

MAINE STATE LEGISLATURE

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Date: 3/6/12

EDUCATION AND CULTURAL AFFAIRS

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
125TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "B" to H.P. 928, L.D. 1237, Bill, "An Act To Prohibit Bullying in Schools"

Amend the bill by striking out the title and substituting the following:

'An Act To Prohibit Bullying and Cyberbullying in Schools'

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

Sec. 1. 20-A MRSA §254, sub-§11-A is enacted to read:

11-A. Model policy; reporting. By January 1, 2013, the commissioner shall develop a model policy to address bullying and cyberbullying for use by school administrative units pursuant to section 6554. A copy of the model policy must be sent to each school administrative unit in the State and posted on the publicly accessible portion of the department's website along with any training and instructional materials related to the policy that the commissioner determines necessary.

A. The commissioner shall create a procedure by which school administrative units report substantiated incidents of bullying and cyberbullying to the department on at least an annual basis. These reports may not contain personally identifying information about students or other involved persons, but must delineate the specific nature of the incidents, the consequences and the actions taken.

B. The commissioner may update or revise the model policy and shall post the update or revision on the publicly accessible portion of the department's website and send a copy of the update or revision to each school administrative unit.

Sec. 2. 20-A MRSA §1001, sub-§15, ¶H, as enacted by PL 2005, c. 307, §3, is amended to read:

H. Establish policies and procedures to address bullying, harassment and sexual harassment as set forth in section 6554.

Sec. 3. 20-A MRSA §6554 is enacted to read:

COMMITTEE AMENDMENT

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§6554. Prohibition on bullying in public schools

1. Findings. All students have the right to attend public schools that are safe, secure and peaceful environments. The Legislature finds that bullying and cyberbullying have a negative effect on the school environment and student learning and well-being. These behaviors must be addressed to ensure student safety and an inclusive learning environment. Bullying may be motivated by a student's actual or perceived race; color; religion; national origin; ancestry or ethnicity; sexual orientation; socioeconomic status; age; physical, mental, emotional or learning disability; gender; gender identity and expression; physical appearance; weight; family status; or other distinguishing personal characteristics or may be based on association with another person identified with such a characteristic. Nothing in this section may be interpreted as inconsistent with the existing protection, in accordance with the First Amendment of the United States Constitution, for the expression of religious, political and philosophical views in a school setting.

2. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Alternative discipline" means disciplinary action other than suspension or expulsion from school that is designed to correct and address the root causes of a student's specific misbehavior while retaining the student in class or school, or restorative school practices to repair the harm done to relationships and persons from the student's misbehavior. "Alternative discipline" includes, but is not limited to:

- (1) Meeting with the student and the student's parents;
- (2) Reflective activities, such as requiring the student to write an essay about the student's misbehavior;
- (3) Mediation when there is mutual conflict between peers, rather than one-way negative behavior, and when both parties freely choose to meet;
- (4) Counseling;
- (5) Anger management;
- (6) Health counseling or intervention;
- (7) Mental health counseling;
- (8) Participation in skills building and resolution activities, such as social-emotional cognitive skills building, resolution circles and restorative conferencing;
- (9) Community service; and
- (10) In-school detention or suspension, which may take place during lunchtime, after school or on weekends.

B. "Bullying" includes, but is not limited to, a written, oral or electronic expression or a physical act or gesture or any combination thereof directed at a student or students that:

- (1) Has, or a reasonable person would expect it to have, the effect of:

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- (a) Physically harming a student or damaging a student's property; or
- (b) Placing a student in reasonable fear of physical harm or damage to the student's property;

(2) Interferes with the rights of a student by:

- (a) Creating an intimidating or hostile educational environment for the student; or
- (b) Interfering with the student's academic performance or ability to participate in or benefit from the services, activities or privileges provided by a school; or

(3) Is based on a student's actual or perceived characteristics identified in Title 5, section 4602 or 4684-A, or is based on a student's association with a person with one or more of these actual or perceived characteristics or any other distinguishing characteristics and that has the effect described in subparagraph (1) or (2).

"Bullying" includes cyberbullying.

C. "Cyberbullying" means bullying through the use of technology or any electronic communication, including, but not limited to, a transfer of signs, signals, writing, images, sounds, data or intelligence of any nature transmitted by the use of any electronic device, including, but not limited to, a computer, telephone, cellular telephone, text messaging device and personal digital assistant.

D. "Retaliation" means an act or gesture against a student for asserting or alleging an act of bullying. "Retaliation" also includes reporting that is not made in good faith on an act of bullying.

E. "School grounds" means a school building; property on which a school building or facility is located; and property that is owned, leased or used by a school for a school-sponsored activity, function, program, instruction or training. "School grounds" also includes school-related transportation vehicles.

3. Prohibition. A person may not engage in bullying on school grounds. This section does not modify or eliminate a school's obligation to comply with state and federal constitutional protections and civil rights laws applicable to schools.

4. Scope. This section applies to bullying that:

A. Takes place at school or on school grounds, at any school-sponsored or school-related activity or event or while students are being transported to or from school or school-sponsored activities or events; or

B. Takes place elsewhere or through the use of technology, but only if the bullying also infringes on the rights of the student at school as set forth in subsection 2, paragraph B.

5. Adoption of policy. When revising the policies and procedures it has established to address bullying pursuant to section 1001, subsection 15, paragraph H, a school board shall ensure that its policies and procedures are consistent with the model policy

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1 developed or revised by the commissioner pursuant to section 254, subsection 11-A. The
2 policies and procedures must include, but are not limited to:

3 A. A provision identifying the responsibility of students and others on school
4 grounds to comply with the policies;

5 B. A clear statement that bullying, harassment and sexual harassment and retaliation
6 for reporting incidents of such behavior are prohibited;

7 C. A provision outlining the responsibility of a superintendent to implement and
8 enforce the bullying policies required by this section, including:

9 (1) A requirement that the superintendent designate a school principal or other
10 school personnel to administer the policies at the school level; and

11 (2) A procedure for publicly identifying the superintendent's designee or
12 designees for administering the policies at the school level;

13 D. A requirement that school staff members, coaches and advisors for extracurricular
14 and cocurricular activities report incidents of bullying to the school principal or other
15 school personnel designated by the superintendent pursuant to paragraph C;

16 E. Procedures for students, school staff members, parents and others to report
17 incidents of bullying. The procedures must permit reports of bullying to be made
18 anonymously;

19 F. A procedure for promptly investigating and responding to incidents of bullying,
20 including written documentation of reported incidents and the outcome of the
21 investigations;

22 G. A clear statement that any person who engages in bullying, who is determined to
23 have knowingly and falsely accused another of bullying or who engages in acts of
24 retaliation against a person who reports a suspected incident of bullying is subject to
25 disciplinary actions, which actions may include but are not limited to imposing a
26 series of graduated consequences that include alternative discipline;

27 H. A procedure for a person to appeal a decision of a school principal or a
28 superintendent's designee related to taking or not taking disciplinary action in
29 accordance with the policies adopted pursuant to this subsection. The appeals
30 procedure must be consistent with other appeals procedures established by the school
31 board and may include an appeal to the superintendent;

32 I. A procedure to remediate any substantiated incident of bullying to counter the
33 negative impact of the bullying and reduce the risk of future bullying incidents,
34 which may include referring the victim, perpetrator or other involved persons to
35 counseling or other appropriate services;

36 J. A process for the school to communicate to the parent of a student who has been
37 bullied the measures being taken to ensure the safety of the student who has been
38 bullied and to prevent further acts of bullying; and

39 K. A procedure for communicating with a local or state law enforcement agency if
40 the school principal or the superintendent's designee believes that the pursuit of
41 criminal charges or a civil action under the Maine Civil Rights Act is appropriate.

COMMITTEE AMENDMENT

1 School boards may combine the policies and procedures required by this subsection with
2 nondiscrimination, harassment and sexual harassment policies and grievance procedures.

3 **6. Dissemination of policy.** Each school board shall annually provide the written
4 policies and procedures adopted pursuant to subsection 5 to students, parents, volunteers,
5 administrators, teachers and school staff. The policies and procedures must be posted on
6 the school administrative unit's publicly accessible website. Each school board shall
7 include in its student handbook a section that addresses in detail the policies and
8 procedures adopted pursuant to subsection 5.

9 **7. Application.** A superintendent or the superintendent's designee shall ensure that
10 every substantiated incident of bullying is addressed.

11 A. The prohibition on bullying and retaliation and the attendant consequences apply
12 to any student, school employee, contractor, visitor or volunteer who engages in
13 conduct that constitutes bullying or retaliation.

14 B. Any contractor, visitor or volunteer who engages in bullying must be barred from
15 school grounds until the superintendent is assured that the person will comply with
16 this section and the policies of the school board.

17 C. Any organization affiliated with the school that authorizes or engages in bullying
18 or retaliation forfeits permission for that organization to operate on school grounds or
19 receive any other benefit of affiliation with the school.

20 **8. Transparency and monitoring.** Each school administrative unit shall file its
21 policies to address bullying and cyberbullying with the department.

22 **9. Staff training.** A school administrative unit shall provide professional
23 development and staff training in the best approaches to implementing this section.'

24 **SUMMARY**

25 This amendment replaces the bill, which requires the Commissioner of Education to
26 develop a model harassment, intimidation and bullying prevention policy and requires
27 that school administrative units adopt a policy based on the model by August 15, 2012.
28 The amendment:

29 1. Requires the Department of Education to develop a model policy on bullying and
30 cyberbullying in accordance with the requirements set forth in the Maine Revised
31 Statutes, Title 20-A, section 6554 by January 1, 2013;

32 2. Defines "bullying" to include cyberbullying and establishes a prohibition on
33 bullying to ensure a safe and secure student learning environment in public schools in the
34 State;

35 3. Provides that when a school board revises the school administrative unit's existing
36 policies and procedures established to address bullying pursuant to the Maine Revised
37 Statutes, Title 20-A, section 1001, subsection 15, the school board shall adopt a policy
38 that is consistent with the provisions established to prohibit bullying at school or on
39 school grounds, including cyberbullying that takes place at school or elsewhere through
40 the use of technology;

12 of 13

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4. Provides that the policy adopted by a school board to address bullying must include the following provisions:

A. The responsibility of the superintendent or the superintendent's designee to implement and enforce the policy;

B. The requirement that school staff members, including persons involved with extracurricular or cocurricular activities, report incidents of bullying;

C. The procedures for students, school personnel, parents, legal guardians and others to report incidents of bullying;

D. The procedures for promptly investigating and responding to incidents of bullying, including communicating measures to ensure the safety of a targeted student and prevent further acts of bullying;

E. A statement of the disciplinary actions that a person who engages in bullying may be subjected to, including the imposition of a series of graduated consequences that include alternative discipline practices;

F. A procedure, consistent with the school board's other appeals procedures, to appeal the decision of a school principal or superintendent's designee involving disciplinary action taken or not taken against a person who engages in bullying; and

G. A statement that communication with law enforcement officials is permitted if a school principal or superintendent's designee believes that the pursuit of civil action or criminal charges is appropriate;

5. Requires a school board to disseminate its policies to address bullying, including posting the policies on the school administrative unit's publicly accessible website and incorporating details of the policies in the student handbook;

6. Provides that a superintendent or the superintendent's designee is responsible for ensuring that every substantiated incidence of bullying is addressed;

7. Provides that each school administrative unit shall file its policies to address bullying with the Department of Education and requires the Commissioner of Education to create a procedure for reporting incidents of bullying and cyberbullying to the department on at least an annual basis; and

8. Provides that a school administrative unit shall provide professional development and staff training in the best approaches to implementing its policies to address bullying.

FISCAL NOTE REQUIRED

(See attached)



125th MAINE LEGISLATURE

LD 1237

LR 614(07)

An Act To Prohibit Bullying in Schools

Fiscal Note for Bill as Amended by Committee Amendment "B" (H-745)
Committee: Education and Cultural Affairs
Fiscal Note Required: Yes

Fiscal Note

State Mandate - Unfunded

State Mandates

Required Activity

Requires school boards, when amending its policies and procedures that address bullying, to include the following:

- ~ procedures for students, school staff, parents, guardians and others to report incidents of bullying including anonymous reporting of bullying;
- ~ procedures for prompt investigating and responding to incidents of bullying including written documentation of reported incidents and the outcome of the investigation;
- ~ procedure for appealing a decision to take or not take disciplinary action;
- ~ procedure to remediate any substantiated incident of bullying;
- ~ process to communicate measures being taken to ensure the safety of the targeted student and to prevent further acts of bullying.

Requires the annual dissemination of the written policy to students, parents, guardians, volunteers, administrators, teachers and school staff; posting of policy on the school administrative unit's publicly accessible website; and inclusion of the policy, in detail, to the student handbook.

Requires superintendent to address every substantiated incident of bullying.

Requires local school administrative units to provide professional development and staff training in the best approaches to implementing the anti-bullying policy.

The required local activities in this bill may represent a State mandate pursuant to the Constitution of Maine. Unless General Fund appropriations are provided to fund at least 90% of the additional costs or a Mandate Preamble is amended to the bill and two-thirds of the members of each House vote to exempt this mandate from the funding requirement, municipalities may not be required to implement these changes.

Unit Affected	Local Cost
School	Significant statewide

C"B" (H-745)

Fiscal Detail and Notes

Additional costs to the Department of Education to create a model policy on bullying, harassment and sexual harassment by January 1, 2013 and to create a procedure under which material incidents of discrimination, harassment, sexual harassment, cyberbullying and bullying are reported to the department can be absorbed within existing budgeted resources.