

June 20, 2011

The Hon. Lincoln Chafee
Governor
State House
Providence, RI 02903

RE: 11-S 732A AND H-5941A

Dear Governor Chafee:

On behalf of the Rhode Island ACLU, I am writing to urge you to veto S-732A and H-5941A, companion bills which would greatly expand both school and police authority over the free speech activities of students in the name of dealing with the issue of “bullying.”

We fully agree that the problem of bullying in schools is certainly a serious one that educators, administrators and parents should be concerned about. However, there are limits to what laws can do to address the problem, and when focused, as these bills are, more on punishment than education, they can do more harm than good.

The bill’s definition of what constitutes improper bullying, and therefore what can lead to school suspensions and even the intervention of law enforcement, is incredibly broad. It not only raises fundamental free speech concerns, it has the effect of “criminalizing” types of everyday behavior that adults *and* children regularly engage in. At a basic level, it seeks to punish children for being human.

Bullying, as the term is generally understood, is already illegal: Assaults on students, threats to students, damage to their belongings, stalking – all are criminal right now. Federal and state laws also provide protection to students from pervasive harassment, including harassment based on a person’s gender, sexual orientation and other grounds. Further, Rhode Island already has a specific law barring student-on-student harassment, intimidation and bullying. R.I.G.L. 16-21-26. Unfortunately, these bills repeal that statute and replace it with a much more problematic one.

To give just two examples of how this bill significantly enlarges the type of speech or conduct that would be considered bullying:

* The bill expands the definition of bullying to include any gesture or communication that causes “emotional harm” to a student. This could encompass just about any adverse or negative comment made to someone. When a student breaks up with his girlfriend, there is a good chance it will cause “emotional harm.” A first grader boasting that “my mom is better than your mom” could easily lead to pouting and crying, but such “emotional harm” should not be considered bullying. It drains the term of any specific meaning.

* While current law already bars the use of “written, verbal or electronic expressions” to harass or bully somebody, it also requires that the use be intentional, i.e., that the student means to express something harmful. That condition is missing from this legislation. Hurt feelings are thus the only requirement necessary to deem a student a bully.

The breadth of the illegal conduct created by this bill is exacerbated by the consequences that flow from it. In determining the sanctions that a school should impose on a student for engaging in any type of “bullying,” the bill mentions two criteria: that the disciplinary action “shall balance the need for accountability with the need to teach appropriate behavior,” and that “no student shall be suspended from school unless it is deemed a necessary consequence of the violations.” This guidance is no guidance at all. For many administrators, both sides of this “balancing” will lead to a decision to suspend a student as a “necessary consequence” of the violation.

The bill also sets a troubling standard for contacting the police: schools are required to have procedures in place that provide for “**immediate notification** of the local law enforcement agency when criminal charges may be pursued against the perpetrator.” This standardless language is both broad and circular. Since notification must be immediate, a cautious school administrator will almost always contact police whenever there is the slightest reason to believe criminal charges may be pursued. But, of course, this is a vicious circle, since it is the immediate contacting of police that is likely to lead to the pursuit of criminal charges! The effect of this requirement will be to turn minor incidents between students into criminal matters.

Of course, limiting schools’ *disciplinary* authority for offensive speech does not preclude school officials from taking other steps to address problems. Parents typically don’t know everything their children do, and that’s particularly true for Internet activity. In addition, students certainly need to better understand that Internet speech often carries real-world consequences. There must be better education of students about both the dangers of Internet activity and the hurt they may cause fellow students with unthinking remarks. There are many training and educational programs that seek to do just that, and that is where the focus ought to be.

Most parents would probably want school officials to alert them to bullying activity, and for very serious out-of-school bullying that may cross the line into criminal behavior, contacting the police might be appropriate. But this bill, by turning just about every spat between children into “bullying” and encouraging disciplinary responses as well as law enforcement intervention, sends precisely the wrong message about how this issue can best be dealt with.

As education writer Julia Steiny summed the matter up in a recent *Providence Journal* article, “There is nothing OK about bullying. We must deal with it. But the law is a terrible instrument for mending human relations and fractured communities.” In sum, passage of this law will inevitably lead to inappropriate school and police intervention in free speech activities, intrude on parental rights and chill the First Amendment rights of students. Like adults, children sometimes make nasty, unthinking remarks about their fellow students. By seeking to use the power of the state to punish students for those types of remarks – simply because they may cause “emotional harm” – this legislation, we submit, goes too far.

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For all these reasons, we respectfully urge your veto of this legislation.

Sincerely,

Steven Brown
Executive Director

cc: Patrick Rogers
Stephen Hourahan
Brian Daniels
Kenneth Procaccini