

OFFICE OF POLICY AND LEGAL ANALYSIS

Date: April 9, 2021
To: Committee on Education and Cultural Affairs
From: Samuel Senft, Legislative Analyst

LD 880, “An Act To Protect School Employees from Workplace Bullying” (Daughtry)

SUMMARY

This bill amends the law governing bullying in public schools to include a prohibition on the bullying of school employees.

TESTIMONY

<p>Proponents:</p> <ul style="list-style-type: none">• Schools should be free from bullying• This bill extends efforts to protect students from bullying to school employees• Bill would contribute to an inclusive school environment, which benefits both students and employees.• Before the digital age, student mistreatment of teachers was usually confined to the building and a small group of students or parents. Rarely did this damage a teacher’s reputation or wellbeing, However the internet has made it possible for students to do a great deal of damage to a teacher by spreading false information with anonymity.• While cyberbullying laws protecting student have been enacted, states have also started to see the need to protect school employees. N Caroline recently passed a law.• Studies have found that at least 1 in 7 teacher have been subjected to cyberbullying.• Bill merely adds school employees to the existing anti-bullying law in the Safety section of Title 20-A
<p>Opponents:</p> <ul style="list-style-type: none">• Adults in a school building are there to keep students safe and prepare them for life• This bill puts adults needs first, and is a burdensome mandate on schools. Will require investigation of any complaint by an employee who feels they have been treated unfairly by a fellow employee, a supervisor, a student, a parent, or any other person.• The Human Rights Act already provides protections.
<p>Neither For Nor Against</p> <ul style="list-style-type: none">• Appears that the bill is intended to protect educators from students, not adults.

INFORMATION REQUESTS:

- It was asked to what extent the Maine Human Rights Act protects school employees from bullying and what documentation would be required to make a claim.

The Maine Human Rights Act is codified at [Title 5, Chapter 337, Section 4552](#) establishes the policy of the Act as follows:

To protect the public health, safety and welfare, it is declared to be the policy of this State to keep continually in review all practices infringing on the basic human right to a life with dignity, and the causes of these practices, so that corrective measures may,

where possible, be promptly recommended and implemented, and to prevent discrimination in employment, housing or access to public accommodations on account of race, color, sex, sexual orientation, physical or mental disability, religion, ancestry or national origin; and in employment, discrimination on account of age or because of the previous assertion of a claim or right under former [Title 39](#) or [Title 39-A](#) and in housing because of familial status; and to prevent discrimination in the extension of credit on account of age, race, color, sex, sexual orientation, marital status, religion, ancestry or national origin; and to prevent discrimination in education on account of sex, sexual orientation or physical or mental disability.

Definitions

- For the purposes of employment, the act applies to covered entities, which are defined at [Section 4553, sub-section 1-B](#) as “employer, employment agency, labor organization or joint labor-management committee.”
- An employer is defined at subsection 4. as “any person in this State employing any number of employees, whatever the place of employment of the employees, and any person outside this State employing any number of employees whose usual place of employment is in this State; any person acting in the interest of any employer, directly or indirectly, such that the person's actions are considered the actions of the employer for purposes of liability; and labor organizations, whether or not organized on a religious, fraternal or sectarian basis, with respect to their employment of employee”.
- A person is defined at sub-section 7 as “one or more individuals, partnerships, associations, organizations, corporations, municipal corporations, legal representatives, trustees, trustees in bankruptcy, receivers and other legal representatives, labor organizations, mutual companies, joint-stock companies and unincorporated organizations and includes the State and all agencies thereof”. A school administrative unit would be considered a covered entity/ employer under this definition.

[Section 4571](#) states the right of individuals to “secure employment without discrimination because of race, color, sex, sexual orientation, physical or mental disability, religion, age, ancestry or national origin”.

[Section 4572](#) describes what constitutes unlawful employment discrimination. It prohibits discrimination, such as refusal to hire or promote, based upon race or color, sex, sexual orientation, physical or mental disability, religion age, ancestry or national origin, because of previous assertion of a claim or right under former Title 39 or Title 39-A or because of previous actions that are protected under Title 26, chapter 7, subchapter 5-B (state labor laws).

It would likely be difficult for a teacher or other school employee to assert a claim under the Human Rights Act based on student bullying. First, assuming only the student is engaged in the bullying, it would be difficult to establish employer action against which to make a claim. A teacher might assert that the school knowingly *failed* to act to prevent bullying based on a protected category (verses more general bullying), but this may be difficult. Second, even if the teacher could show that the school knowingly failed to act to prevent bullying based on a protected category, the teacher would still likely need to establish that this failure amounted to a tangible detrimental action related to the employment of the teacher. Finally, conduct occurring online or outside the school building would likely be more difficult for schools to control and therefore more difficult for a teacher to make a claim asserting school liability.

It should be noted that Section 4572 does include a prohibition of sexual harassment. Sexual harassment includes unwanted sexual advances, requests for sexual favors, suggestive or lewd remarks, or other conduct that threatens job security or working conditions. If a student engages in such behavior towards a teacher or other school employee to the extent that a hostile work environment is created, and the school administration is aware of the situation and fails to remedy it, the teacher might be able to assert a claim under the Human Rights Act, though the fact that the behavior is student initiated, verses initiate by an agent of the employer, may be a barrier.

See below for a related discussion of federal discrimination claims.

Enforcement. The Maine Human Rights Act is enforced by the Maine Human Rights Commission (MHRC). Aggrieved parties may file a complaint with the MHRC within 300 days of the date the discrimination occurred. The MHRC will review the complaint and notify the respondents, who are given the opportunity to respond. An MHRC investigator reviews any information or documents submitted and may request additional information, interview parties, hold a conference or try to facilitate a settlement. The investigator will draft a report and make a recommendation to the Commissioners as to whether “reasonable ground” for a claim of discrimination exist. The report is sent to the parties, who may respond and object. If objections are made, the parties may appear before the Commission to argue their case. The Commission meets to vote as to whether reasonable grounds exist for each case. If no, the case is dismissed. If yes, the Commissions will attempt to resolve the dispute. If an agreement cannot be reached, the complainant may file suit, regardless of the Commission’s finding. The Commission may itself file suit in the public interest. The process is described [here](#).

ADDITIONAL INFORMATION:

- The bill can be found [here](#).
- The current statutory language at 20-A MRSA §6554 is [here](#).
- Title VII of the Civil Rights Act of 1964 creates a cause of action of victims of employment discrimination based on race, color, national origin, religion or sex. Title IX of the Education Amendments of 1972 extended its application to educational institutions. Title IX prohibits discrimination on the basis of sex in federally funded education programs or activities. A law review article reports that “Claims for student-on-teacher sexual harassment brought under Title VII have not enjoyed much success”¹. The author argued Title IX may be viable in such cases, but noted the difficulty in establishing school liability is such cases.²

OTHER CONSIDERATIONS:

- [LD 1444](#), An Act to Prohibit Cyberbullying of School Employees by Students, was referred to this committee last week. The bill specifically establishes cyberbullying of teachers by students as a juvenile crime.

¹ Shane, Richard. *Teachers as Sexual Harassment Victims the Inequitable Protections of Title VII in Public Schools*. 61 FLA. L. REV 355, 365 (2009).

² Shane, Richard. *Teachers as Sexual Harassment Victims the Inequitable Protections of Title VII in Public Schools*. 61 FLA. L. REV 355 (2009).

- This bill appears to address only student initiated bullying. If the intent is to also address bullying by fellow employees, that would require additional language.
- Section 5 of the bill described the requirements for adoption of anti-bullying policies. The section is amended in the bill to make clear that these policies relate to the bullying of students, rather than employees. Is the intent to also require a policy to be adopted regarding the bullying of employees? If so, additional language would be required.

FISCAL IMPACT: The fiscal impact of this bill has not yet been determined. It is unclear if this bill will present a mandate.