

## **Policy Recommendations for Improving Anti-bullying Legislation**

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*Cite as:* John Dayton, Anne Proffitt Dupre & Arthur Horne (2009). Book Chapter. *Policy Recommendations for Improving Anti-Bullying Legislation*, in Eric A. Houck, 2009 *EPEC Policy Papers*, pp. 48-65.

Nearly 4,000 years ago, in one of the earliest known codes of law, the Babylonian King, Hammurabi, recognized that the purpose of the law was “to bring about the rule of righteousness in the land . . . so that the strong should not harm the weak.”<sup>1</sup> Time has not changed fundamental human nature, nor has it altered the fundamental purpose of the law. Wisely crafted and applied laws remain a highly effective tool for protecting the most vulnerable among us from those that might otherwise use intimidation, force, and violence against them simply because they can.

Children necessarily rely on the protection of adults whether at home or school. It is therefore our collective responsibility to make our common schools a safe haven for all children, assuring their safety and well being so that they may focus their efforts on the important work of children: Learning and growing into well adjusted, responsible, productive citizens. Tragically, however, for far too many children school can also be a place of fear, humiliation, intimidation, and violence that threatens the mental and physical well being of our children.<sup>2</sup> Bullying<sup>3</sup> is the most common form of violence in schools, causing serious harm to our children. Bullying is not just some quaint rite of passage that all must endure. Incidents of bullying are preventable acts of psychological and physical violence aimed at the most vulnerable among us and resulting in consequences ranging from painful humiliation to death.

Bullying causes untold human suffering and harms that can reverberate from the direct victims to the entire community in the forms of increased disruptions to learning, absenteeism, dropouts, mental and physical illness, health care costs, substance abuse, weapons in schools, violence, crime, and even suicide or “Columbine” type tragedies when psychologically fragile persons are pushed beyond their limits to tolerate bullying and abuse. Allowing bullying to continue without doing all that we can reasonably do to stop it is in no one’s best interests. Further, tolerance of such conduct is not an acceptable adult reaction to behavior that threatens the health and safety of children.

Given the pervasive scope the problem, and the extent of human suffering and harm resulting from bullying, this issue has received shockingly little serious attention in many states. Bullying is epidemic in our schools, with 28% of students reporting being victimized in the preceding six months.<sup>4</sup> Bullying, however, occurs not just within the walls of the school, but can occur anywhere would-be bullies have access to potential victims. With the wide-spread use of modern communications technologies, for example, bullies are now marauding in the cyber-world also, and inventing disturbing new ways to intimidate, harass, and harm their victims anywhere, anytime, virtually without limits. Adults have a responsibility to protect children from serious threats to their well being and safety, and bullying is most certainly a serious threat.

There are, however, positive actions that adults can take to help transform schools and other places where bullying may occur into safer places for all children.<sup>5</sup> Improvements in state legislation and school policy can be an important part of this process, bringing greater public attention, resources, and formal authority to bear on this serious problem, and thereby helping to positively change culture, schools, and children’s lives.

Although legislative change is only part of the solution to this problem, it is an important part of the solution. Ultimately, to remedy bullying in schools, it is necessary to have well prepared professional educators working directly with children to effectively address the root causes and effects of bullying in schools. State-wide statutes, regulations, and policies, however, can play a critical role in establishing and supporting effective anti-bullying efforts in schools. Bullies rely on an imbalance in power between them and their victims. Laws and policies have the potential to shift the balance of power against would-be bullies, by systematically rallying the authority and resources of the law and government against the malicious practice of bullying and in support of greater safety and civility in schools.

This chapter includes policy recommendations for improving anti-bullying legislation based on a comprehensive review of current state statutes, and a review of current Georgia anti-bullying legislation. It is hoped that this chapter will encourage further efforts to examine and improve state laws and school policies to better protect the most vulnerable among us. Through these laws and policies our law makers and the people of our State can publicly and firmly declare that we will no longer tolerate bullying and abuse of our children by anyone, and that bullying in our schools must stop. No excuses. No exceptions.

#### *Policy Recommendations for Improving Anti-bullying Legislation*

In 2006 Dayton & Dupre conducted a comprehensive study of anti-bullying legislation in the U.S. Based on a thorough review of state anti-bullying laws, this study suggested that these laws had the apparent beneficial elements and weaknesses listed in the sections below.<sup>6</sup> State policy makers will likely hold differing views about what particular

elements to emphasize in anti-bullying legislation, and reasonable persons can certainly disagree about what methods or legal tools may prove most effective under varying circumstances. Nonetheless, these recommendations may still serve as a useful check list and benchmark in efforts to improve the efficacy of state legislation and school policies concerning bullying.

*Beneficial Elements of Reviewed Statutes and Related Recommendations*

Based on a comprehensive review of state anti-bullying legislation, state policies that appeared to have the greatest potential for efficacy shared these characteristics:

1) ***There is an enforceable legal duty for school officials to implement state anti-bullying laws:*** Legislation and policies that are most likely to be effective included an unambiguous declaration of state-wide policy establishing a duty for all state-funded schools to provide a safe and respectful learning environment that is free of bullying, harassment, and intimidation,<sup>7</sup> with certain consequences for school personnel where there was clear evidence of a willful failure to comply with state laws and make reasonable efforts to protect children in their care.

2) ***Mandatory reporting requirements apply to all school personnel and students:*** Bullying often occurs with the knowledge of many persons, including both school personnel and students. By creating an affirmative duty for all persons to report incidents of bullying, and broadly notifying all persons of this duty, it becomes much more difficult for those that know about incidents of bullying to ignore this behavior without risking personal consequences.<sup>8</sup> Altruism is a most admirable quality, but for some it may be a less reliable motivator than personal consequences in assuring that all of our children are protected from bullying and abuse in schools. Further, a mandated reporting system may

provide persons that might otherwise be reluctant to report bullying, because of fear of being accused of “tattling” on others, etc., a useful “fig leaf” when reporting was a legal requirement and not a choice.

3) ***There is clear accountability concerning who is responsible for implementing all aspects of the policy, from reports to remedies, and time-lines are reasonable and well defined:*** Policies should clearly designate who is responsibility for all reports and include a requirement for prompt investigations and timely remedial actions as appropriate.<sup>9</sup>

4) ***School officials are granted necessary jurisdiction to protect students:*** Protections expressly extend beyond the physical limits of the school and school activities if the off campus bullying has a sufficient negative impact on a student's academic performance or safety in school.<sup>10</sup>

5) ***All school employees have an affirmative duty to model appropriate conduct:*** Policies establish that all school employees, teachers, administrators, and other child services professionals in schools, have an affirmative duty to demonstrate appropriate behavior on the premises of any public school by treating students, colleagues, and all persons with civility and respect at all times, and by refusing to tolerate any form of harassment or intimidation.<sup>11</sup> This includes serving as consistent roles models of nonviolent behaviors that do not present or condone sexual, racial, or cultural harassment, or student hazing.<sup>12</sup> School officials are expressly prohibited from engaging in any form of harassment, and the policy makes harassment by certified employees a basis of suspension or revocation of a certificate, and mandates a report to state officials.<sup>13</sup>

6) ***State-wide policy mandates are strong enough to assure adequate protection for children throughout the state, yet flexible enough to allow for reasonable local***

***variations and innovations:*** State-wide policies should assure that all children in the state are protected by the essential elements of the adopted policy, but policies should also allow for reasonable variations based on special circumstances and local needs, and encourage continuing local innovations aimed at finding better solutions to local problems.

7) ***A system for anonymous reporting is established:*** Some children, and even some school personnel, may fear retaliation if they openly make a report. Anonymous reporting procedures are likely to both increase the chances that bullying activities will be reported, and put would-be bullies on strong notice that they are likely to be reported by someone if they engage in prohibited bullying conduct. While due process of law would prohibit the use of anonymous reports as evidence in disciplinary hearings, that is not the purpose of this information. Anonymous reports are used solely to alert school officials to a situation that may be endangering the health and safety of a child so that they can follow up and assure that all children are safe in their school. If, however, the follow up investigation by school officials independently reveals evidence of misconduct, that evidence may be used in a disciplinary proceeding.

8) ***All persons who make good faith reports are protected with good faith immunity:*** To encourage necessary reporting, and to protect those that report in good faith, there should be good faith immunity for all reports made in good faith.<sup>14</sup>

9) ***There are anti-retaliation prohibitions:*** There should be clear and strong prohibitions against any retaliation towards persons who make good faith reports.

10) ***There are appropriate sanctions for malicious false reports:*** Policies provide for appropriate disciplinary action for any person who knowingly and maliciously makes a false report.<sup>15</sup>

11) ***Securing a safe environment for all children is made part of the primary mission of the school:*** The policy aimed at protecting children is rooted in the school's fundamental mission of educating children rather than just tacked onto policies addressing general disciplinary measures.<sup>16</sup> The policies should recognize that securing a safe, supportive environment for all children is a necessary prerequisite to maximizing learning.

12) ***Children are provided with age-appropriate and situation appropriate self-help skills:*** Children are taught how to avoid potentially dangerous situations, and as necessary, taught essential age-appropriate self-protection skills.<sup>17</sup>

13) ***Policies mandate a curriculum that promotes constructive actions and prevention:*** To the extent possible, the policies and curriculum incorporate positive and constructive approaches to preventing bullying, such as instruction on ethics, morality, building a culture of civility, and preventing and treating the causes of bullying, not just negative prohibitions and ex post facto punishments.<sup>18</sup> Students are positively instructed what to do concerning improving the school culture, not just negatively warned what not to do. Students and all school personnel are provided with conflict resolution instruction, and age appropriate civility and anti-bullying lessons are thoroughly integrated into the K-12 curriculum.<sup>19</sup>

14) ***Policies appropriately balance discipline and counseling for children that engage in bullying:*** Intervention programs should include discipline and counseling aimed at ethical and moral growth. In many cases, discipline alone is insufficient to effectively

deal with bullying behavior and its consequences, and effective counseling programs are necessary.<sup>20</sup>

15) ***Anti-bullying training is provided to all persons in schools:*** There should be no safe-harbor for bullying, and all persons should be part of the anti-bullying effort. Students should be provided with age appropriate training,<sup>21</sup> and all school personnel, including teachers, administrators, support personnel and bus drivers should be provided with high quality anti-bullying training programs with proven efficacy.<sup>22</sup>

16) ***Anti-bullying efforts are community-wide and broadly communicated:*** Parents, community leaders, and all members of the community are invited to participate in anti-bullying efforts, to send a unified message throughout the community that bullying of children will not be tolerated anywhere or by anyone in the community.<sup>23</sup> There should be comprehensive publication of the policy, with the policy disseminated in multiple forms, forums, and languages where appropriate, to communicate a clear message throughout the community that bullying is unacceptable, harmful to all, and will not be tolerated in the school or anywhere in the community.<sup>24</sup>

17) ***Policies require parental involvement and responsibility:*** Parents are required to take appropriate parental responsibility for the behavior of their minor children, and are required to participate, as necessary, in remedial efforts by school officials. Willful refusal by parents to participate in reasonable efforts to improve student behavior that threatens harm to the child or others is deemed actionable neglect under state child protection laws.

18) ***Serious criminal acts are dealt with as criminal acts***: School policies should treat serious criminal acts such as assault, terroristic threats, and malicious harassment as what they are: criminal acts, and not just common misbehavior in school.<sup>25</sup>

19) ***Policies expressly recognize the need to respect free speech rights***: Although taking a firm stand against all forms of bullying and harassment, policies must also recognize and respect the rights of all persons to peaceably disagree with any and all points of view.<sup>26</sup> So long as individuals express themselves in a manner appropriate to civil discourse in a public school, every person's right to communicate their opinions must be protected, whether their views are popular or not.<sup>27</sup>

20) ***Equal protection and treatment are guaranteed to all persons regardless of their social, economic, or political status***: School officials should be expressly prohibited from inappropriately interfering with the process of reporting, investigating, or administering remedies related to acts of bullying and harassment.<sup>28</sup> The perpetrators of incidents of bullying and harassment are often relatively high social status students, or from high social status families, targeting more vulnerable lower social status victims. School officials may have a social or political incentive to ignore or "whitewash" misconduct perpetrated by socially or politically powerful individuals unless that incentive is counter-balanced by prohibitions against any interference with disclosure, and requirements for a full and objective investigation in all cases regardless of the social or political status of the alleged victim or perpetrator.

21) ***Students are guaranteed a fair and objective review of disputes***: When school official bias in the implementation of policies is alleged, there should be a reasonable

opportunity for an independent review by qualified neutral parties outside the school system.<sup>29</sup>

**22) Policies support continued research and improvement in treatment methods and prevention:** The policy supports ongoing efforts to find and use best practices and research in preventing bullying in schools.

*Perceived Weaknesses in Reviewed Statutes and Related Recommendations*

The most significant policy error in dealing with bullying in schools is the failure by policy makers to adequately acknowledge the seriousness of the issue, and adopt a systemic remedy through appropriate state legislation and local policy. Accordingly, all states that have attempted to address this critically important issue should be commended for their efforts, but also strongly encouraged to continue their efforts at law and policy improvement to better protect children and promote greater safety and civility in our schools. Among the perceived weaknesses in the reviewed state statutes were the following:

1) ***Symbolic appeasement statutes:*** Provisions that are largely “window dressing” statutes, passed as symbolic gestures to placate parties that pushed for anti-bullying laws, but in fact do little more than symbolically declare the problem addressed and implicitly resolved without substantively changing any realities for children in schools.<sup>30</sup>

2) ***Making compliance with statutes to protect children optional:*** It is likely that the schools that most need state mandates to seriously address bullying will be the schools that are most likely to ignore state anti-bullying policies if they are optional.

3) ***Weak or unenforceable policies***: Even when policies are mandated by law, weak or unenforceable policies make it possible for school officials that most need the force of these mandates to ignore them without consequences.<sup>31</sup>

4) ***No real connection between proposed remedies, research, and realities in schools***:

Legislation and policies must be founded on a clear understanding of the current problems and knowledge of the best research tested practices for addressing these problems. Otherwise, it is not possible to construct the most effective remedies for current problems.

5) ***Policies are premised on outdated stereotypes of bullying***: Policies must address current problems threatening children and be updated as necessary. For example, the failure to include cyber-bullying or other current and clearly emerging threats within the statutory definition of actionable bullying can leave children unnecessarily vulnerable to these dangers.

6) ***Overly narrow definitions of bullying***: Definitions of “bullying” that only include physical assault or serious threat of assault<sup>32</sup> and fail to include harassment, social bullying, cyber-bullying,<sup>33</sup> etc., all of which can also be devastating to both the mental and physical health and well-being of children.

7) ***Setting the bench mark for actionable bullying too high***: A child in the custody and protection of school officials should not have to wait to be intentionally injured more than once by a bully before the child can expect appropriate action and protection from school officials.<sup>34</sup>

8) ***Arbitrarily limiting the protection of the statute based on grade level***: Because bullying occurs at all grade levels, limiting statutory protections to only grades 6-12,<sup>35</sup> for

example, leaves many children unprotected. Policies must be age appropriate, but there should be policies protecting all children.

9) ***Limiting actionable “harassment” to incidents of discrimination related to “protected categories” only:*** It is essential that policies protect persons that fall into categories that have received protected status under law because of a history of discrimination, such as discrimination based on “race, creed, color, national origin, marital status, sex, sexual orientation, or disability.”<sup>36</sup> These are not, however, the only persons subjected to acts of bullying. Often bullying is not motivated by any race, gender, etc., animus,<sup>37</sup> but is instead abuse within a relatively homogenous group. If statutory protections are limited to “protected categories” only, many or even most incidents of bullying in the school could fall outside of the scope of a statute restricted only to protected categories of persons and discrimination based on these characteristics,<sup>38</sup> leaving millions of children unprotected from the abuse of bullying.

10) ***Definitions of “harassment” that are so overbroad that they intrude on protected speech:*** Bullying policies that intrude on protected speech are unconstitutional.<sup>39</sup> Further, policies that do not fairly respect the rights of free speech for all persons in the community are unlikely to gain the broad community support needed to make the policies effective.

11) ***Piecemeal and scattered legislation:*** Bullying provisions should not be buried in tangential or unrelated statutes, seemingly included as an afterthought amendment, or scattered among many different statutes, making it unnecessarily difficult for those who need these provisions to find and implement them.

12) ***Sending mixed messages about violence in schools***: A policy, for example, that prohibits children from striking one another, but expressly preserves the right of school officials to strike children, is likely to send a mixed and confusing message to children.<sup>40</sup>

13) ***Failure to provide certain and adequate funding***: An effective program requires adequate funding and a long-term commitment of support.<sup>41</sup>

14) ***A focus on limiting school district liability rather than protecting children***: Some state policies seem to be aimed more at officially absolving school districts and school officials of any legal liability for failing to protect children from bullying, than in holding school districts and school officials accountable for protecting children placed in their care because of state compulsory attendance laws.

#### *Georgia Anti-Bullying Legislation*

Georgia is among the 21 states that have enacted anti-bullying legislation.<sup>42</sup> Georgia Code § 20-2-751.4 provides for school policies to prohibit bullying of students and declares:

a) As used in this Code section, the term “bullying” means:

(1) Any willful attempt or threat to inflict injury on another person, when accompanied by an apparent present ability to do so; or

(2) Any intentional display of force such as would give the victim reason to fear or expect immediate bodily harm.

(b) Each local board of education shall adopt policies, applicable to students in grades six through 12, that prohibit bullying of a student by another student and shall require such prohibition to be included in the student code of conduct for middle and high schools in that school system. Local board policies shall require that, upon a finding that a student has committed the offense of bullying for the third time in a school year, such student shall be assigned to an alternative school. Each local board of education shall ensure that students and parents of students are notified of the prohibition against bullying, and the penalties for violating the prohibition, by posting such information at each middle and high school and by including such information in student and parent handbooks.

(c) Any school system which is not in compliance with the requirements of this Code section shall be ineligible to receive state funding.<sup>43</sup>

Georgia Code § 20-2-751.5 reinforces the requirement for student notification of anti-bullying prohibitions and adds that students must be notified in an age appropriate manner in their student code of conduct that bullying as defined in Georgia Code § 20-2-751.4 is prohibited. Georgia Code § 20-2-145 requires inclusion of “methods of discouraging bullying and violent acts against fellow students” in the State’s K-12 Comprehensive Character Education Program. The Georgia General Assembly also made a formal finding in Georgia Code § 31-2-9, concerning suicide prevention programs, that among other concerns “bullying in school contribute[s] to causes of suicide; and . . . [e]ducation is necessary to inform the public about the causes of suicide and the early intervention programs that are available.”<sup>44</sup>

By enacting anti-bullying legislation, Georgia law makers have taken a critically important step forward in protecting children. Among the commendable elements of Georgia’s current legislation are mandatory requirements that all local boards of education must comply with state anti-bullying laws, notify students and parents of anti-bullying prohibitions and penalties, and adopt policies consistent with the statute or become ineligible for state funding. Among elements of the current legislation that may merit further consideration are:

- 1) Defining “bullying” too narrowly, to include only the attempt or threat to inflict physical injury, and then only when accompanied by an apparent present ability to do so, thereby failing to address, for example, threats that are not accompanied by a present ability to injure but are nonetheless terrifying and psychologically

harmful, cyber-bullying, and other physically non-violent but nonetheless malicious and highly damaging acts of bullying and harassment, and other efforts to inflict psychological and emotional pain and harm through bullying. It may be useful to consider expanding the statutory definition of “bullying” to include all current and significant bullying problems in schools, particularly cyber-bullying and other types of psychological bullying and harassment.

- 2) The limitation of these policies to grades 6-12 only, leaving all students below grade 6 unprotected by the policies. Expanding the coverage of the statute to provide age-appropriate protections in grades K-12 would provide protections for all public school children.
- 3) The requirement that the bullying student “has committed the offense of bullying for the third time in a school year” allowing a bullying student to commit the offense at least 2 times in any school year, 4 times in two school years, etc. without becoming subject to the prohibitions of the statute. Whether a student’s conduct constitutes actionable bullying should be a function of not only frequency but also severity and intent to harm. For example, when appropriate, a single, intentional, and severe act of bullying should also be punishable under anti-bullying policies.
- 4) The requirement that a bullying student that has met all the elements of the statute “shall be assigned to an alternative school” may limit remedial options for school officials in constructing an individually appropriate remedial plan on a case-by-case basis. While general remedial guidelines may help to assure greater equity and uniformity in administration of the policy, school officials should still have

adequate discretion to assign an appropriate remedy based on the circumstances of the case.

- 5) While posting anti-bullying policies in student codes of conduct and at each middle and high school provides constructive notice of these policies, it does not in many cases provide actual notice to students, parents, or faculty. Georgia's inclusion of "methods of discouraging bullying and violent acts against fellow students" in the State's K-12 Comprehensive Character Education Program is also a very positive step forward, but anti-bullying policies should be incorporated throughout the K-12 curriculum and disseminated broadly in the community in multiple mediums, forums, and languages where appropriate, to communicate a clear and consistent message throughout the community that bullying is unacceptable, harmful to all, and will not be tolerated in the school or anywhere in the community.

### *Conclusion*

The Preamble to the U.S. Constitution states its purpose as the formation of a "more perfect union" recognizing the ongoing nature of improving law and governance policies. Similarly, state legislation is always a work in progress, with a constant goal of revising legislation so as to more perfectly achieve the purposes of the people and their state government. Georgia has taken a critically important step forward in protecting its children by enacting an anti-bullying statute. Revising that statute so that it can protect our children in a more effective and efficient manner will be an ongoing task. It is also an urgent task, as the happiness, well being, safety, and in some cases very lives of children may depend on whether they are adequately protected from those that would

bully and abuse them. It is hoped that the above policy suggestions may be helpful in the important and ongoing process of legislative revision.

Protecting children from bullying and abuse is a critically important task not only for Georgians, but for parents, educators, and legislators world-wide. Dr. Dan Olweus, an international scholar and leader in efforts to address bullying in schools, stated that children have a fundamental right “to feel safe in school and to be spared the oppression and repeated, intentional humiliation implied in bullying. No student should be afraid of going to school for fear of being harassed or degraded, and no parent should need to worry about such things happening to his or her child.”<sup>45</sup> We must protect the most vulnerable among us from those that would harm them. Georgians are a good, honorable, and civil people, and our schools should reflect our values by teaching, and when necessary demanding, that all persons in our schools conduct themselves in a manner of civility befitting the high standards of our people and our great State.

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<sup>1</sup> THE CODE OF HAMMURABI (c. 1780 BCE) (translated by L.W. King in 1910 and edited by Richard Hooker), <http://www.wsu.edu/~dee/MESO/CODE.HTM>

<sup>2</sup> See, Kathleen Hart, *Sticks and Stones and Shotguns at School: The Ineffectiveness of Constitutional Antibullying Legislation as a Response to School Violence*, 39 GA. L. REV. 1109 (2005).

<sup>3</sup> Bullying is distinguished from other forms of conflict and aggression by three factors: 1) It is intended to inflict suffering; 2) the infliction of suffering is repeated and persistent; and 3) there is an imbalance of power between the perpetrator and the victim. See Sheri Bauman & Cindy Hurley, *Teachers' Attitudes and Beliefs About Bullying: Two Exploratory Studies*, 4 J. SCHOOL VIOLENCE 49, 50 (2005).

<sup>4</sup> U.S. DEPT. OF EDUC., NAT'L CENTER FOR EDUC. STAT., INDICATORS OF SCHOOL CRIME AND SAFETY: 2006, INDICATOR 11: BULLYING AT SCHOOL (2007), at [http://nces.ed.gov/programs/crimeindicators/ind\\_11.asp](http://nces.ed.gov/programs/crimeindicators/ind_11.asp) ("In 2005, about 28 percent of students reported having been bullied at school during the last 6 months. Nineteen percent of students said that they had experienced bullying that consisted of being made fun of; 15 percent reported being the subject of rumors; and 9 percent said that they were pushed, shoved, tripped, or spit on. Of those students who had been bullied, 79 percent said that they were bullied inside the school, and 28 percent said that they were bullied outside on school grounds. Of the students in 2005 who reported being bullied during the previous 6 months, 53 percent said that they had been bullied once or twice during that period, 25 percent had experienced bullying once or twice a month, 11 percent reported being bullied once or twice a week, and 8 percent said that they had been bullied almost daily").

<sup>5</sup> See, Pamela Orpinas & Arthur M. Horne, *CREATING A POSITIVE SCHOOL CLIMATE AND DEVELOPING SOCIAL COMPETENCE* (2006).

<sup>6</sup> These recommendations should be considered as preliminary only, and as a starting point for constructive discussions pending the completion of a more comprehensive study of these issues which is currently in progress.

<sup>7</sup> NEV. REV. STAT. § 388.125 (2007).

<sup>8</sup> N.J. STAT. ANN. § 18A:37-13 (2007).

<sup>9</sup> N.J. STAT. ANN. § 18A:37-13 (2007).

<sup>10</sup> CONN. GEN. STAT. § 10-222(D) (2007).

<sup>11</sup> NEV. REV. STAT. § 388.125 (2007).

<sup>12</sup> MINN. STAT. § 120(B).22 (2007).

<sup>13</sup> VT. STAT. ANN. 16 § 11(A)(26) (2007) (Department of Education policy implementing Vermont Act 91).

<sup>14</sup> NEV. REV. STAT. § 388.125 (2007).

<sup>15</sup> N.J. STAT. ANN. § 18A:37-13 (2007).

<sup>16</sup> OR. REV. STAT. § 339.351 (2007).

<sup>17</sup> MINN. STAT. § 120(B).22 (2007).

<sup>18</sup> OKLA. STAT. § 24-100.1 (2007).

<sup>19</sup> MINN. STAT. § 120(B).22 (2007).

<sup>20</sup> CONN. GEN. STAT. § 10-222(D) (2007).

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<sup>21</sup> VT. STAT. ANN. 16 § 11(A)(26) (2007) (Vermont DOE Policy implementing Act 91 requires student notification of policy in age appropriate language with examples of harassment; requires age appropriate training with students and staff).

<sup>22</sup> See Arthur M. Horne, Christi L. Bartolomucci & Dawn Newman-Carlson, *BULLY BUSTERS: A TEACHER'S MANUAL FOR HELPING BULLIES, VICTIMS, AND BYSTANDERS* (2003). See also, *Bully Busters Training*, at *Stop Bullying Now* (*BULLY BUSTERS* is a research-driven bullying prevention curriculum for elementary, middle and junior high schools. Upon completion of the training, teachers, administrators, and staff will be able to put the program in place immediately to begin reducing bullying and positively affect school climate), at <http://www.stopbullyingnow.net/bullybusterstraining.htm>

<sup>23</sup> MINN. STAT. § 120(B).22 (2007).

<sup>24</sup> N.J. STAT. ANN. § 18A:37-13 (2007). See also WASH. REV. CODE § 28A.300.285 (2007) ("Training materials shall be disseminated in a variety of ways").

<sup>25</sup> See WASH. REV. CODE § 28A.300.285 (2007) (defining "Malicious harassment").

<sup>26</sup> VT. STAT. ANN. 16 § 11(A)(26) (2007) (Department of Education policy implementing Vermont Act 91).

<sup>27</sup> NEV. REV. STAT. § 388.125 (2007).

<sup>28</sup> NEV. REV. STAT. § 388.125 (2007).

<sup>29</sup> VT. STAT. ANN. 16 § 11(A)(26) (2007).

<sup>30</sup> See MISS. CODE ANN. § 37-11-54 (2007) ("The State Board of Education, using only existing staff and resources, shall develop a list of recommended conflict resolution and mediation materials, models and curricula that address responsible decision making, the causes and effects of school violence and harassment, cultural diversity, and nonviolent methods for resolving conflict, including peer mediation, and shall make the list available to local school administrative units and school buildings before the beginning of the 2002\_2003 school year. However, no monies from the Temporary Assistance for Needy Families grant may be used for developing this list. In developing this list, the board shall emphasize materials, models and curricula that currently are being used in Mississippi and which the board determines to be effective. The board shall include at least one (1) model that includes instruction and guidance for the voluntary implementation of peer mediation programs and one (1) model that provides instruction and guidance for teachers concerning the integration of conflict resolution and mediation lessons into the existing classroom curriculum. This section shall be repealed on July 1, 2007").

<sup>31</sup> See OR. REV. STAT. § 339.351 (2007). The statute is weak on the reporting requirement for adults. All adults should be required to protect children in their care, not just encouraged ("school employee, student or volunteer who witnesses or has reliable information that a student has been subjected to an act of harassment, intimidation or bullying is encouraged to report the act to the appropriate school official designated by the school district's policy").

<sup>32</sup> GA. CODE ANN. § 20-2-751.4 (2007).

<sup>33</sup> See Darby Dickerson, *Cyberbullies on Campus*, 37 U. Tol. L. Rev. 51 (2005).

<sup>34</sup> GA. CODE ANN. § 20-2-751.4 (2007); LA. REV. CODE § 416.13 (2007).

<sup>35</sup> GA. CODE ANN. § 20-2-751.4 (2007).

<sup>36</sup> VT. STAT. ANN. 16 § 11(A)(26) (2007).

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<sup>37</sup> Nansel T.R., et al. (2001). *Bullying Behaviors Among U.S. Youth: Prevalence and Association with Psychosocial Adjustment*, 285 JAMA 2094 (2001).

<sup>38</sup> *But see* WASH. REV. CODE § 28A.300.285 (2007) ("Nothing in this section requires the affected student to actually possess a characteristic that is a basis for the harassment, intimidation, or bullying").

<sup>39</sup> *Saxe v. State College Area School District*, 240 F.3d 200 (3d Cir. 2001) (defining speech as "harassing" does not exclude that speech from First Amendment protection, and holding that anti-harassment policy was unconstitutionally overbroad). *See also* Martha McCarthy, *Anti-Harassment Policies in Public Schools: How Vulnerable Are They?*, 31 J.L. & EDUC. 52 (2002).

<sup>40</sup> What message, for example, does the use of corporal punishment by school officials send to children about resolving disputes, bullying and the exercise of power over others? *See* OKLA. STAT. § 24-100.1 (2007) (statute addressing bullying, but also expressly protecting local schools right to exercise corporal punishment).

<sup>41</sup> N.J. STAT. ANN. § 18A:37-13 (2007) ("To the extent funds are appropriated for these purposes").

<sup>42</sup> Alaska Statutes § 14.33.200 (2008); Arizona Revised Statutes § 15-341 (2008); Arkansas Code § 6-18-514 (2008); California Code § 32261 (2008); Colorado Code § 22-32-109.1; Connecticut General Statutes § 10-222d (2008); 14 Delaware Code § 4112D (2008); Georgia Code § 20-2-751.4 (2008); 2008 Illinois Laws § 10-0.14; Louisiana Revised Statutes § 416.13 (2008); Minnesota Laws 120B.22 (2008); Mississippi Code § 37-1-54 (2008); Nevada Revised Statutes § 388.125 (2008); New Hampshire Revised Statutes 193-F:3 (2008); New Jersey Revised Statutes 18A:37-13 (2008); Oklahoma Statutes § 24-100.1 (2008); Oregon Revised Statutes § 339.351 (2008); Rhode Island General Laws § 16-21-26 (2008); 16 Vermont Statutes § 11(a)(32) (2008); Washington Revised Code § 28A.300.285 (2008); West Virginia Code § 18-2C-1 (2008).

<sup>43</sup> Georgia Code § 20-2-751.4 (2008).

<sup>44</sup> Georgia Code § 31-2-9 (2008).

<sup>45</sup> *See* Dan Olweus, *THE NATURE OF SCHOOL BULLYING* 7, 21 (P.K. Smith et al. eds., 1999), *cited in* Kathleen Hart, *Sticks and Stones and Shotguns at School: The Ineffectiveness of Constitutional Antibullying Legislation as a Response to School Violence*, 39 GA. L. REV. 1109 (2005).