



Bullying Bill Would Give Special Status to “Alternative” Sexual Behaviors

Applicable Bills: **House Bill 1366**

While proposing to outlaw bullying and harassment in public schools, a section of House Bill 1366 would grant a specially protected status to students on the basis of their actual or perceived “sexual orientation” or “gender identity or expression.” Removing this controversial section from the bill will fully preserve the intent and effect of HB 1366 and provide ALL students equal protection from bullying and harassment.

BACKGROUND:

House Bill 1366 directs local school boards to adopt policies to prohibit bullying or harassing behavior for students or school employees in North Carolina public schools.

The bill defines bullying or harassing behavior as: “acts reasonably perceived as being motivated by any **actual or perceived characteristics**, such as race, color, religion, ancestry, national origin, gender, **gender identity or expression**, physical appearance, **sexual orientation**, or mental, physical, or sensory disability.”

The bill purports to limit this enumeration of classifications by stating: “Nothing in this act shall be construed to create any classification or preference beyond those existing in present statute or case law.”

ANALYSIS:

The controversial provision in House Bill 1366 enumerating special classifications is completely unnecessary. All students deserve to be protected from bullying, not just certain groups of students. All school environments should be free from bullying and harassment, so that all students are afforded the opportunity to learn in an environment that maximizes their educational performance, opportunities, and benefits. Removing the controversial section from HB 1366 will ensure that local school board policies against bullying and harassing behavior **apply equally to all students** regardless of “actual or perceived” personal characteristics.

Delineating certain groups of students as being specifically protected from bullying creates protected classes. By delineating certain groups of students that are specifically protected from bullying, HB 1366 emphasizes the rights of those students more than students who are not included in the list. The Fourteenth Amendment to the U.S. Constitution requires equal protection of all peoples who are similarly situated. The U.S. Supreme Court has granted protected class status only on the basis of immutable [unchangeable] characteristics, such as race, color, religion, national origin, and gender. “Sexual orientation” and “gender identity or expression” are not immutable characteristics and have not been recognized by the U.S. Supreme Court as protected classes. Including “sexual orientation” and “gender identity and expression” in this provision of the bill would recognize these classifications on the same basis as race, color, national origin, etc.

The terms “sexual orientation” and “gender identity or expression” appear nowhere in existing state law and are undefined terms. North Carolina does not recognize “sexual orientation” and “gender identity or expression” as the basis for any special protections, because these terms do not appear anywhere in state law. If these terms are enacted into law, it will have the legal effect of recognizing “sexual orientation” and “gender identity or expression” as legitimate classes that must be recognized for special protection in a variety of other state laws. The recognition of these classes will not be limited to just school bullying. Further, these terms are not defined and could be interpreted to mean practically anything. Other bills this session (see, HB 1631 and HB 1788) have defined “sexual orientation” as “actual or perceived heterosexuality, **homosexuality**, or **bisexuality**, or a person’s **gender-related identity or expression.**” Legislation seeking to address bullying and harassment in public schools should not be used as a mechanism to establish—**for the first time in state history**—special legal protections for homosexuality, bisexuality, cross dressing and other such sexual behaviors.

A provision in HB 1366 that attempts to divert concerns about the enumerated classifications in the bill will not have the intended effect. A provision included at the end of HB 1366 states: “Nothing in this act shall be construed to create any classification or preference beyond those existing in present statute or case law.” While this sentence purports to avoid the creation of special classifications, the bill does just the opposite. House Bill 1366 creates protected classes and then attempts to disavow what it has done. If House Bill 1366 is enacted into law, then the enumerated classification in the bill would be “present statute” and would have the effect of providing special legal protections to individuals on the basis of their “sexual orientation” or “gender identity or expression.”

ACTION:

The controversial and unnecessary section of House Bill 1366 enumerating special classification including “sexual orientation” and “gender identity or expression” should be removed from the bill. Please SUPPORT the pending amendment to House Bill 1366 that will delete lines 5-10 on Page 2 of the bill.