

Senate Education Committee

Ava Hawkes 271-4151

HB 140, relative to private rights of action regarding pupil safety.

Hearing Date: April 20, 2021

Time Opened: 9:30 a.m.

Time Closed: 10:20 a.m.

Members of the Committee Present: Senators Ward, Hennessey, Ricciardi and Prentiss

Members of the Committee Absent : Senator Kahn

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

Sponsors:

Rep. Cordelli
Rep. Verville
Rep. Osborne

Rep. Ladd
Rep. Shaw
Rep. Layon

Rep. Boehm
Rep. A. Lekas
Sen. Ward

Who supports the bill: 29 people signed up in support of the bill. Full sign-in sheet available upon request.

Who opposes the bill: 37 people signed up in opposition to this bill. Full sign-in sheet available upon request.

Who is neutral on the bill: None.

Summary of testimony presented:

Representative Glenn Cordelli – Carroll, District 4

- Representative Cordelli introduced HB 140.
- Bullying is a serious national and statewide issue.
- In the 2019 school year, there were 1,400 reported cases of bullying in NH, including 66 documented cases of physical harm.
- 65% of bullying incidents go unreported.
- Even students who witness bullying are impacted.
- A Yale study found that bullying victims were two to nine times more likely to have suicidal thoughts.

- House Education heard tearful testimony, stories of neglect, and stories of suicide on this subject.
- Current RSA states that nothing shall create right of action.
- In 2015, there was a case in the Manchester School District that went to the Supreme Court.
- This case involved two separate altercation. First, the student was punched in the face on the bus. Then, received threatening messages, which later resulted in another attack, which landed this child in the emergency room with severe injuries.
- The parents became aware of the school bus incident at the emergency room.
- The court ultimately sided in favor of the school district, as to not create a private right of action.
- This bill is simple. If there is gross negligence or willful misconduct by a school district, there shall be a private right of action.
- The statute pertaining to school employees remains untouched: they shall be immune from civil liberties for good faith conduct arising from or pertaining to the reporting or investigation response to bullying incidents.
- There should be accountability when there is negligence and misconduct by school districts.
- All pupils have the right to safe, secure and peaceful environments.
- The legislature needs to ensure bullying issues are being taken seriously.
- We'd like to think districts are doing everything possible to fulfill their duty; when they are not, parents deserve a remedy.

Barrett Christina – Executive Director, NH School Board Association

- Opposed to this bill.
- The legislature acknowledges, through RSA 193-f:2, II that bullying is mostly based on one the various protected classes.
- This bill is not needed as there is already a cause of action that exists in NH law relative to discrimination, bullying based on protected classes.
- RSA 193:38, the former SB 263 from the 2019 session, states that any person facing discrimination can initiate a civil lawsuit against a school or school district in superior court for legal or equitable relief.
- There is no need for this bill when causes of action already exist.
- Other causes of action that students may file under common law.
- Common law is based on customs and precedent.
- There is a 1995 common law case from the NH Supreme Court ruled that school districts have duty of supervision over their employees.
- There are two causes of action that already exist under laws.
- The language in the bill pertaining to aggrieved persons is too broad and may cover more than the victim of bullying, but the perpetrator.

- Not good policy to allow someone to sue a school district to have courts decide who is and who is not a bully.
- When the bullying statute was amended in its current form roughly ten years ago, it passed almost unanimously.
- When SB 263 was working through the legislature in 2019, House Education members voted against it due to issues with private rights of action.
- Senator Hennessey asked Mr. Christina about the protected classes portion of his testimony. Younger kids don't always base their bullying on protected classes, for instance, clothing may be a reason to bully. What can those kids do if they don't fall under a protected class in their cases of bullying.
 - Mr. Christina referred to RSA 193:38, which is a very expansive statute, that covers protected classes in a broad sense.
 - The majority of the reasons she stated could fall under family status or socioeconomic status. He does, however, understand her point.
 - Another aspect to be mindful of is the fact that there are now more reported cases of bullying, which is positive, as that means students are coming forward and districts are reporting cases of bullying to NHDOE. It is not good that bullying is happening, but that it is being reported.
 - At the elementary level, we would think that teachers and principals are able to address and stem bullying early on.
- Senator Hennessey asked Mr. Christina to clarify the notion that simply because folks may fall under the socioeconomic status for the type of bullying, it does not make them a protected class. Thus, it does not provide protections and rights for lawsuit reasons.
 - Mr. Christina said under RSA 193:38, "family status" may invoke economic factors.
 - There are also protections under RSA 186:11, a common law cause of action for failure to supervise.
 - Based on testimony before the House, school district employees were not following local policies or pertinent statute relative to bullying, that seems to be a supervision issue, which may give rise to a cause of action suit.

Representative Erica Layon – Rockingham, District 6

- Supports this bill.
- There are bullying cases that do not fall under protected classes, i.e. body odor.
- The Manchester case proves this issue needs addressing through this bill.
- Loss of confidence and loss of learning happens frequently with bullying.
- When parents are aware of this, they can help their children overcome these challenges.
- Students in NH have been hospitalized and committed suicide as a result of bullying incidents.

- Many school shootings are the result of bullied children snapping.
- While we have not seen this in NH, it is a clear risk factor nationwide.
- Laws can't solve every issue we face.
- This bill can solve those rare cases where parents are denied the knowledge they need to support their bullied children.
- This bill will put schools on notice that they can be held responsible for failing to appropriately deal with bullying.
- In 2019, a middle school student in Nashua was jumped twice at school. Other students filmed the attacks and shared them on social media. The students and her friends continued to receive threats after the attack.
- The girl was uninjured in the first attack but following the second attack, the student was concussed and had broken ribs.
- The school's response was that there was nothing they could do as it was considered a mutual fight as it was recorded. Their suggestions were for the student to fight back or change schools.
- Another example is of a transgender student in California shot dead in a middle school computer lab. The transgender child was a protected class, however, they were the bully. RSA 193:38 would do nothing in order to give private right of action to the bullied student because the bully, not the victim, was a protected class.
- Victims of bullying should not be unserved.
- Teachers should have the best interest of students at heart.

Megan Douglass

- Supports this bill.
- She is the attorney who represented the student in the Manchester case referenced by Representative Cordelli.
- Mr. Christina's representation of her case, under common law relief, is flatly rejected in her case.
- The Supreme Court held that plaintiff attorneys could not assert common law of action.
- It is striking that we send students to school, entrusting their care, with adults to protect them from physical harm.
- There is no way to hold those adults accountable for gross failures.
- They are completely immune from gross negligence.
- She knows a lot of teachers.
- She plans to submit written testimony.

Marissa Chase – Executive Director, NH Association for Justice

- Supports this bill.
- It is very hard to bring a lawsuit due to professional ethics where lawyers cannot file frivolous or meritless claims. If they were to, they would be disbarred.
- There are not rash, frivolous lawsuits happening in NH.
- You can point to two supreme court cases where this has been an issue in the past decade. These cases are not brought lightly.
- There has yet been a case filed using the law passed in SB 263. That's a good thing.
- When these laws are passed with a penalty associated, it helps everyone be accountable.
- Their hope is that there will be no lawsuits filed under the provisions in HB 140.
- This bill would provide accountability and create teeth to a very important statute.
- They don't want to see children harmed.
- This is how our civil justice system works.
- When there are penalties in place, we tend to have better outcomes.
- She plans to submit written testimony.

Kimberly Lavallee

- Opposed to this bill.
- Mont Vernon, NH resident.
- Founder of two charter schools in Manchester.
- As a mother of two young adults, she sees ramification in one of her children as a result of bullying.
- Each investigation by the school takes time and personnel and should be thoroughly investigated.
- Social media increases challenge for schools in bullying.
- There is never an excuse for bullying.
- This bill's language may allow for unintended lawsuits.
- In this bill, parents are able to recoup legal fees if they win. Public schools and charter schools would be unable to recover those fees if they win.
- Legal fees and insurance premiums are expensive for all.
- Small charter schools can be challenged to find affordable legal representation and liability insurance.
- If the amount of lawsuits increase, so will cost of insurance. They would face higher premiums, higher deductibles and higher retention costs.
- Insurance companies are beginning to see more nuclear settlements over time.
- She appreciates the sentiment behind the bill. The state did not have a bullying law when her child was in school.

- The issue with this bill is the current draft.
- Trial lawyers will benefit.
- The bill does not provide a reasonable, affordable solution for schools.

Matt Southerton – President, NH Alliance for Public Charter Schools

- Opposed to this bill.
- This issue is serious and complicated.
- He has seen firsthand the effects of bullying on students.
- School administrators and officials work hard to conduct investigations and protect students.
- If this language were to go through, there will be costs to school communities across state.
- We must seriously consider the damage this bill could do.
- One of the most critical methods to fighting against bullying is open communication between schools and families.
- This bill would reduce conversations and the level of trust between schools and families with the impending doom of lawsuits.
- Pulls focus away from students who we are trying to protect.
- He will submit written testimony.

Scott Perron

- Opposed to this bill.
- Manchester, NH resident.
- Bullying cannot be tolerated.
- He understands and agrees with many of the points brought up so far.
- Understanding where bullying responsibility lies is a joint venture, not just one of the schools.
- Worries that the number of resources that would be necessary to accomplish this, on the school administration level, would take away from the necessary funding that our schools need for educational purposes.

Katherine Shea

- Supports this bill.
- Important to her family and neurodiverse students who struggle with self-advocacy.
- They are also the victims of school staff's lack of training and understanding.
- Parent to autistic children who have experienced bullying.
- Served on taskforce to serve and generate solutions to bullying in our state.

- Disabled children may be considered protected, but that is not always recognized in schools.
- The current dispute resolution process did not know how to even define their statistics and couldn't break down their definitions of bullying and how they report that kind of information.
- While a civil lawsuit sounds nice, families do not have money for those kinds of lawsuits.
- Common law is not a practical way to solve this problem.
- No protections or real teeth in the current process and nothing is enforced.
- For other families, you may recognize from being in the news, bullying was the final factor that pushed their unsupported, unhappy, mistreated children over the edge. Those children are no longer with us.
- This bill will hold schools accountable.

Moiria Ryan

- Supports this bill.
- Plans to submit written testimony.
- For school to be in compliance with bullying standards, they must file a report.
- Students do reach out and don't get help.
- School districts need to protect their students and educate them.
- She has known of schools who do not follow through in filing reports.

Shannon Bouchard

- Supports this bill.
- Plans to submit written testimony.
- Her daughter was severely bullied on the bus.
- She was reassured during her IEP meetings that they were documenting the bullying. She was also told by the bus company that they record bus rides.
- She trusted the school immensely and thought they were keeping an eye on her daughter.
- Her daughter endured bullying every day.
- Instead of mailing special education reports home, the school sent home the reports with her child and the bullies found the reports on the bus.
- The most often kind of bullying starts in elementary school and peaks in middle school.
- This bullying caused her daughter to withdraw and not want to go to school.
- The threat of truancy, by her daughter's school, came about due to her missing so much school.
- The bullying caused her daughter physical harm.
- The school did not report physical abuse by the bully, she found out through her daughter's friend.

- Due to her own disability, she could not drive her daughter to and from school so she had to continue taking the bus.
- The bully was suspended off the bus a few times, but continually came back.
- Children with disabilities are two to three times more likely to be bullied than non-disabled children.
- Disabled children may have a harder time communicating about bullying.
- Her daughter began to suffer from depression, anxiety, self-harm and suicidal thoughts.
- She ended up going before the school board with the help of the disability rights center.
- She is still fighting even while permanently disabled with MS. Her husband is the only one able to work in their home.

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Date Hearing Report completed: April 21, 2021