

HB

45

<TARGET><BILL>HB 45</BILL><SUBJECT>HB
45</SUBJECT><COMM>HJUD28</COMM></TARGET>



REPRESENTATIVE MIA COSTELLO
Member, House Finance Committee

Sponsor Statement **House Bill 45**

"An Act relating to harassment, intimidation, or bullying by students attending a public school in the state"

Currently, state law requires each school district to adopt a policy that prohibits the "harassment, intimidation, or bullying" of any student. House Bill 45 changes the definition of "harassment, intimidation, or bullying" to include those acts which are communicated electronically. This is commonly referred to as "cyberbullying".

The rates of cyberbullying and electronic victimization have varied over the years in which the age of people using electronic devices has lowered. Anywhere from 15-35 percent of teens have experienced some form of cyberbullying. While traditional bullying is still more common than cyberbullying, the latter has become more prevalent amongst teens because they can fearlessly harass people, in many cases by hiding their identity. Youth have been misusing technology, especially in terms of cyberbullying and social networking. Since proof of this type of harassment exists only in the virtual world, these youth ultimately think of themselves as blameless. This law would remind educators and administrators of our school districts that the virtual realm is a part of daily life that we should teach our children how to safely and respectfully interact within.

Currently, 18 states include "cyberbullying" in their bullying laws. Also, five other states have anti-cyberbullying laws pending. Wisconsin, Montana, and Alaska are the only states which do not include "electronic harassment" in their bullying laws.

This bill was suggested by a Dimond High School senior. Our students deserve to learn and grow without threats to their well-being, whether they come from the real or virtual world. Schools should be an environment where students can expect safety from their leaders and kindness from their peers. This bill helps to ensure that.

I ask for your support with HB 45.

SESSION:
Alaska State Capitol
Juneau, AK 99801
Tel: 907-465-4968
Fax: 907-465-2040

rep.mia.costello@legis.state.ak.us
1-800-773-4968

Sand Lake, Jewel Lake and Kincaid

IN TERIM:
716 W. 4th Ave.
Anchorage, AK 99501
Tel: 907-269-0117
Fax: 907-269-0119

House Bill 45

“An Act relating to harassment, intimidation, or bullying by students attending a public school in the state.”

Sectional Analysis

Section 1 – removes “whether verbal or physical” from AS 14.33.220(b). Removing this specification implies that this bill refers to bullying through any action, regardless of the means of communication.

Section 2 – inserts “electronic communication” as a possible form of harassment in AS 14.33.250(2). Currently, schools are required by statute to have anti-bullying policies. This section requires school districts to expand their anti-bullying policies to cover cyberbullying as well.

Fiscal Note

State of Alaska
2014 Legislative Session

Bill Version: HB 45
Fiscal Note Number: 1
(H) Publish Date: 3/31/14

Identifier: HB045-EED-SSA-3-16-14
Title: ELECTRONIC BULLYING IN SCHOOLS
Sponsor: ** COSTELLO, GATTIS
Requester: House Education Committee

Department: Department of Education and Early Development
Appropriation: Teaching and Learning Support
Allocation: Student and School Achievement
OMB Component Number: 2796

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

| | FY2015 Appropriation Requested | Included in Governor's FY2015 Request | Out-Year Cost Estimates | | | | | |
|-------------------------------|--------------------------------------|--|-------------------------|------------|------------|------------|------------|------------|
| | | | FY 2015 | FY 2016 | FY 2017 | FY 2018 | FY 2019 | FY 2020 |
| OPERATING EXPENDITURES | | | | | | | | |
| Personal Services | | | | | | | | |
| Travel | | | | | | | | |
| Services | | | | | | | | |
| Commodities | | | | | | | | |
| Capital Outlay | | | | | | | | |
| Grants & Benefits | | | | | | | | |
| Miscellaneous | | | | | | | | |
| Total Operating | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Fund Source (Operating Only)

| | | | | | | | | |
|--------------|------------|------------|------------|------------|------------|------------|------------|------------|
| None | | | | | | | | |
| Total | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Positions

| | | | | | | | | |
|-----------|--|--|--|--|--|--|--|--|
| Full-time | | | | | | | | |
| Part-time | | | | | | | | |
| Temporary | | | | | | | | |

| | | | | | | | | |
|---------------------------|--|--|--|--|--|--|--|--|
| Change in Revenues | | | | | | | | |
|---------------------------|--|--|--|--|--|--|--|--|

Estimated SUPPLEMENTAL (FY2014) cost: 0.0 (separate supplemental appropriation required)
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2015) cost: 0.0 (separate capital appropriation required)
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

| |
|-----------------|
| Initial Version |
|-----------------|

Prepared By: Susan McCauley, Director
Division: Division of Teaching & Learning Support
Approved By: Mike Hanley
Agency: Commissioner

Phone: (907)465-2857
Date: 03/16/2014 09:10 AM
Date: 03/16/14

FISCAL NOTE ANALYSIS #1

STATE OF ALASKA
2014 LEGISLATIVE SESSION

BILL NO. HB 45

Analysis

This legislation clarifies the current statute, AS 14.33.200 (Harassment, intimidation, and bullying policy) by including "electronic communication" in the definition of "harassment, intimidation or bullying." This addresses the issue of "cyber bullying" and requires such incidents to be reported to an appropriate school official. Additionally, this legislation amends AS 14.33.250 (Definitions) to include electronic or oral communication.

The existing statute includes written, oral or physical act as the definition of harassment, intimidation or bullying. All districts have safe guards in place, as outlined in the district education technologies plan, that address "cyber bullying" issues and currently report incidents of "harassment, intimidation or bullying" to the department.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

December 31, 2012

SUBJECT: Cyberbullying (Work Order No. 28-LS0256\A)

TO: Representative Mia Costello

FROM: Jean M. Mischel
Legislative Counsel

Enclosed is a bill draft that includes electronic communications in the definition of "harassment, intimidation, and bullying" by a public school student for disciplinary purposes. The issue raises possible free speech challenges and overlaps with current crimes that encompass the concept. An overview of those issues is provided below. In my opinion, however, AS 14.33.250, as amended by the enclosed bill draft, is likely to be upheld if challenged.

1. Current school discipline law pertaining to cyberbullying.

"Cyberbullying" is a term that has been coined to refer to bullying as intimidation or harassment through use of the Internet or telephones. Some states regulate the behavior as an "electronic act." Idaho specifies that an act of harassment, intimidation, or bullying may be committed through the use of a land line or wireless telephone or through the use of data or computer software that is accessed through a computer, computer system, or computer network. A South Carolina statute provides that "harassment, intimidation, or bullying" means "a gesture, an electronic communication, or a written, verbal, physical, or sexual act"

Our current school discipline statutes define harassment, intimidation, or bullying under AS 14.33.250 as

. . . *an intentional written, oral, or physical act*, when the act is undertaken with the intent of threatening, intimidating, harassing, or frightening the student, and

- (A) physically harms the student or damages the student's property;
- (B) has the effect of substantially interfering with the student's education;
- (C) is so severe, persistent, or pervasive that it creates an intimidating or threatening educational environment; or
- (D) has the effect of substantially disrupting the orderly operation of the school; [emphasis added].

An "intentional written, oral, or physical act" does not, in my opinion, exclude threats spoken through a telephone or voice messaging system. Similarly, typing a threat as a text message or on a keyboard does not mean it is not written. The statutes as currently written, therefore, arguably already cover cyberbullying. The issue as discussed below, however, may warrant clarification to avoid a free speech challenge for electronic expressions made off-campus in order to provide a jurisdictional link for imposing school discipline.

2. First amendment implications of off-campus conduct.

Providing for school discipline for cyberbullying must necessarily address the obvious issues of whether a school can extend its jurisdictional reach to off-campus activities and the potential for a first amendment challenge.

The United States Supreme Court had occasion in 2007 to review off-campus speech for the purpose of determining whether an Alaska school had jurisdiction to impose disciplinary sanctions on a student and whether the speech was otherwise protected by first amendment free speech principles. In that case, *Morse v. Frederick*, 551 U.S. 393 (2007), a Juneau high school student unfurled a banner conveying what the Court construed as a message encouraging illegal drug use off-campus ("Bong hits 4 Jesus"). Although the communication was not electronic, the case is instructive in how far a court may go to confer school jurisdiction. Because the banner was used during school hours, was not the type of speech that received the highest level of constitutional protection (political speech), and involved teachers and students, the fact that the function was otherwise off-campus and on a public street did not persuade the Court to provide the full breadth of first amendment protections. The Court therefore upheld the disciplinary sanction despite the finding that the content of the speech would have been otherwise protected under the constitution.

In 1969, the Supreme Court in *Tinker v. Des Moines Independent Community School District*, 339 U.S. 503 (1969), established a test for regulating otherwise protected free speech and weighed a student's limited first amendment rights against a school's interest in maintaining order and conveying moral principles through its disciplinary system. The Court then said that

[C]onduct by the student, in class or out of it, which for any reason -- whether it stems from time, place, or type of behavior -- materially disrupts classwork or involves substantial disorder or invasion of the rights of others is, of course, not immunized by the constitutional guarantee of free speech.

Id. at 513.

Circuit Courts of Appeals have applied this test to online, off-campus speech. *See, e.g., Donninger v. Niehoff*, 557 F.3d 41 (2nd Circ. 2008) (offensive blog entry complaining about cancelation of music festival, made off-campus but directed at public and students

to complain about principal, caused substantial disruption and could be regulated by school).

In *Layshock v. Hermitage School District*, 593 F.3d 249 (3d Cir. 2010), the appellate court reviewed the question of whether a school district can punish a student for creating, off-campus, a fictitious online profile off-campus of a school principal using his photo and false answers to various questions. The court found the relationship between the school and the off-campus location of the student's conduct too attenuated to stretch its authority to the student's grandmother's house.

Similarly, in *Evans v. Bayer*, 684 F. Supp. 2d 1365 (S.D. Fla. 2010), a lower court applied the *Tinker* test in a case involving a student who invited complaints about a teacher on her blog made off-campus and after school hours. After rejecting the possibility of applying a test based on the target audience, obviously directed at other high school students, the court held that the blog entry was protected free speech that did not have a foreseeable and substantially disruptive effect on the school. In that case, the court acknowledged that off-campus unprotected speech may be regulated by a school when it was "fighting words" or "words that would . . . inflict injury or tend to incite an immediate breach of the peace." *Id.* at 1377.

In summary, cases suggest that cyberbullying that occurs off-campus may be regulated by a school if it results in the foreseeable and substantial disruption of the school, a breach of the peace, or threatened violence against another student or a school staff member. At the same time, a crime may have been committed and be charged as such.

3. Current criminal law that encompasses cyberbullying.

Whether accomplished through electronic or other methods, bullying is not described as a specific crime under our model penal code structure; rather, it is a common term used to refer to conduct between school students. For that reason, peace officers may be reluctant to investigate bullying as a crime and defer instead to school administrators for disciplinary actions and to the civil courts for damages caused by bullying.

Despite any reluctance to charge bullying as a crime (juvenile or adult), any number of criminal offenses may be implicated by conduct that is included within a harassment, intimidation, or bullying policy required of schools by AS 14.33.200. With the exception of stalking and exploitation, none of the crimes specify that the act may be by electronic means. The failure to reference electronic communications does not mean, however, that the crimes may not be accomplished through electronic communications and still charged as a crime. For example, an action that physically harms a student is an assault.

Threats and other actions may amount to assault in the fourth degree, stalking, or reckless endangerment. The difficulty in proving an assault by electronic means relates to whether a threat was imminent. In addition, a sexual act conveyed electronically could be construed as sexual assault or sexual abuse or exploitation of a minor. Stealing or damaging the property of another is robbery, extortion, theft, or malicious mischief. The

Representative Mis Costello
December 31, 2012
Page 4

crimes of disorderly conduct and harassment in the first or second degree may also be implicated by certain activities. For each of the related crimes, all elements of the crime must be met. See, for example, AS 11.61.118 - 11.61.120.

If I may be of further assistance, please advise.

JMM:ljw
12-522.ljw

Enclosure



NEA-ALASKA

Affiliated with the National Education Association

April 3, 2013

Representative Mia Costello
State Capitol, Room 501
Juneau, AK 99801-1182

Dear Honorable Representative Mia Costello:

As president of NEA-Alaska, representing nearly 13,000 educators and education support professionals throughout Alaska, I am writing to inform you of our enthusiastic support of House Bill 45.

There is absolutely no place in Alaska's public schools for bullying or harassment of any kind. NEA-Alaska is pleased that your legislation enjoys support from a large number of legislators from both sides of the political aisle.

We remain hopeful that this legislation, with sponsorship from more than a third of house members, can still move through the process during this legislative session. HB 45 is the type of legislation that should be acted upon expeditiously.

Thank you for your efforts on this important legislation.

Sincerely,

Ron Fuhrer
NEA-Alaska President



February 12, 2013

Business Manager

Katie Bell
Anchorage

**Board of Directors
Officers**

John Lucking, Jr., President
Soldotna

Kris Sell, Vice President
Juneau

Angella Long, Past President
Wasilla

Marilyn Bailey, Secretary-Treasurer
Anchorage

Directors

John Waldron, President
Aleutian Islands Chapter
Unalaska

Michele Logan, President
Anchorage Chapter
Anchorage

Steve Hall, President
Capital City Chapter
Juneau

Brad Johnson, President
Fairbairn North Chapter
Fairbanks

Mark Pearson, President
Kenai Peninsula Chapter
Kenai

Kevin Brew, President
Mat-Su Chapter
Wasilla

Thecla Lalonde, President
Wrangell Chapter
Wrangell

The Honorable Mia Costello
Alaska State House of Representatives
State Capitol Rm 501
Mail Stop: 3100
Juneau AK 99801-1182

Dear Representative Costello:

On behalf of the Alaska Peace Officers Association (APOA), I would like to thank you for introducing House Bill 45, "An act relating to harassment, intimidation, or bullying by students attending a public school in state".

The APOA Board of Directors recently reviewed this proposed legislation and unanimously supports this bill in its current form. We applaud your efforts to keep children safe in our public schools through anti-bullying legislation.

Please contact the APOA office in Anchorage at 277-0515, if there is anything our organization can do to assist in the passage of this bill.

Sincerely,

John Lucking, Jr.
State President

cc: Representative Gattis
Representative Hughes
Representative Josephson

PO Box 240106
Anchorage AK 99524

t 907 277 0515
f 907 272 5355

Making A Difference In The Last Frontier

