows a party to recover attorney’s fees upon proving that degree of carelessness. Alas, the bill neglects to define this critical term.

HB 140 incorrectly assumes the term is defined elsewhere, such as via court

¹ The bill misspells “supersede.”

decisions applying common law. However, unlike many states, New Hampshire's common law does not recognize the concept of gross negligence. *Barnes v. New Hampshire Karting Assoc'n, Inc.*, 128 NH 102, 108-09, 509 A.2d 151, 155 (1986). It consequently remains unclear exactly what "gross negligence" means in HB 140. This, like the attorney's fees provision, will encourage litigation.

Fourth, HB 140 is unnecessary. RSA 193-F:9, which HB 140 would repeal, merely provides that a violation of RSA 193-F is not *per se* grounds for liability.

The existing statute does not foreclose liability based on other laws. RSA 193-F:9 states, "Nothing in this chapter shall supersede or replace existing rights or remedies under any other general or special law." RSA 193-F:7 reiterates that concept by providing immunity only to those who act in "good faith."

Other relevant statutes double down on that principle. For example, RSA 31:105 allows a school district to reimburse an employee held liable for money damages arising from "negligence" or "accidental injury," but does not protect employees who *intentionally* violate a student's rights. RSA 507-B:4, IV immunizes local government personnel from liability for money damages only when "said employee or official was acting within the scope of his or her office and reasonably believed in the legality of his or her actions."

For all those reasons, the NHASEA oppose HB 140.

Thank you for considering these comments.

Very truly yours,

Gerald M. Zelin

Gerald M. Zelin

cc: Jane Bergeron, Exec. Dir, NHASEA

Archived: Thursday, March 18, 2021 10:53:49 AM
From: [Marissa Chase](#)
Sent: Thursday, March 11, 2021 10:42:35 AM
To: [~House Education Committee](#)
Subject: Follow up re: HB 140
Importance: Normal

Representatives,

I apologize for not being prepared to answer your questions this morning, I wasn't expecting to be called. Should any members of this committee wish to speak with Megan Douglass, or any other attorney who practices in this area, I would be happy to connect you.

I also apologize for giving an incorrect answer, Rep. Woodcock and Rep. Ladd are correct - HB 140 applies to the chapter of RSA 193-F. I agree with Diane Fenton's complete description.

In RSA 193-F, the Legislature has prescribed procedures and actions meant to take place in the best interest of our children in our schools. In the scope of this chapter, the only practical actionable rights pertain to bullying. To Rep. Woodcock's point, perhaps the bill could be tailored to only apply to RSA 193-F:4 if there is a concern - but in practice, it would not make a difference as to how the law would be applied. I cannot foresee any situation where someone would be so aggrieved/injured under section 5 regarding training procedures, for example, that could ever lead to the filing of a lawsuit.

Hopefully, there will never be any lawsuits filed under this provision. The intent behind liability is accountability, and a law without a penalty is just a suggestion. Currently, school districts seem to be unaware of their requirements under RSA 193-F:4, and many schools are not following the procedures the NH Legislature prescribed over a decade ago. I think we'd all agree that is unacceptable.

I would also agree with Rep. Mullen that more funding in the area of bullying prevention would be beneficial. I would respectfully disagree with Rep. Mullen that a lawsuit in Temple would not impact another student in another town, simply because attorneys representing school districts are clearly paying attention to these issues and talking to each other, and would want to protect their client (the district they represent). If a lawsuit in another district is successful, or there is even talk of one, it would likely encourage stricter adherence to bullying prevention and reporting in more districts across the state. The ideal scenario would be the removal of this immunity in 193-F would actually lead to zero lawsuits because it would mean schools are acting responsibly while in the care of our kids.

While I am not a lawyer, I have worked with them now for five years and find myself married to one. I've learned it takes a lot to bring a claim in New Hampshire - not just in the way of expenses, but time and personal energy, and you better have a good claim because you're not guaranteed to recover what you put in. They care deeply about issues like this because they have likely had the experience of hearing a client's story about a grievous injury they suffered, and there's nothing they can do to help them. Not dissimilar to why you all advocate tirelessly for your constituents.

Thank you all for your efforts, and please don't hesitate to contact me with any comments or questions.

Sincerely,
Marissa

Marissa Chase

Executive Director

New Hampshire Association for Justice

10 Ferry Street, #311

Concord, NH 03301

O 603.224.7077 | **F** 603.224.3256 | **C** 603.854.9330

Archived: Thursday, March 18, 2021 10:53:49 AM

From: [Glenn Cordelli](#)

Sent: Sunday, February 21, 2021 5:30:06 PM

To: [~House Education Committee](#)

Cc: [Jennifer Foor](#)

Subject: HB140 information

Importance: Normal

Attachments:

[HB140 Information.pdf](#) 

Tuesday we will have a hearing on HB140 relative to private rights of action regarding pupil safety.

I have attached a package of information that I hope you will consider in our discussion of this important legislation.

Glenn

Archived: Thursday, March 18, 2021 10:54:29 AM

From: Megan Douglass

Sent: Wednesday, March 10, 2021 1:34:28 PM

To: ~House Education Committee

Subject: HB140

Importance: Normal

Dear Honorable Members of the Committee:

I am writing to forward to you an email inquiry that I received from a parent yesterday:

"I have read online that Attorney Douglass has successfully defended children who have been bullied and attacked. My daughter is currently at _____ Hospital, after a suicide attempt, and awaiting a bed at _____ Hospital. I have spent more than a year fighting to have my daughter protected from her abusers and bullies at school. She has suffered from increased anxiety and depression. When of her bullies stepped up his game in the last few weeks she became overwhelmed and more depressed that ended with a suicide attempt. I would like to discuss all of this, the time line, and what she has endured in greater detail, please call me."

I will have to call this parent today and advise that if the emotional injury suffered by the child, is not targeted at the child's "protected status" (race, gender, disability, etc) but it does have something to do with the school's failure to investigate and respond to reports of peer abuse, then there is not, actually, a way that I can help. Parent will likely want to know why, where the law requires the school to do certain things to protect the child. I will have to explain that those statutory duties are not enforceable in court, so the parent will have to appeal to the DOE or local or state school boards for help (which may have been done already), or parent will have to file a petition for manifest educational hardship, to remove the child from her school (rather than fix the school).

I just wanted to show you what these conversations look like and ask you to consider that they are very hard on the parents and, frankly, me.

I have listened to some of the ensuing testimony from opponents of HB140 after I spoke at hearing a few weeks ago, and I want to say I am troubled by some of the comments presented to the committee about me and my motivations. In particular, Atty. Barrett Christina relayed a personal conversation between us from a year ago totally out of context and without my consent as a way to argue his position. I believe this is uncalled for and was dishonest.

Lawyers like me take cases on contingency fee. This means that I front the costs of litigation: hiring experts, discovery, depositions, etc before a case ever goes to trial. I recover those costs if, and only if, my client prevails. This does two things:

1. It ensures this legislation would not open a 'floodgate of litigation' because there are no frivolous claims filed in New Hampshire anyway (see: no claims have been filed under the new provision granted in SB 293 from last session because a child would have to be harmed in a way that fits those circumstances, and the damages would have to outweigh the cost of litigation)
2. Hopefully proves to you I, and lawyers like me, are not in this for the money. New Hampshire has no punitive damages, meaning clients can only recover for medical expenses, and emotional pain and suffering. That determines the final monetary award in a case. Most clients want a resolution, and the justice system is the only recourse they have to enact meaningful change. On the flip side, civil defense attorneys are paid hourly on a retainer fee - they make money regardless if they win or lose.

I would whole-heartedly support an expansion, say, of the Office of Child Advocate to help children like those of the family I described above. All of us share the goal in helping the most egregious cases of kids who have been harmed. By not passing this bill, the current immunity for wrongdoing in 193-F stays in place and those most seriously harmed by the system can never truly heal.

Megan Douglass, Esq.

Douglas, Leonard & Garvey, P.C.
14 South Street
Concord, NH 03301
603-224-1988

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Archived: Thursday, March 18, 2021 10:53:49 AM
From: [Michael Mathaisel](#)
Sent: Tuesday, February 23, 2021 4:36:35 PM
To: [~House Education Committee](#)
Subject: HB140
Importance: Normal

Dear House Education Committee Members:

I write in support of House Bill 140. This bill would allow civil actions against only those schools that grossly, negligently, or willfully fail to protect children from child-on-child abuses that they know of. Students have a right to be safe in school from known hazards.

This bill is not for the benefit of the attorneys; rather, it is a reasonable mechanism for holding schools accountable for protecting students from abuses that occur when the school fails to follow the accepted standard of care.

I strongly encourage the committee to pass HB140.

Sincerely,
Michael Mathaisel

Archived: Thursday, March 18, 2021 10:54:29 AM

From: [Peter Hansen](#)

Sent: Friday, February 19, 2021 11:45:28 AM

To: [~House Education Committee](#)

Subject: NH House Remote Testify: 9:45 am - HB140 in House Education

Importance: Normal

I support and urge OTP on this bill. You need look no further than the recent despicable issues with the Concord school system and the cover-ups to recognize that this is needed. In addition the newspapers for years have reported the mission of the school districts to cover up and also to protect themselves and the employees. Vote OTP.

Sincerely

Hon. Peter Hansen

Sent from [Mail](#) for Windows 10

Archived: Thursday, March 18, 2021 10:53:49 AM
From: [Ann Marie Banfield](#)
Sent: Monday, February 22, 2021 4:43:16 PM
To: [~House Education Committee](#)
Subject: Testimony in support of HB 140
Importance: Normal

February 23, 2021

Honorable Members of the House Education Committee:

My name is Ann Marie Banfield and I am an advocate for parental rights and academic excellence in education. I am here today to testify in support of HB 140.

HB 140 would create a private right of action for bullying and cyberbullying.

I was in front of this committee several years ago when the anti-bullying legislation was passed. Unfortunately at that time, many of us felt it didn't go far enough. Today I hear from parents who are still trying to get their school administrators to act upon the bullying that continues to exist.

For instance parents and the representative from the NAACP contacted me a couple of years ago regarding a case in Hampton. Their daughter, who was bullied at school for several years, ended up filing a complaint with the Federal Department of Education's Office for Civil Rights. In this case, the parents ended up removing their child from the school after several years of inaction.

<https://apnews.com/article/55d8802c5eef40c180bd62f3c6abf276>

Laws and stories from students have certainly raised awareness. Depending on what school your child attends, some students are seeing action. But for other children, many remain frustrated by the lack of action.

The current law has no teeth. If you don't have highly motivated administrators, some of these cases are being swept under the rug.

RSA 193-F:7 is the section that gives immunity to school districts and employees for "*good faith conduct arising from or pertaining to the reporting, investigation, findings, recommended response, or implementation of a recommended response under this chapter.*"

Section 9 of the law explicitly states that the statute creates no private right of action for a student who is harmed because the authorities don't follow the law and fail to protect the student from bullying.

The recent case of *Gauthier v. Manchester School District*, 168 N.H. 143 (2015) demonstrates how useless this law is. A female student was assaulted on a school bus.

The school principal failed to notify the student's parents as required by the law. Eleven days later, the young bully assaulted the female student again in the cafeteria, this time causing injuries which required hospital treatment. The mother of the injured student sued the School District for failing to follow the law to protect her child, but the case was dismissed due to the immunity section of the law. (See link below)

There needs to be an avenue where parents can hold responsible, those individuals who demonstrate gross negligence or willful misconduct. To oppose this much-needed correction to the current law would put more children in danger.

For these reasons I ask you to support HB 140

Ann Marie Banfield
banfieldannmarie@gmail.com
North Hampton, NH
603-714-5814

RE: <https://law.justia.com/cases/new-hampshire/supreme-court/2015/2014-049-0.html>

Archived: Thursday, March 18, 2021 10:53:49 AM
From: [Gerald M. Zelin](#)
Sent: Tuesday, February 23, 2021 11:16:07 AM
To: ~[House Education Committee](#)
Subject: Follow up re HB 140
Importance: Normal

Dear Committee Members,

I'm following up on Attorney Douglas's comments regarding my testimony on HB 140.

1. Attorney Douglas argued that gross negligence or willful misconduct occurs only when the student *has actually been bullied*. That is incorrect. The bill allows a lawsuit for a violation of "any provision of this chapter," so long as the violation was the "result of gross negligence or willful misconduct."
2. Attorney Douglas stated that the bill allows a prevailing defendant to recover attorney's fees. That too is incorrect. The default rule in American courts is that each party bears its own attorney's fees. HB 140 overrides that default only for plaintiffs, not defendants. The bill says, "any person aggrieved ... may initiate an action .. and may recover attorney's fees." The bill says nothing about awarding attorney's fees to defendants.
3. I agree with Attorney Douglas that RSA 507-B:5, which generally confers municipal immunity, is subject to exceptions. That statute says, "No government shall be liable for any action to recover for bodily injury, personal injury or property damage *except* as provided by this chapter or *as is provided or may be provided by other statute.*" (Emphasis added.) That is why I suggested amending HB 140 to target instances when: (1) bullying actually occurred; and (2) there was a direct causal connection between the bullying and the school district's action or inaction.

Thank you for considering these comments.

Gerald M. Zelin
Attorney
Drummond Woodsum
603.792.7408 Direct | GZelin@dwmlaw.com

From: Gerald M. Zelin
Sent: Tuesday, February 23, 2021 10:34 AM
To: 'HouseEducationCommittee@leg.state.nh.us' <HouseEducationCommittee@leg.state.nh.us>
Subject: HB 140

Attached is a copy of my letter to the committee.

Gerald M. Zelin

Attorney

603.792.7408 Direct

GZelin@dwmlaw.com

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* also admitted in MA

** also admitted in ME

February 23, 2021

The New Hampshire House of Representatives
Education Committee
LOB Room 207
c/o Chairman Rick Ladd
33 N. State Street
Concord, NH 03301

Via email delivery to: HouseEducationCommittee@leg.state.nh.us

Dear Honorable Members of the Committee:

I write today as a teacher, parent, and plaintiff's attorney, to support HB140 relative to a private right of action for schools' gross negligence or willful misconduct in violation of RSA 193-F (the pupil safety and violence prevention act).

To me, deciding whether to support this bill is as simple as deciding whether you want the school that you send your child to, to provide a minimal level of care and safety for your child. If the answer is yes, you should support the bill, because requiring schools to provide a minimal level of care and protection for children is all that this bill does.

Here is why I say this:

Before RSA 193-F, Schools Were Legally Required to Provide Minimal Protection from Child-On-Child Abuse

Before RSA 193-F, schools were required to ensure that the children in their care were safe from brutality.¹ The common law held that adult professionals responsible for supervising children in school had to intervene when they saw a child being abused by other children. If, for

¹ Marquay v. Eno, 139 N.H. 708, 717, 662 A.2d 272, 279 (1995)(holding that schools share a special relationship with students entrusted to their care, "which imposes upon them certain duties of reasonable supervision," limited to supervisory adults and reasonably foreseeable harms.)

example, a teacher could see that a child was repeatedly being taunted, chased, and beaten by other children, in a “ganging up” on the child, in an effort to humiliate and dominate the child, the teacher had a legal duty to step in and try to stop it, just as any parent supervisor of children in the home would have a duty to intervene in the face of child-on-child abuse.

Pre-RSA 193-F, if a teacher *ignored* child-on-child abuse, and looked the other way, and the victimized child went on to suffer serious injury, the victimized child had a common law right to sue his/her school for the teacher’s gross negligence or willful misconduct, in failing to provide even the most basic care and protection that one would expect of an adult supervisor of children.

But enactment of RSA 193-F changed all of that. RSA 193-F essentially gave schools a pass to avoid legal liability for gross negligence and willful misconduct in the face of child-on-child abuse. The problem is the combination of 193-F sections 4 and 9. 193-F:4 basically dictates all of the reasonable things that an adult professional would do, and should do, in the face of bullying in school, and RSA 193-F:9 essentially erases ANY legal liability on the part of a school for failing or even **refusing** to do these things.² RSA 193-F:9 immunizes schools for even their most gross and outrageous failures to protect children.

HB140 Only Requires Schools to Provide Minimal, or “Not-Grossly-Negligent,” Care

Enacting HB140, or essentially reversing RSA 193-F:9, is a balanced and equitable way to ensure that schools actually follow the bullying standard of care for children that is articulated in RSA 193-F:4. HB140 presents no risk of overburdening schools with frivolous lawsuits. This is because all that HB140 would do is hold schools accountable for their “gross negligence” or “willful misconduct” in the face of bullying, which is to say the most egregious dereliction of duty in response to known bullying.

HB140 would NOT provide a cause of action against a school for a mere careless error or mistake in investigating or responding to a report of bullying. In order for a school to be found to have committed “gross negligence” or “willful misconduct” under the bill, a plaintiff child would have to show clear incidences of unambiguous abuse, and a school that was clearly notified of these abuses but clearly ignored the abuses or willfully permitted them to continue.

This is a high proof burden for a plaintiff, which will disincentivize plaintiff’s attorneys from taking on marginal cases. Plaintiff’s attorneys are almost exclusively paid on a contingency fee basis, which means they are paid nothing unless and until they recover funds for their clients. Because of the high proof bar, gross negligence cases are not only risky for the plaintiff’s attorney, but require a lot of work on the plaintiff’s end, which equates to an upfront investment by the attorney of tens of thousands of dollars’ worth of work time, in addition to thousands of dollars in expert fees expended and litigation costs in order to advance the plaintiff’s case. Given this investment risk, there is simply no incentive for a plaintiff’s attorney

² Gauthier v. Manchester Sch. Dist., 168 N.H. 143, 149, 123 A.3d 1016, 1021 (2015)(refusing to recognize a common law right of action for violation of duties prescribed by RSA 193-F:4 because doing so “would undermine the policy thus expressed by the legislature” in RSA 193-F:9, prohibiting a private right of action.”)

to take on a questionable gross negligence case, even with the possibility of recoverable attorney's fees. Put plainly, I know of no plaintiff's attorney who will take on a marginal gross negligence case only because of the *possibility* of recovering attorney's fees after a costly and arduous march to trial.

HB140 Could Only Be Used in Rare Cases of Egregious School Conduct

Some say that local school boards and the Department of Education adequately address the problem of school negligence in protecting children from child-on-child abuse. For some savvy parents, able and willing to navigate multi-level local appeals and prosecute cases at the Department of Education and the State School Board, this may be the case, particularly where the negligence is just that, *negligence* or carelessness, and the abuses are not daily and devastating. But these parents and children are not the parents and children that *this* bill, targeted at gross negligence and willful misconduct, is intended to help.

HB140 is intended to help the children who are drowning, directly in front of the proverbial adult lifeguards at their schools, and who are going under. Like the case of Morgana Isenberg, who testified before this committee in support of this bill last year. She testified that her 12-year-old son was repeatedly attacked by a group of boys with the school's knowledge and the school failed to intervene. On her son's last day, he was kicked in the testicles and told that this was being done so that "someone like him" would never be able to reproduce. Her son, who spent his school year watching his adult protectors look away, went home, and took his life. This bill could have been used to prevent *this* type of tragedy.

Respectfully Submitted,

/s/ *Megan Douglass*

Megan Douglass

HB140

relative to private rights of action regarding pupil safety

Information Package

Additional Web Site Resources:

Stop Bullying

A federal government website managed by the
U.S. Department of Health and Human Services

<https://www.stopbullying.gov/resources/facts>

National Bullying Prevention Center

PACER's National Bullying Prevention Center actively
leads social change to prevent childhood bullying, so that
all youth are safe and supported in their schools, commu-
nities and online

<https://www.pacer.org/bullying/info/stats.asp>

October 16, 2019

New Hampshire Department of Education
 Division of Program Support, Bureau of Data Management
 101 Pleasant Street, Concord NH 03301-3852
 Telephone: (603) 271-2775 Fax: (603) 271-3875

Bullying Report School Years 2014-2015 Through 2018-2019

Bullying Report	School Year 2014-2015			School Year 2015-2016			School Year 2016-2017			School Year 2017-2018			School Year 2018-2019		
	Elementary (including standalone Preschools)	Middle School	High School	Elementary (including standalone Preschools)	Middle School	High School	Elementary (including standalone Preschools)	Middle School	High School	Elementary (including standalone Preschools)	Middle School	High School	Elementary (including standalone Preschools)	Middle School	High School
State Enrollment	91,083	33,664	57,358	90,459	33,060	57,435	90,197	32,637	56,554	88,846	32,190	55,865	89,481	32,099	55,785
Number of incidents of bullying <i>reported</i> during the past year (of any kind)	853	710	667	793	584	632	812	720	701	931	646	553	864	712	576
Number of incidents of cyber bullying <i>reported</i> during the past year	76	189	259	60	131	199	81	149	285	87	159	180	92	149	153
Number of incidents of <i>investigated and actual</i> bullying during the past year (of any kind)	429	431	341	378	297	256	427	354	226	386	289	256	401	373	202
Number of incidents of <i>investigated and actual</i> cyber bullying during the past year	38	98	163	39	53	107	56	75	142	35	81	96	50	86	65
Number of incidents of investigated and actual bullying during the past year that were based on gender	54	12	34	22	13	30	22	24	31	15	23	16	13	13	19
Number of incidents of investigated and actual bullying during the past year that were based on sexual orientation	12	21	17	12	27	17	18	31	27	14	24	16	12	44	17
Number of incidents of investigated and actual bullying during the past year that were based on race, color, or national origin	18	14	22	18	24	10	15	26	20	17	21	22	26	31	14
Number of incidents of investigated and actual bullying during the past year that were based on disability	25	14	5	23	17	13	23	23	11	32	13	10	13	15	7
Number of incidents of investigated and actual bullying during the past year that were based on physical characteristics	51	54	31	58	56	23	41	68	32	37	62	35	46	64	28
Number of incidents of investigated and actual bullying during the past year that were based on any other basis	366	389	337	303	261	235	364	214	201	310	217	207	344	282	170
Number of <i>actual</i> bullying incidents that were a single significant event	238	324	285	201	167	180	184	169	170	164	159	138	183	149	131
Number of <i>actual</i> bullying incidents that were a pattern of deliberate harmful events	127	93	111	140	92	81	144	106	96	182	88	80	169	116	83
Number of <i>actual</i> bullying incidents that included physical harm to the victim	37	37	14	50	24	18	55	15	7	43	17	8	46	17	10
Number of <i>actual</i> bullying incidents that included harm to the victim's property	10	14	11	8	3	5	9	10	1	9	2	2	1	4	0
Number of <i>actual</i> bullying incidents that used social/emotional alienation or tactics	165	78	96	133	83	108	148	89	110	142	65	70	103	97	63
Number of <i>actual</i> bullying incidents that interfered with the victim's educational opportunities	123	62	121	119	43	51	60	63	120	92	46	52	79	51	46
Number of <i>actual</i> bullying incidents that substantially disrupted the orderly operation of the school	34	19	54	49	32	29	29	28	24	31	29	32	43	34	22

October 16, 2019

New Hampshire Department of Education
 Division of Program Support, Bureau of Data Management
 101 Pleasant Street, Concord NH 03301-3852
 Telephone: (603) 271-2775 Fax: (603) 271-3875

Bullying Report School Years 2011-2012 Through 2018-2019

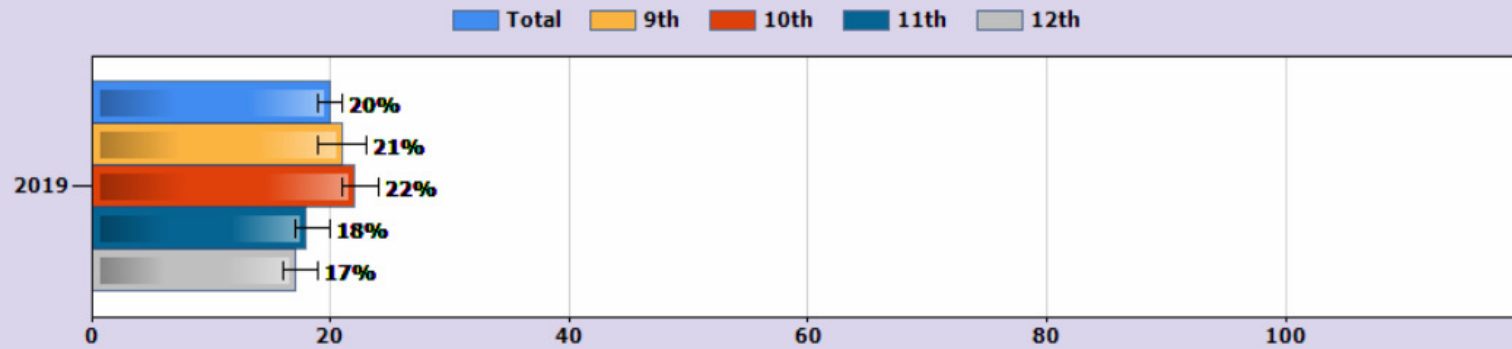
Bullying Report	School Year 2011-2012			School Year 2012-2013			School Year 2013-2014			School Year 2014-2015			School Year 2015-2016			School Year 2016-2017			School Year 2017-2018			School Year 2018-2019		
	Elementary (including standalone Preschools)	Middle School	High School	Elementary (including standalone Preschools)	Middle School	High School	Elementary (including standalone Preschools)	Middle School	High School	Elementary (including standalone Preschools)	Middle School	High School	Elementary (including standalone Preschools)	Middle School	High School	Elementary (including standalone Preschools)	Middle School	High School	Elementary (including standalone Preschools)	Middle School	High School	Elementary (including standalone Preschools)	Middle School	High School
State Enrollment	94,718	35,133	61,494	93,450	34,399	60,113	91,627	34,164	58,733	91,083	33,664	57,358	90,459	33,060	57,435	90,197	32,637	56,554	88,846	32,190	55,865	89,481	32,099	55,785
Number of incidents of bullying <i>reported</i> during the past year (of any kind)	1,540	1,519	1,069	1,247	1,106	781	964	817	677	853	710	667	793	584	632	812	720	701	931	646	553	864	712	576
Number of incidents of cyber bullying <i>reported</i> during the past year	115	288	259	122	170	262	82	147	173	76	189	259	60	131	199	81	149	285	87	159	180	92	149	153
Number of incidents of <i>investigated and actual</i> bullying during the past year (of any kind)	779	816	525	580	579	425	484	440	297	429	431	341	378	297	256	427	354	226	386	289	256	401	373	202
Number of incidents of <i>investigated and actual</i> cyber bullying during the past year	69	154	150	53	83	154	47	72	93	38	98	163	39	53	107	56	75	142	35	81	96	50	86	65
Number of incidents of investigated and actual bullying during the past year that were based on gender	48	159	43	47	27	49	11	24	20	54	12	34	22	13	30	22	24	31	15	23	16	13	13	19
Number of incidents of investigated and actual bullying during the past year that were based on sexual orientation	35	43	40	34	45	36	19	42	29	12	21	17	12	27	17	18	31	27	14	24	16	12	44	17
Number of incidents of investigated and actual bullying during the past year that were based on race, color, or national origin	23	43	24	29	39	28	20	20	38	18	14	22	18	24	10	15	26	20	17	21	22	26	31	14
Number of incidents of investigated and actual bullying during the past year that were based on disability	19	21	19	28	20	9	14	18	8	25	14	5	23	17	13	23	23	11	32	13	10	13	15	7
Number of incidents of investigated and actual bullying during the past year that were based on physical characteristics	138	125	67	68	97	90	72	53	43	51	54	31	58	56	23	41	68	32	37	62	35	46	64	28
Number of incidents of investigated and actual bullying during the past year that were based on any other basis	568	591	388	476	482	351	409	358	247	366	389	337	303	261	235	364	214	201	310	217	207	344	282	170
Number of <i>actual</i> bullying incidents that were a single significant event	367	457	341	323	267	269	265	182	207	238	324	285	201	167	180	184	169	170	164	159	138	183	149	131
Number of <i>actual</i> bullying incidents that were a pattern of deliberate harmful events	252	218	176	236	152	112	155	131	93	127	93	111	140	92	81	144	106	96	182	88	80	169	116	83
Number of <i>actual</i> bullying incidents that included physical harm to the victim	81	54	38	61	55	14	50	55	16	37	37	14	50	24	18	55	15	7	43	17	8	46	17	10
Number of <i>actual</i> bullying incidents that included harm to the victim's property	19	17	12	9	4	6	11	14	4	10	14	11	8	3	5	9	10	1	9	2	2	1	4	0
Number of <i>actual</i> bullying incidents that used social/emotional alienation or tactics	345	337	200	256	208	200	176	96	113	165	78	96	133	83	108	148	89	110	142	65	70	103	97	63
Number of <i>actual</i> bullying incidents that interfered with the victim's educational opportunities	143	160	169	108	140	145	89	38	109	123	62	121	119	43	51	60	63	120	92	46	52	79	51	46
Number of <i>actual</i> bullying incidents that substantially disrupted the orderly operation of the school	55	52	46	37	52	46	45	11	8	34	19	54	49	32	29	29	28	24	31	29	32	43	34	22

2019 Youth at Risk Behavior Survey (YRBS) NH High School

Were electronically bullied

(counting being bullied through texting, Instagram, Facebook, or other social media, during the 12 months before the survey)

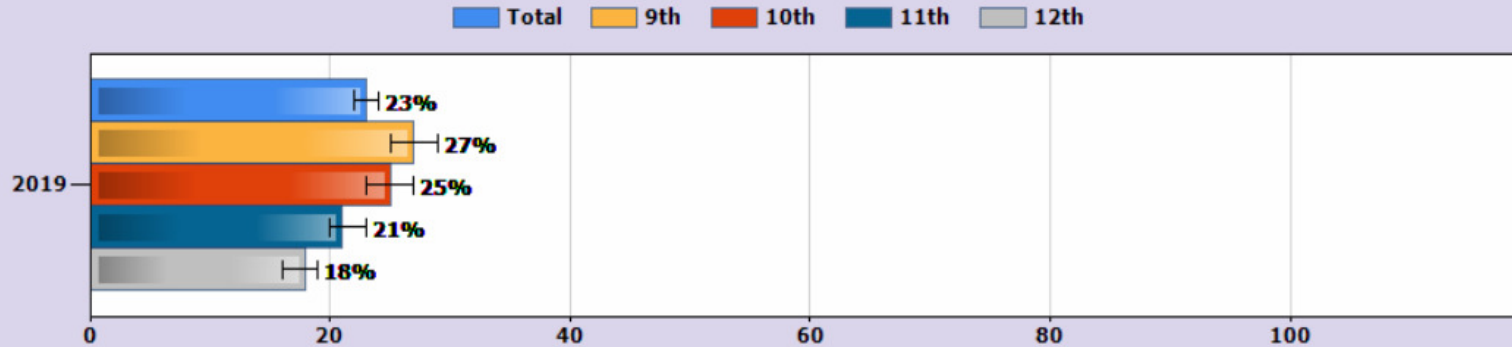
New Hampshire, High School Youth Risk Behavior Survey, 2019



Were bullied on school property

(during the 12 months before the survey)

New Hampshire, High School Youth Risk Behavior Survey, 2019



Bullying alters brain structure, raises risk of mental health problems

New research is suggesting that there may be physical structural differences in the brains of adolescents who are regularly bullied.

According to the National Center for Education Statistics and Bureau of Justice Statistics, [between one and three students](#) in the United States report being bullied at school.

In recent years, cyberbullying has become a widespread problem.

Cyberbullying is any bullying performed via cell phones, social media, or the Internet in general.

Such devices allow bullies to continue their harassment anonymously and at any time of the day.

Bullying has serious effects on health

One [study](#) revealed that childhood bullying has effects on health, and it can lead to significant costs for individuals, their families, and society at large.

In the U.S., researchers estimate that the prevention of high school bullying could result in lifetime benefits of over \$1 million per individual.

New research now suggests that bullying may cause physical changes in the brain and increase the chance of mental illness. The study now [appears](#) in the journal *Molecular Psychiatry*.

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Erin Burke Quinlan, of King's College London in the United Kingdom, and colleagues conducted this study. They analyzed questionnaires and brain scans of more than 600 young people from different countries in Europe.

The participants were part of the IMAGEN long-term project. The goal of the study was to assess the brain development and [mental health](#) of young adults through questionnaires and high-resolution brain scans, taken when the participants were 14 and 19 years old.

The scientists found that more than 30 of the participants had experienced chronic bullying. Then, they compared the data with those of young people who had not been victims of chronic bullying.

The analysis showed that severe bullying was linked to changes in brain volume and levels of anxiety at age 19.

The brains of bullied adolescents

The study confirms the results of previous research that linked bullying with mental health issues — but it also revealed something new.

Bullying may decrease the volume of parts of the brain called the caudate and

putamen.

The caudate plays a crucial role in how the brain learns — specifically how it process memories. This part of the brain uses information from past experiences to influence future actions and decisions. The putamen regulates movements and affects learning.

The authors say that the physical changes in the brains of adolescents who were constantly bullied partly explain the relationship between peer victimization and high [anxiety](#) levels at the age of 19.

"Although not classically considered relevant to anxiety, the importance of structural changes in the putamen and caudate to the development of anxiety most likely lies in their contribution to related behaviors such as reward sensitivity, motivation, conditioning, attention, and emotional processing."

Erin Burke Quinlan

She explains that it is worrying that as many as 30 percent of young people could be bullied on an almost daily basis. Burke Quinlan also highlighted the importance of brain development during adolescence.

She also hopes to see more efforts to fight bullying in the future, as peer victimization is becoming a global problem that might lead to physical changes in the brain, widespread anxiety, and high costs for society.

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Childhood Bullying Can Have Lasting Effects on Mental Health

By Laura Geggel January 14, 2020

Bullying can have a lasting effect on a person's mental health: A new study finds that children who were bullied frequently when they were 8 years old were more likely to develop a psychiatric disorder that needed treatment as an adult, compared with kids who were not bullied.

The scientists also found strong evidence that being [bullied as a child](#) puts kids at high risk for depression as a young adult, according to the study, published online today (Dec. 9) in the journal JAMA Psychiatry.

The findings suggest that being victimized by bullying in early childhood increases the risk of [depressive disorders](#) that need psychiatric treatment later in life, said study author Dr. Andre Sourander, a professor of child psychiatry at the University of Turku in Finland.

Previous studies have found a link between bullying and a higher risk of mental health problems during childhood, such as [low self-esteem](#), poor school performance, depression and an increased risk for suicide. But less is known about the long-term psychological health of adults who, as children, were bullies or victims of bullying.

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Studies of childhood bullying with long-term follow-ups from the early school years through adulthood are lacking, Sourander said. This new study is the largest to date to look at bullying among young children, and it also had the longest follow-up period, tracking children from age 8 until age 29, he said. [[7 Ways to Recognize Depression in 20-Somethings](#)]

In the study, the researchers analyzed data collected from about 5,000 children in Finland. When the children reached age 8, they filled out questionnaires that asked whether they were victims of bullying or had bullied other children, and how frequently this behavior occurred.

Similar questions about bullying were also asked of the children's parents as well as the children's second-grade teachers.

Using the information gathered from children, parents and teachers, the researchers divided the kids into four groups: kids who were uninvolved in bullying (they were neither bullies nor

bullied); kids who were frequent victims of bullying but did not bully others; kids who were frequent bullies but were not the targets of it; and kids who were often [bullies and were also often victims](#) of bullying.

Mental-health consequences

Then, the researchers looked at the mental health outcomes of the children from ages 16 to 29 by examining data from a nationwide hospital register that includes all inpatient and outpatient mental health visits in Finland.

They found that the vast majority of the children, or 90 percent of them, were not involved in bullying, and among this group, about 12 percent had been diagnosed with a psychiatric disorder before age 30.

But about 20 percent of those who were bullies as children had a mental health problem that needed medical treatment as a teen or young adult, and 23 percent of the kids who were victims of frequent bullying had sought help for a psychiatric problem before age 30.

The group that fared the worst in terms of adult mental health were the 8-year-olds who were frequently bullies and were also bullied themselves. About 31 percent of these children had psychiatric problems that required treatment, and these kids also had the [highest rates of depression](#), anxiety disorders, schizophrenia and substance abuse of all four groups analyzed in the study.

When a child is both a bully and bullied by their peers, this is a red flag, Sourander told Live Science. It can indicate that the youngster has other serious psychiatric problems, and often, these children are at high risk for later adversities in adulthood, including a wide range of mental health problems, he said.

Being bullied frequently by other children is [a traumatic experience](#), and researchers need to gain a better understanding of how important a child's early peer and school experiences are for their development, Sourander said. When kids are frequently the targets of bullying, it affects their social, emotional and psychological development, he said.

Bullying behavior should be taken seriously by teachers, parents and their peers because early intervention in childhood bullying can help prevent its long-term mental health consequences, Sourander said.

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Nashua Father Says Daughter Bullied At Fairgrounds Middle School

[schools](#)

Chad LaCrosse posted a video on social media that he says was one of two occasions in the past week where his daughter was assaulted.

By [Scott Souza, Patch Staff](#)

Oct 8, 2019 4:42 pm ET | Updated Oct 9, 2019 6:30 pm ET



Chad LaCrosse posted a video on social media that he says was one of two occasions in the past week where his daughter was assaulted at Fairgrounds Middle School in Nashua. (Shutterstock)

NASHUA, NH – A Nashua father is calling for a public discussion of bullying in schools and action from school officials after posting a video on social media of his 12-year-old daughter being attacked at Fairgrounds Middle School. Chad LaCrosse said that his daughter was attacked twice by other girls at the school and that meetings with school officials have been unsuccessful in keeping her safe.

"I plan on taking this as far I can," LaCrosse told Patch in a phone interview Tuesday night. "I was blown away with how the school system dealt with it. They told me they have their protocols and that it was a fight. That's not a fight. That was a planned attack."

LaCrosse said the [video posted was of a Sept. 27 attack](#) and that his daughter was attacked in the same manner on Monday, getting beat down while she was looking the other way. LaCrosse also asserts that his daughter was threatened on Sept. 26, received more threats on Sept. 28, and had to be dismissed from school due to threats on Oct. 4 before being attacked a second time on Monday.

He said other students witnessed the attacks and posted the videos of Snapchat, Instagram and TikTok. He said he went public after the second attack – which he said occurred when his daughter got off the bus at the school Monday morning – because he felt having the videos go viral would be the only way to increase awareness of the incident. As of Wednesday afternoon, the post of the video had received 55,000 views and 192 comments.

LaCrosse said he brought cause for a restraining order against two of the girls accused in the assault in Nashua District Court on Wednesday. He said a family pediatrician told him his daughter had signs of a concussion and cracked rib after the second attack. LaCrosse added that his daughter's friend had also been threatened.

"I want it to stop," he said. "I was told they can't arrest a 12-year-old for that. What exactly does a 12-year-old have to do to get arrested? That was a planned attack. I can understand if two kids go out in the playground and have a fistfight – that's a fight. If you are hit from behind when you are not looking, that's a planned attack. There is nothing you can do about it?"

LaCrosse posted on Facebook that he had meetings with Nashua Principal Sharon Coffey, Vice Principal Jeffrey Arbogast and Nashua Police, but claimed on social media: "They all said there is nothing they can do to make this stop, and she needs to fight back, or maybe she should change schools."

"My daughter is a straight-A student and she is the one who should change schools?" he told Patch was his reaction.

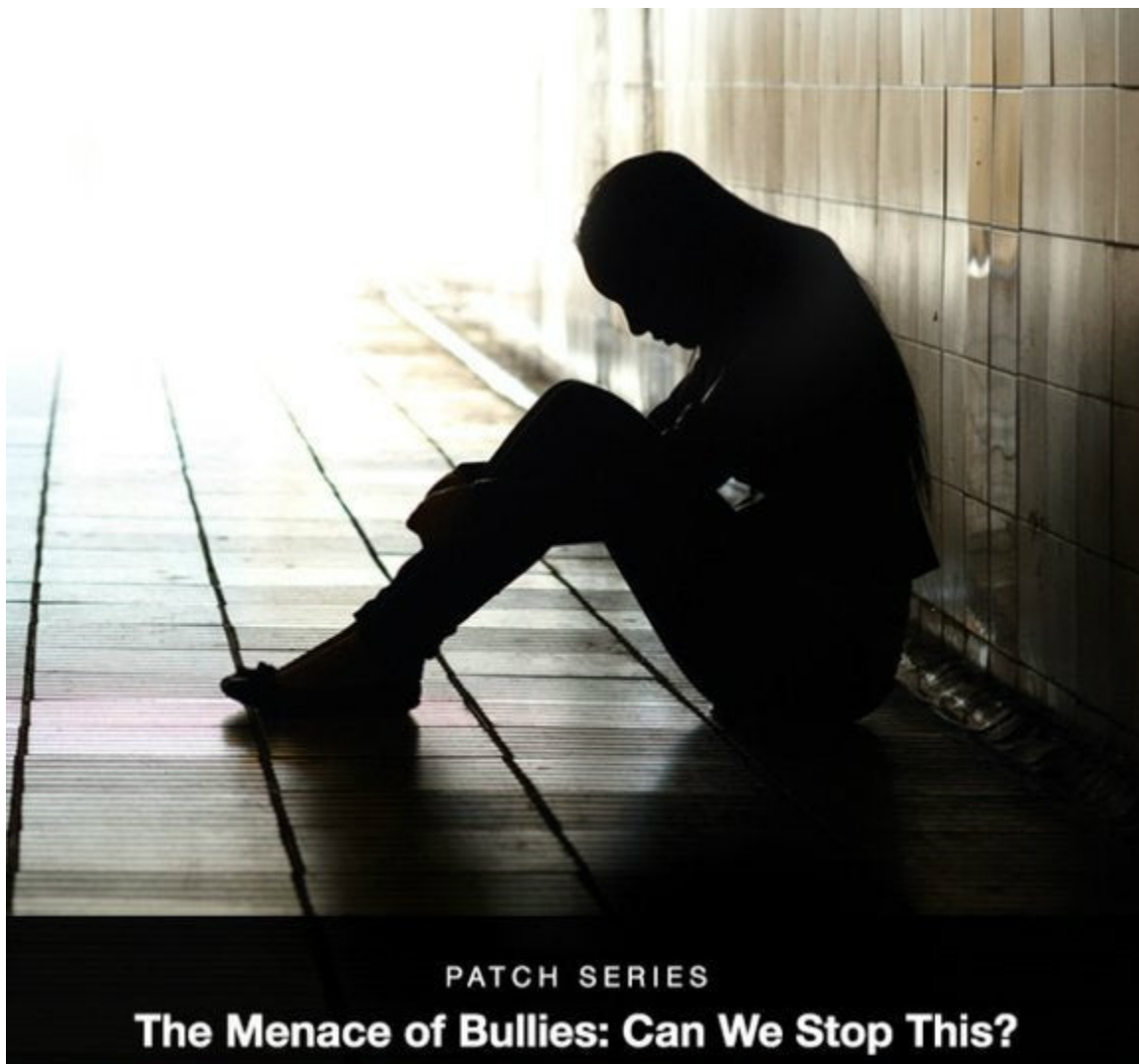
Nashua Superintendent Jamahl Mosely [issued a letter to parents](#) saying: "As superintendent, and as a father of a middle schooler at Fairgrounds Middle School, I am deeply troubled by this event and we will investigate this fully."

LaCrosse said he has a meeting with Mosely scheduled for Wednesday that he was told may include other school officials.

"I want things to change," LaCrosse said. "I want things to change in Nashua. I want things to change in Nashua schools. I want things to change with Nashua Police, if necessary."

"How many other parents are in my shoes and they have no way out?" he added.

Mosely wrote that Nashua Police have been contacted for "support and guidance in this matter" and that anyone revealed to be involved with being involved with, or filming, the bullying "will have consequences."



As part of a national reporting project, Patch has been looking at society's roles and responsibilities in bullying and a child's unthinkable decision to end their own life in hopes we might offer solutions that save lives.

Do you have a story to tell? Are you concerned about how your local schools handle bullies and their victims?

Email us at bullies@patch.com and share your views in the comments.

Selected Stories From The Project

- [Bullied To Death: When Kids Kill With Words](#)
- [New Jersey Man Remembers The Day He Stood Up To Racist Bully](#)
- [Why Bullying Is Killing Kids: National Stop Bullying Day](#)
- [Teen Bullied, Outed As Bisexual Takes His Life](#)
- [Boy, 13, Dies 9 Days After Moreno Valley Middle School Attack](#)

'I need this bullying to stop. I need it for her sake': New Hampshire family says 11-year-old endured severe bullying before taking her own life

By Dialynn Dwyer, Boston.com Staff July 10, 2018

Every night before going to sleep, Skylar Desmarais would find her grandmother in the home they shared in Manchester, New Hampshire.

The 11-year-old would tell her grandmother that she loved her, giving her a hug and a kiss.

She never missed a night.

"Even if she was away with somebody she would call me and say, 'I love you, Grammy,'" Teri Desmarais said of her granddaughter.

It was one of several rituals the 11-year-old shared with her grandmother, with whom she'd lived since she was 2. They watched "The Ellen DeGeneres Show" together each evening, bringing their dinner trays into the living room, taping episodes to save for later when they couldn't watch it side-by-side.

Skylar loved Christmas, so they started watching holiday movies in October and cranked up the carols on the radio in the car as soon as they hit the airwaves.

"If it was too hot out, we'd turn the air conditioner on in the car, so it was nice and cold to listen to Christmas music and just sing at the top of our lungs," Desmarais said. "People would think we were crazy, but it's OK. It was fun. It was our thing."

July Fourth was another favorite holiday. Desmarais and her granddaughter would scout the listings of the fireworks displays in the paper and would drive between the surrounding towns, going to up to four different shows surrounding the holiday.

This year, Desmarais stayed home. She said she just couldn't go see the fireworks without her granddaughter.

Skylar took her own life weeks before, on June 20, after struggling daily with depression and anxiety that her [family says stemmed](#) from severe verbal and cyberbullying by classmates at school.

"I just want her back," Desmarais said. "I don't know how to live without her."

'She was the type of child that wanted everyone to be happy'

Skylar and Teri Desmarais. —Courtesy of Teri Desmarais

Skylar seemed to have easily made friends until within the last year and a half, her grandmother said.

“She really started to have a hard time,” Desmarais said of the 11-year-old. “She never wanted to get anyone in trouble. She was the type of child that wanted everyone to be happy and she would make sure they were happy even if it was her pain that was inside. She couldn’t let people know that, she had to make them happy all the time.”

Skylar Desmarais —Courtesy of Teri Desmarais

The bullying started in the middle of this past school year, while Skylar was attending Parker-Varney Elementary School, according to Desmarais. After the family moved within the city, the 11-year-old was given the choice between continuing at Parker-Varney or transferring to Highland-Goffe’s Falls Elementary School, which she did. Skylar’s father, Michael Desmarais, suggested that maybe a new school would a good chance to start over, her grandmother said.

“It was worse,” Desmarais said.

She saw her granddaughter, who loved drama class and singing, become more and more withdrawn.

“She wanted to stay in her room more and draw,” Desmarais said. “That’s how she vented — she drew — and the pictures she drew started getting more dark. She’s always gone to therapy, so I asked her, I said, ‘Sky, what’s going on?’ And she said, ‘Nothing, Grammy. Everything’s fine.’ And I could just see it wasn’t.”

The Manchester woman said one day she noticed marks from self-harm on her granddaughter’s arms. Skylar eventually told her how bad the bullying was, but she wouldn’t tell her the names of the classmates.

“She has always just been loving, caring, never said the word ‘hate’ to anyone in her life,” Desmarais said. “Never said it to anyone or about anything.”

The 11-year-old didn’t want her classmates to get into trouble, her grandmother said.

“Skylar didn’t want to tell me a lot of stuff, but one of things that was brought out was some kids on the bus and at school said, ‘If I had a face like Sklyar Desmarais, I’d kill myself,’” the grandmother said.

Once it was in her brain, Desmarais said her granddaughter couldn’t forget it.

Separate of the bullying, the 11-year-old and her family had already had a difficult year. Last June, Desmarais said one her sons, Skylar’s uncle, died of a drug overdose in their basement. In October, Desmarais’s father, who lived in the two-family home they occupied, died of cancer.

“She had these two major losses, too, within a very short amount of time,” Desmarais said. “I’m having a hard time dealing with it, and I’m an adult. I can’t even imagine a child having to deal with this.”

Desmarais said she had begun the process of signing custody of Skylar back to her son, Michael Desmarais. The 11-year-old was excited about going to live with her father and his fiancée, Hope Shafer, in Pittsfield.

The Manchester School District told Boston.com it could not answer specific questions about the bullying Skylar's family says she experienced:

Our whole community is grieving over the tragic death of one of our Highland-Goffe's Falls students and we feel for the family who is struggling with this unimaginable loss. Out of respect for the privacy of our students and their families, and to comply with both state and federal law, we cannot provide a specific response to comments about the student being a victim of bullying. We have an exceptionally caring and dedicated staff working to ensure that services are in place for the students in our community. Suicide is a complex issue and research informs us that one issue rarely results in a suicide death, rather it is often a combination of factors. Our focus remains on healing and caring for the students, staff and community impacted by this tragedy.

By the end of the school year, Skylar had attempted suicide twice, her grandmother said. At school, she was accompanied by an adult because she'd tried to harm herself there.

But still, Desmarais said, the bullying continued.

'I need this bullying to stop'

Skylar Desmarais. —Courtesy of Teri Desmarais

Skylar finished fifth grade.

Desmarais said her granddaughter was happy about graduating elementary school and was happy that she would be moving to Pittsfield to live with her dad, her stepmother, and half brother. The last day of school was June 15, and Skylar planned to attend camp at the end of June.

On June 20, Skylar was found by a family member at her father's home. Desmarais said a letter left behind spoke of the bullying the 11-year-old experienced during the school year.

"I need this bullying to stop. I need it for her sake," she said of her granddaughter's death. "I don't want her to have left this world for no reason at all."

Desmarais said she and her family believe Skylar was "put on this Earth for a short time to teach us love, forgiveness, and caring."

"She was a unique child. She beat to her own drum, which everybody should be able to," she added.

The family plans to set up a memorial fund in Skylar's name to combat and raise awareness about bullying. Desmarais said she also plans to work to get more accountability in schools for reporting on incidents of bullying.

“I just want everyone — not to remember her death — but remember her life,” Desmarais said of her granddaughter. “Remember her smile every time she saw somebody, remember the hugs she used to give. Remember the loving, caring child. That’s what I want people to remember.”

Skylar Desmarais. —Courtesy of Teri Desmarais



2/23/21

Rep. Rick Ladd, Chair
House Education Committee
Legislative Office Building
Concord, NH 03301

RE: HB140

Dear Chairman Ladd and members of the House Education Committee,

I am writing on behalf of the members of the New Hampshire Association of School Principals (NHASP) to appeal to you to vote in opposition of HB 140 (Relative to private rights of action regarding student safety in cases of bullying and cyberbullying). We believe this proposed legislation, is unnecessary, as current due process protocols currently exist within R.S.A 193-F (Pupil Safety and Violence Prevention) as written.

Additionally, district policies already include investigation, documentation and communication (with families) requirements as required by R.S.A 193-F. It is significant to note that school leaders and/or their designees work closely with families to ensure that if and when an incident of bullying, or cyberbullying is verified that a clear fact-based response is developed to immediately address the issue/concern. Specifically, this may include disciplinary action as well as possible preventative actions aligned within the school, or district's trauma-informed system of care model.

It is of equal importance to note that often times the school/district will also extend supports and services to the perpetrator (and family) using elements from restorative justice protocols, or other preventative supports that align with district policy and are coupled with best practices intended to help mitigate future incidents.

Lastly, should a parent choose to appeal the findings of an investigation, or determination they currently have the right, under existing statute, to appeal the building-level findings to the Superintendent.

Please know that our students' safety and overall well-being is of utmost importance to us. Rest assured that we will continue to execute our ethical duties to advocate for their safety and care to insure they are afforded the best protections possible in our schools.

For the aforementioned reasons stated above, we respectfully request that you please consider voting against this proposed legislation.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Bridey C. Bellemare". The signature is fluid and cursive, with a prominent initial "B" and a long, sweeping underline.

Bridey C. Bellemare
Executive Director, NHASP

February 22, 2021

Via email and first class mail

Rep. Rick Ladd, Chair
House Education Committee
Legislative Office Building, Room 207
33 North State Street
Concord, NH 03301

Re: HB 140 (allowing lawsuits for violations of the anti-bullying statute)

Dear Representative Ladd:

I am writing on behalf of the New Hampshire Association of Special Education Administrators (NHASEA), which represents special education directors employed by school districts throughout the State.

The NHASEA opposes HB 140. The bill proposes to amend RSA 193-F:9 by allowing lawsuits for *any* violation of RSA 193-F, the anti-bullying statute. The bill also allows a prevailing plaintiff to recover attorney's fees.

RSA 193-F:9 currently provides as follows:

Nothing in this chapter shall supersede or replace existing rights or remedies under any other general or special law, including criminal law, nor shall this chapter create a private right of action for enforcement of this chapter against any school district or chartered public school, or the state.

This provision operates in tandem with RSA 193-F:7, which states:

A school administrative unit employee, school employee, chartered public school employee, regular school volunteer, pupil, parent, legal guardian, or employee of a company under contract to a school, school district, school administrative unit, or chartered public school, shall be immune from civil liability for good faith conduct arising from or pertaining to the reporting, investigation, findings, recommended response, or implementation of a recommended response under this chapter. The department of education shall be immune from civil liability for its good faith conduct in making recommendations under this chapter.

HB 140 would repeal RSA 193-F:9 and replace it with the following language:

Any person aggrieved as a result of *gross negligence or willful misconduct* in violation of *any provision of this chapter* may initiate an action against a school district or chartered public school and may recover court costs and reasonable attorney's fees as the prevailing party. Nothing in this section shall supercede [sic] or replace existing rights or remedies under any other law.

(Emphasis added.) ¹

The NHASEA opposes HB 140 for the following reasons.

First, the bill is overbroad. It allows a lawsuit by anyone “aggrieved” by “any” violation of RSA 193-F, *regardless of whether there was actual bullying and regardless of whether the violation proximately caused physical or emotional injury.*

RSA 193-F includes many technical provisions. For example:

- The statute directs every local school board to adopt a policy prohibiting bullying and cyberbullying. RSA 193-F:4, II.
- This policy must include procedures for: (a) reporting incidents of suspected bullying; (b) notifying parents of those reports; (c) investigating such reports; and (d) remedial action. RSA 193-F:4, II.
- The statute imposes short deadlines for school officials to notify a suspected victim’s parents and to complete investigations. RSA 193-F:4, II(i)-(j).
- School districts must provide training for students and staff regarding bullying. RSA 193-F:5.
- Each school district must annually report to the State Department of Education all “substantiated incidents” of bullying. RSA 193-F:6.

HB 140, allowing an award of attorney’s fees for “any” violation of RSA 193-F, will invite lawsuits alleging technical violations that ultimately caused no harm.

Second, the bill violates Part 1, Article 28-a of the New Hampshire Constitution, which prohibits the State from imposing new unfunded mandates on school districts. This constitutional provision became effective in 1984. RSA 193-F was first enacted in 2000 and amended in 2010. While the statute serves a laudable purpose, the legislature did not appropriate funds to defray the costs of compliance. HB 140 compounds that constitutional violation by imposing substantial new costs on school districts, such as liability for attorney’s fees.

Third, the bill relies on an undefined term. HB 140 permits lawsuits alleging “gross negligence” and allows a party to recover attorney’s fees upon proving that degree of carelessness. Alas, the bill neglects to define this critical term.

HB 140 incorrectly assumes the term is defined elsewhere, such as via court

¹ The bill misspells “supersede.”

decisions applying common law. However, unlike many states, New Hampshire's common law does not recognize the concept of gross negligence. *Barnes v. New Hampshire Karting Assoc'n, Inc.*, 128 NH 102, 108-09, 509 A.2d 151, 155 (1986). It consequently remains unclear exactly what "gross negligence" means in HB 140. This, like the attorney's fees provision, will encourage litigation.

Fourth, HB 140 is unnecessary. RSA 193-F:9, which HB 140 would repeal, merely provides that a violation of RSA 193-F is not *per se* grounds for liability.

The existing statute does not foreclose liability based on other laws. RSA 193-F:9 states, "Nothing in this chapter shall supersede or replace existing rights or remedies under any other general or special law." RSA 193-F:7 reiterates that concept by providing immunity only to those who act in "good faith."

Other relevant statutes double down on that principle. For example, RSA 31:105 allows a school district to reimburse an employee held liable for money damages arising from "negligence" or "accidental injury," but does not protect employees who *intentionally* violate a student's rights. RSA 507-B:4, IV immunizes local government personnel from liability for money damages only when "said employee or official was acting within the scope of his or her office and reasonably believed in the legality of his or her actions."

For all those reasons, the NHASEA oppose HB 140.

Thank you for considering these comments.

Very truly yours,

Gerald M. Zelin

Gerald M. Zelin

cc: Jane Bergeron, Exec. Dir, NHASEA

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Thursday, February 25, 2021

VIA EMAIL: HouseEducationCommittee@leg.state.nh.us

The New Hampshire House of Representatives
Education Committee

RE: HB140 – An Act Relative to Private Rights of Action Regarding Pupil Safety

Dear Honorable Members of the Committee:

I submit this written testimony in support of HB140. Although I was unable to attend the virtual hearing on Tuesday, February 23, I write to explain my support of HB140 and to address a few points that have come to my attention, largely from local media reporting on the hearing.

I am not an educator, but it seems plain that educators share overarching, common interests: they care about the well-being of kids, and they want to help craft our collective future by shaping young minds and guiding youth on their journey to becoming productive, contributing members of our community. Because HB140 ensures kids' well-being by protecting them on that journey, I support HB140. I implore you to do the same.

I. Schools are in the best position to address bullying, and HB140 will not impose a significant burden on schools.

The Union Leader reported that Barrett Christina, Executive Director of the New Hampshire School Boards Association, stated at the hearing: "it is terrible these children are still bullied, but school boards can't eradicate bullying," and "it seems the accountability of the bullying should be the parent...[because] the district has limited

responses to what it can do.” Although my support for HB140 may make this surprising, I actually agree with Mr. Christina.

Certainly, addressing bullying starts at home by what parents teach children and through the environment that children are raised in. But, I fear that what is being overlooked here is the basic premise upon which the public school system is structured: kids, very often, do not get everything they need at home. If they did, there would be no need for a public school system, let alone a need for many of the programs offered in public schools (i.e., district wide busses, free and reduced lunch, after school programs, providing school supplies to kids who would otherwise have none, etc.).

These programs, too, “tie up district resources and staff time,” just like HB140 would as Attorney Zelin noted. We nonetheless support these programs because they are in the best interests of kids and because we know that many kids will not have an adequate substitute for these programs at home. When the things that are essential to a child’s education – and, by extension, are essential to the well-being of that child and the community to which that child belongs – are not available at home, schools routinely step in to provide those crucial resources. Preventing bullying, and stopping it once it occurs, should not be exceptions to this routine.

So, although I agree with Mr. Christina that schools cannot “eradicate” bullying, I feel compelled to point out what, in my mind, is obvious: where bullying is concerned, schools are in the best position to “nip it in the bud.” School is where all parties to bullying – the bully, the bullied, and the bystander – come together in one place. While a parent or household can only be responsible for the children which reside there, a school is different. The school takes daily custody of and responsibility for children residing in all local households.

Where the vast majority of public schools already have anti-bullying and/or zero tolerance bullying policies in place, it is not a burden to simply enforce policies which have already been implemented. Moreover, HB140 sets the bar very low: it does not hold schools strictly liable for any mistake but, instead, provides a cause of action only to those persons “aggrieved as a result of gross negligence or willful misconduct.” See An Act Relative to Private Rights of Action Regarding Pupil Safety, HB140, 2021 (emphasis added).

II. HB140 will not result in frivolous litigation.

The Union Leader reported that Attorney Gerald Zelin, a lawyer representing the New Hampshire School Administrators Association, said at the hearing that the bill gives court access to anyone “aggrieved” by a school decision on bullying, presenting “a recipe for frivolous litigation.” That is false.

For one thing, the ethical rules to which attorneys are bound prohibit such behavior and make such behavior grounds for sanctions and other discipline against the attorney. See, e.g., N.H. R. Prof'l Conduct 11.

Beyond that, however, those of us who represent plaintiffs scrutinize potential cases and, generally speaking, consider three things before accepting a new client: (1) that the facts which form the basis of the plaintiff's injury conform to the law's requirements for stating a cause of action, such that the case is likely to be successful on the merits; (2) the extent of the firm's potential investment, both in fronting work time¹ and in fronting litigation expenses for clients who cannot afford such expenses; and (3) whether we can recover that investment, along with damages sufficient to redress the client's injury, from a jury verdict. The cases that are brought after such scrutiny are not frivolous.

Stepping outside the criminal sphere and into the civil sphere, where HB140 lawsuits would reside, the only notion of "justice" in the civil sphere is an amount of money damages that a jury determines is appropriate to redress a civil plaintiff's injuries. That is simply the way that our system is structured.

Moreover, to the extent that any person at the hearing may have implied that plaintiffs' attorneys would use HB140 to file frivolous lawsuits as part of a money-grabbing scheme, I condemn such an implication. The plaintiffs' attorneys who litigate the types of cases that HB140 would allow are not the Harvey Specter's of the world; we are the Hyundai driving, thrift store shopping, student loan paying, hardworking lawyers who are striving to make a positive difference in our communities. I implore you to help us make this positive difference by supporting HB140.

Sincerely,



Samantha J. Heuring, Esq.

CC: Chairman Rick Ladd; Vice Chairman Glenn Cordelli; Clerk Barbara Shaw; Member Ralph Boehm; Member James Allard; Member Alicia Lekas; Member Michael Moffett; Member Deborah Hobson; Member Louise Andrus; Member Oliver Ford; Member Erica Layon; Member Julius Soti; Member Mel Myler; Member David Luneau; Member Patricia Cornell; Member Linda Tanner; Member Arthur Ellison; Member Sue Mullen; Member Douglas Ley; Member Steve Woodcock

¹ Almost all plaintiff's representation is undertaken on a contingency fee basis, meaning the plaintiff's attorney agrees to invest sometimes hundreds of hours of work uncompensated unless and until the attorney recovers funds for the client, in which case the attorney takes a percentage of the recovery.

Bill as
Introduced

HB 140 - AS INTRODUCED

2021 SESSION

21-0265

06/04

HOUSE BILL **140**

AN ACT relative to private rights of action regarding pupil safety.

SPONSORS: Rep. Cordelli, Carr. 4; Rep. Ladd, Graf. 4; Rep. Boehm, Hills. 20; Rep. Verville, Rock. 2; Rep. Shaw, Hills. 16; Rep. A. Lekas, Hills. 37; Rep. J. Osborne, Rock. 4; Rep. Layon, Rock. 6; Sen. Ward, Dist 8

COMMITTEE: Education

ANALYSIS

This bill creates a private right of action for bullying and cyberbullying.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears ~~[in brackets and struckthrough.]~~
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT relative to private rights of action regarding pupil safety.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Safety and Violence Prevention; Pupil Safety Private Right of Action. RSA 193-F:9 is repealed
2 and reenacted to read as follows:

3 193-F:9 Private Right of Action Permitted. Any person aggrieved as a result of gross negligence
4 or willful misconduct in violation of any provision of this chapter may initiate an action against a
5 school district or chartered public school and may recover court costs and reasonable attorney's fees
6 as the prevailing party. Nothing in this section shall supercede or replace existing rights or
7 remedies under any other law.

8 2 Effective Date. This act shall take effect upon its passage.