

Model Anti-Bullying Legislation: Promoting Student Safety, Civility, and Achievement through Law and Policy Reform

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*We've got to dispel this myth that bullying is just a normal rite of passage - that it's some inevitable part of growing up. It's not. We have an obligation to ensure that our schools are safe for all of our kids.*¹

-President Barack Obama

On January 14, 2010, Phoebe Prince, an Irish emigrant attending high school in South Hadley, Massachusetts, took her own life after enduring months of vicious harassment from other students, hanging herself in the hallway of her family home.² Heartbreaking stories of children feeling alone, unprotected from endless abuse, and seeing no other way to stop their suffering have become woefully all too common. Bullying³ is the most common form of violence in schools, causing serious harm to far too many children.⁴ Bullying is not, however, just some quaint rite of passage that all must endure: “The consensus among physicians and social scientists, educators and youth development organizations, civil rights advocates, and law enforcement is that bullying is neither inevitable nor normal, and that it seriously impairs the

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¹ President Barack Obama, Address at the White House Conference on Bullying Prevention (Mar. 10, 2011).

² See Nancy Gibbs, *Sticks and Stones*, TIME, Apr. 19, 2010, at p. 64.

³ 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).

⁴ 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, 1115 (2005) (describing the scope and impact of bullying).

health and achievement of victims.”⁵ Incidents of bullying are wide-spread but preventable acts of psychological and physical violence aimed at the most vulnerable among us, resulting in consequences ranging from painful humiliation to death.⁶

Bullying causes untold human suffering that can reverberate from the direct victims to the entire community. The harms caused by bullying may include increased disruptions to learning, absenteeism, dropouts, mental and physical illness, higher health care costs,⁷ 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.⁸

Allowing bullying to continue without doing all that can reasonably be done to prevent it is in no one's best interests. Further, tolerance of such malicious, injurious conduct is not an acceptable

⁵ Julie Sacks & Robert S. Salem, *Victims Without Legal Remedies: Why Kids Need Schools to Develop Comprehensive Anti-Bullying Policies*, 72 ALB. L. REV. 147, 147-148 (2009).

⁶ 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 ("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.") See also Carmel Sileo, *Who is to Blame When Bullying Ends in Death?*, 40 TRIAL 79 (2004).

⁷ Brady Coleman, *Pragmatism's Insult: The Growing Interdisciplinary Challenge to American Harassment Jurisprudence*, 8 EMPLOYEE RTS. & EMP. POL'Y J. 239, 265 (2004) (Harassment of both children and adults is damaging and costly to Americans. "Ongoing research attempts to precisely measure the economic costs of harassment - including the costs from psychological and physical illness, absenteeism, turnover - and, inter alia, lost productivity through organizational disunity, reduced morale, and acts of sabotage. In addition, indirect costs must account for intertwined pathologies, like alcoholism and mental illness, which reportedly cost U.S. industry in the tens of billions of dollars annually. The U.S. Bureau of National Affairs found in a 1990 study 'that between \$5 billion and \$6 billion was lost each year to businesses as a result of the decreased productivity caused by real or perceived abuse of employees'.").

⁸ Andrew Brownstein, *The Bully Pulpit: Post-Columbine, Harassment Victims Take Schools to Court*, 38 JTILA TRIAL 12, 13 (2002) ("What emerged in the aftermath [of Columbine] was a brutal image of students ostracized by the 'popular kids' and taunted on a daily basis. Two-thirds of teenagers involved in deadly school shootings say they were seriously bullied, and many suicides have been linked to peer harassment . . . The 1950s image of the bully as the big kid who extorted lunch money began to fade. Studies revealed bullying to be a pervasive part of school culture worldwide, with devastating long-term effects for both victims and bullies.")

adult reaction to behaviors that threaten the safety, health, and well-being of children. All children have the right to learn in a safe, respectful environment.⁹

This article examines how state anti-bullying laws can be improved to better protect students from abuse. The first part of this article discusses the impact bullying has on children and how laws can be utilized to deter bullying. Bullying is an epidemic in U.S. schools, impacting students both inside and outside of the classroom.¹⁰ While forty-six states have enacted some sort of anti-bullying legislation, current laws in many states provide neither adequate proactive prevention policies nor adequate remedies for the harms caused by bullying. The second part of this article focuses on proactive measures, particularly legislative improvements that can be made in order to promote safe, civil and effective learning environments. While policies using primarily ex post facto punitive measures have not been very effective in reducing bullying, more comprehensive law and policy remedies may help to support the broader institutional and cultural changes necessary to better protect children in schools. This article provides specific recommendations for creating effective anti-bullying legislation as well as a model statute that incorporates these recommendations. Although effective legislation is only part of the solution to deterring bullying in schools, it is an important step in implementing positive systemic change.

⁹ Ursula Kilkelly, CHILDREN'S RIGHTS IN IRELAND: LAW, POLICY AND PRACTICE 459 (2008) ("The right to education is an internationally recognised human right and the subject of significant constitutional and legislative provision nationally and internationally. It is well established that children have the right to education . . . and to benefit from it in a way that recognizes that education enables the fulfilment of the child's potential. This requires that education meets the child's needs, is child-centred and also aims to equip the child with the life and social skills to respond appropriately to life's challenges . . . children have the right to be protected from harm.")

¹⁰ See Kathleen Conn, *Sexting and Teen Suicide: Will School Administrators Be Held Responsible?* 261 Ed. Law Rep. [1] (2010).

The Use of Law in Deterring Bullying

For thousands of years the fundamental purpose of the law has been recognized as "bring[ing] about the rule of righteousness in the land . . . so that the strong should not harm the weak."¹¹ This remains the fundamental purpose of the law, and wisely crafted and applied laws can serve as effective tools for protecting the most vulnerable among us from those that might otherwise abuse them.

Children necessarily rely on the protection of adults both at home and in school.¹² It is therefore the responsibility of adults to ensure that homes and schools provide a safe haven for children. Educators must protect the safety and well-being of students in schools so that the students may focus their full attention on learning and growing into well-adjusted, responsible, productive citizens through their studies and healthy social interactions in schools.¹³ In the absence of these protections schools can become places where intimidation, humiliation, fear, and violence threaten the mental and physical well-being of children.¹⁴

Bullying Laws in U.S. Schools

Bullying is a distressingly persistent epidemic in U.S. schools: "The National Education

¹¹ 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>.

¹² See Tamar Ezer, *A Positive Right to Protection for Children*, 7 YALE HUM. RTS. & DEV. L.J. 1, 23-24 (2004) ("The Declaration sets out a positive right to protection for children. Thus, in the Preamble, it explains that 'the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection,' linking needs and rights. Principle 2 goes on to assert, 'The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity.' Principle 9 refers specifically to abuse, stating, '[T]he child shall be protected against all forms of neglect, cruelty and exploitation.' In the Declaration, children's rights are rooted in the inherent 'dignity and worth of the human person.' By virtue of their humanity, children are entitled to the protections necessary for them to live with dignity.")

¹³ John Dayton & Carl Glickman, *American Constitutional Democracy: Implications for Public School Curriculum Development*, 69 PEABODY J. EDUC. 62 (1994).

¹⁴ See generally, Pamela Orpinas & Arthur M. Horne, *CREATING A POSITIVE SCHOOL CLIMATE AND DEVELOPING SOCIAL COMPETENCE* (2006).

Association estimates that 160,000 students avoid school every day for fear of being physically or emotionally abused by their peers under the not-so-watchful eyes of school staff.”¹⁵ Further, bullying occurs not just within the walls of the school, but can occur anywhere would-be bullies have access to their intended victims. With the wide-spread use of modern communications technologies, for example, bullies are now marauding in the cyber-world as well, and inventing disturbing new ways to intimidate, harass, and harm their victims anywhere, anytime, virtually without limits.¹⁶ And when children are being harassed by today’s high-tech enabled bullies, they no longer have even the sanctuary of their own homes as a temporary respite from the torment of school bullies. “Cyber bullying reaches beyond the schoolyard as technology affords the bully a veil of anonymity with instantaneous 24/7 access to the victim before an unlimited Internet based audience of bystanders and supporters. The victim cannot escape the electronic message delivered by the tormentor.”¹⁷

Although not specifically intended to address bullying, several current federal and state laws may be applicable in incidents of bullying based on race,¹⁸ gender,¹⁹ or disability.²⁰ Further,

¹⁵ Laurie Bloom, *School Bullying in Connecticut: Can the Statehouse and the Courthouse Fix the Schoolhouse? An Analysis of Connecticut’s Anti-Bullying Statute*, 7 CONN. PUB. INT. L. J. 105, 108 (2007).

¹⁶ See, Stacy M. Chaffin, *The New Playground Bullies of Cyberspace: Online Peer Sexual Harassment*, 51 HOW. L.J. 773 (2008).

¹⁷ Jill Joline Myers & Gayle Tronvig Carper, *Cyber Bullying: The Legal Challenge for Educators*, 238 Ed. Law Rep. [1] (2008).

¹⁸ See Title VI, 42 U.S.C. § 2000d (2009) (“No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”) See also William Y. Chin, *School Violence and Race: The Problem of Peer Racial Harassment Against Asian Pacific American Students in Schools*, 10 SCHOLAR 333 (2008).

¹⁹ 20 U.S.C. § 1681(a) (“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”) See also Susan Hanley Kosse & Robert H. Wright, *How Best to Confront the Bully: Should Title IX or Anti-Bullying Statutes be the Answer?*, 12 DUKE J. GENDER L. & POL’Y 53 (2005).

²⁰ See Mark C. Weber, *Disability Harassment in the Public Schools*, 43 WM. & MARY L. REV. 1079, 1093 (2002) (“There are several sources of law under which claims for disability harassment in the public schools can be analyzed: Section 504 of the Rehabilitation Act and title II of the ADA; the Individuals with Disabilities Education Act (IDEA); the common law; and the United States Constitution.”)

physical assaults, sexual assaults, stalking, and disorderly conduct violate criminal laws,²¹ and an assault, defamation, or invasion of privacy may provide the basis for a tort suit.²² Nonetheless:

Federal and state laws neither deter bullying nor provide most victims a remedy for psychological or physical injuries. Generally, federal law, whether civil rights statutes or the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, offers remedies for victims who are bullied on the basis of federally protected criteria: race, nationality, sex, or disability. The vast majority of victims, however, are bullied for reasons that do not fall under this civil rights umbrella. For example, in a survey of Ohio students aged thirteen to eighteen, the majority cite *physical appearance* as the most common reason students are bullied and harassed (49%), followed by sexual orientation (18%), and gender expression (9%). Moreover, even when victims do fall into protected categories, courts have set a high bar for recovery, with plaintiffs often prevailing in only the most horrific cases.²³

There is a growing awareness, however, that adequate laws are needed to protect everyone from the consequences of bullying in schools:

Increasing incidents of school violence rooted in bullying behavior, including school shootings such as Columbine High School (1999) in Littleton, Colorado and teen and pre-teen suicides . . . have raised public and political awareness that has generated [state] anti-bullying legislation . . . There are even groups calling for federal anti-bullying laws linked to the fulfillment of the No Child Left Behind Act.²⁴

Further, there is a growing recognition that many current laws do not adequately address harassment and bullying²⁵ as well as increasing calls to provide proactive prevention policies and

²¹ See, e.g., *Svedberg v. Stamness*, 525 N.W.2d 678 (N.D. 1994) (upholding a charge of disorderly conduct against a student who had repeatedly harassed and threatened another student, and rejecting a First Amendment defense on the grounds that the harassing speech constituted “fighting words.”)

²² Brady Coleman, *Pragmatism’s Insult: The Growing Interdisciplinary Challenge to American Harassment Jurisprudence*, 8 EMPLOYEE RTS. & EMP. POL’Y J. 239, 247 (2004) (“Several tort actions - assault, defamation, invasion of the right to privacy - are theoretically applicable to the many variants of harassment.”)

²³ Julie Sacks & Robert S. Salem, *Victims Without Legal Remedies: Why Kids Need Schools to Develop Comprehensive Anti-Bullying Policies*, 72 ALB. L. REV. 147, 149 (2009) (emphasis added).

²⁴ Laurie Bloom, *School Bullying in Connecticut: Can the Statehouse and the Courthouse Fix the Schoolhouse? An Analysis of Connecticut’s Anti-Bullying Statute*, 7 CONN. PUB. INT. L. J. 105, 105 (2007).

²⁵ See, U.S. Commission on Civil Rights Hearing on *Peer-to-Peer Harassment and Bullying: Examining the Federal Response*. On May 13, 2011 the Commission held hearings on peer-to-peer harassment and bullying and will release a final report September 2011. See also, e.g., Brady Coleman, *Pragmatism’s Insult: The Growing Interdisciplinary Challenge to American Harassment Jurisprudence* 8 EMPLOYEE RTS. & EMP. POL’Y J. 239 (2004).

adequate remedies for injuries that occur.²⁶ Perhaps most important is the realization that it is necessary to recast the rationale for anti-bullying laws from protection based on limited categories of discrimination to a broader protection of fundamental human dignity. Under this new model harassment would be recognized “as an issue primarily of dignity rather than discrimination.”²⁷

Improving Anti-bullying Laws

Adults have a responsibility to protect children from serious threats to their safety and well-being, and bullying is most certainly a serious threat.²⁸ There is considerable evidence that many current laws and policies do not adequately protect children. Under current law in the U.S., for example:

Even if a victim obtains a legal remedy under state or federal law, such remedy comes long after the harm has been done--after the student has changed schools, dropped out, or is well past eighteen. As a practical matter, kids need their schools to adopt and enforce effective anti-bullying policies that will protect them while they are in school. Clearly, policies offering students the greatest protection are those that prevent bullying from happening in the first place, not those merely imposing consequences after incidents arise. Thus, model anti-bullying policies are those that deter bullying by improving overall school climate.²⁹

There are positive, proactive measures that adults can take to help transform schools into safer,

²⁶ Laurie Bloom, *School Bullying in Connecticut: Can the Statehouse and the Courthouse Fix the Schoolhouse? An Analysis of Connecticut's Anti-Bullying Statute*, 7 CONN. PUB. INT. L. J. 105, 108 (2007) (“There is, or ought to be, an expectation that students should be able to attend school without fearing for their personal safety. The law must provide a cause of action when schools fail to meet their obligation to provide a safe [and respectful] learning environment.”)

²⁷ Brady Coleman, *Pragmatism's Insult: The Growing Interdisciplinary Challenge to American Harassment Jurisprudence*, 8 EMPLOYEE RTS. & EMP. POL'Y J. 239, 259 (2004).

²⁸ Daniel B. Weddle, *Bullying in Schools: The Disconnect Between Empirical Research and Constitutional, Statutory, and Tort Duties to Supervise*, 77 TEMPLE L. REV. 641, 642 (2004) (“Nearly two decades of educational research has repeatedly demonstrated that one of the most damaging and pervasive problems in our schools today is bullying. That research has shown that bullying leaves its victims with serious and often life-long emotional problems.”)

²⁹ Sacks & Robert S. Salem, *Victims Without Legal Remedies: Why Kids Need Schools to Develop Comprehensive Anti-Bullying Policies*, 72 ALB. L. REV. 147, 150-51 (2009).

more respectful places for children.³⁰ Legislative improvements in anti-bullying policies 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.

A review of bullying-related litigation in the U.S. concluded “the cases illustrate that, employed piecemeal, punitive tactics such as progressive discipline, mediation, conflict resolution, and so-called ‘zero tolerance’ policies, if unsupported by the entire school community, do not reduce bullying.”³¹ More comprehensive law and policy remedies, however, if wisely crafted and administered, can help to support the broader institutional and cultural changes necessary to better protect children in schools.

To remedy bullying in schools it is necessary to have well prepared professional educators motivated and empowered to work with children to address the root causes and effects of bullying in schools. Statutes, regulations, and policies can play a central role in establishing and supporting effective anti-bullying efforts. Bullies rely on an imbalance in power between the bully and the victim. Laws and institutional policies have the ability to shift the balance of power against would-be bullies, by systematically rallying the authority of the law, the resources of the common government, and the opinions of the community against the malicious practice of bullying and in support of greater safety, civility, and achievement in schools.

Lawmakers in different regions and contexts will likely hold divergent views about what particular elements to emphasize in anti-bullying legislation, and reasonable persons may

³⁰ See, e.g., Arthur M. Horne, Christi L. Bartolomucci & Dawn Newman-Carlson, *BULLY BUSTERS: A TEACHER'S MANUAL FOR HELPING BULLIES, VICTIMS, AND BYSTANDERS* (2003).

³¹ Julie Sacks & Robert S. Salem, *Victims Without Legal Remedies: Why Kids Need Schools to Develop Comprehensive Anti-Bullying Policies*, 72 ALB. L. REV. 147, 152 (2009).

disagree about what methods or legal tools may prove most effective under varying circumstances. Acknowledging this diversity in opinions, circumstances, and local needs, the recommendations below are intended to provide a useful guide for improving the efficacy of legislation and school policies in protecting children from bullying.³²

1) *Laws must communicate a strong commitment to stopping bullying in schools:* There is powerful evidence to support legislative findings that bullying and harassment present a grave threat to the health and well-being of children, an unreasonable interference with the educational process, and that it is in society's best interests to assertively address this problem.³³ To serve as an effective foundation for needed reform, laws must clearly evidence a firm and unwavering commitment to stopping bullying in schools.³⁴

2) *Definitions of "bullying" must be broad enough to address current realities in schools:*

³² John Dayton & Anne Dupre, *From the Common Bully to the Cyber Bully: Finding Effective Law and Policy Remedies*, July 2007 lecture at the University of Maine School of Law (manuscript on file with authors) (in 2007 Dayton & Dupre conducted a comprehensive study of anti-bullying legislation in the U.S. Based on a thorough analysis of state anti-bullying laws, this study suggested policy recommendations for improving anti-bullying laws. See also John Dayton & Anne Dupre, *A Child's Right to Human Dignity: Reforming Anti-Bullying Laws in the U.S.*, 28 IRISH EDUC. STUDIES 333 (2009). This article presents updated and revised recommendations based on further analysis of U.S. laws.).

³³ See, e.g., Arthur M. Horne & Jon Carlson, BULLYING PREVENTION (2005); Corinna Young, BULLYING BEHAVIOR: CURRENT ISSUES, RESEARCH, AND INTERVENTION (2002); Dan Olweus, BULLYING AT SCHOOL: WHAT WE KNOW AND WHAT WE CAN DO (1993); National Conference of State Legislatures, *School Bullying, available at* <http://www.ncsl.org/programs/educ/SchBullying.htm> ("research indicates that this type of adolescent victimization occurs frequently, particularly in middle school grades, and can result in serious consequences for both bully and victim"); NATIONAL CENTER FOR EDUCATION STATISTICS, STUDENT REPORTS OF BULLYING RESULTS FROM THE 2001 SCHOOL CRIME SUPPLEMENT TO THE NATIONAL CRIME VICTIMIZATION SURVEY, U.S. DEPARTMENT OF EDUCATION STATISTICAL ANALYSIS REPORT (2005).

³⁴ Even the format and placement of these provisions can send powerful messages about lawmakers' genuine commitments to reform. Accordingly, these 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 access them, and sending a negative message about lawmakers' seriousness and commitment to these laws. See generally David A. Marcello, *The Ethics and Politics of Legislative Drafting*, 70 TUL. L. REV. 2437 (1996). Unless the policies send an unambiguous message of serious commitment by lawmakers, they may be perceived as little more than symbolic gestures to placate parties who pushed for anti-bullying legislation, doing little more than symbolically declaring the problem addressed and therefore resolved without substantively changing any realities for children in schools. See, e.g., MISS. CODE ANN. § 37-11-54 (2007) (allocating no additional resources, setting very limited and likely meaningless goals, and establishing an arbitrary sunset clause for repeal).

Narrow definitions of bullying that only include, for example, physical assault or immediate threat of assault³⁵ and fail to include other non-violent but decidedly harmful forms of bullying such as harassment, social bullying, cyber-bullying,³⁶ etc., will fail to adequately protect the mental, emotional, and physical health of children.³⁷ To address current realities in schools, legislation and policy must be the product of a clear understanding of current problems and a thorough knowledge of available remedies for addressing these problems.³⁸ Related scope and definition problems include language that sets the bench-mark for actionable bullying too high,³⁹ and policies that arbitrarily limit the protection of the statute based on grade-level, leaving many children unnecessarily vulnerable.⁴⁰

3) *Definitions of "bullying" cannot be so over-broad that they intrude on protected speech:*

Bullying policies that intrude on protected speech are unconstitutional, and therefore ultimately unenforceable.⁴¹ Further, policies that do not fairly respect the legitimate free speech rights of

³⁵ GA. CODE ANN. § 20-2-751.4 (2007).

³⁶ See Darby Dickerson, *Cyberbullies on Campus*, 37 U. TOL. L. REV. 51 (2005).

³⁷ Laurie Bloom, *School Bullying in Connecticut: Can the Statehouse and the Courthouse Fix the Schoolhouse? An Analysis of Connecticut's Anti-Bullying Statute*, 7 CONN. PUB. INT. L. J. 105, 108-109 (2007) ("The overt acts typical of younger children and adolescent/teenage boys, including physical and verbal abuse, harassment, and humiliation, are far more easily identified than their covert cousins. Covert acts could arguably be considered more pernicious forms of emotional and psychological torment and perhaps even more damaging to the victims. This covert or 'relational aggression' infects the lives of adolescent and teenage girls (and to a lesser extent boys) and their classmates in middle schools and high schools across the country. State anti-bullying laws, and school district anti-bullying policies, most often do not address relational aggression or even recognize it as a form of bullying. Its existence and the adverse impact it has on the educational environment are simply ignored and denied by school administrators and school policy makers.")

³⁸ 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. See Jill Joline Myers & Gayle Tronvig Carper, *Cyber Bullying: The Legal Challenge for Educators*, 238 Ed. Law Rep. [1,7] (2008) (describing Internet-based resources for addressing Internet-based harassment).

³⁹ A child in the custody and protection of school officials should not have to wait to be intentionally injured more than once before the child can expect appropriate action and protection from school officials under state law. *But see* GA. CODE ANN. § 20-2-751.4 (2007); LA. REV. CODE § 416.13 (2007).

⁴⁰ Because bullying occurs at all grade levels, legal remedies should extend to all grade levels in age-appropriate ways. *But see* GA. CODE ANN. § 20-2-751.4 (2007) (limiting protections to grades 6-12 only).

⁴¹ U.S. Const. amend. I ("Congress shall make no law...abridging the freedom of speech...."). See also *Saxe v.*

all persons in the community are unlikely to gain the broad community support necessary for effective implementation of the policy. While taking a firm stand against all bullying and harassment, policies must also recognize and respect the rights of all persons to peaceably disagree with any and all points of view.⁴² So long as individuals express themselves in a manner appropriate to civil discourse in a public school, all persons' right to communicate their opinions must be protected, whether their views are popular or not.⁴³

4) *Policies must protect the safety and human dignity of all children*: It is essential that policies protect persons that fall into categories that have received protected status under law because of a demonstrated history of discrimination, such as discrimination based on "race, creed, color, national origin, marital status, sex, sexual orientation, or disability."⁴⁴ These are not, however, the only persons subjected to acts of bullying. To the contrary, bullying is often not motivated by any race, gender, etc., animus,⁴⁵ but instead occurs within a relatively homogenous group. When statutory protections are limited exclusively to particular characteristics,⁴⁶ this leaves millions of children unprotected from abuse. Anti-bullying policies must protect the safety and human dignity of all children.

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); Diane Heckman, *Just Kidding: K-12 Students, Threats and First Amendment Freedom of Speech Protection*, 259 Ed. Law Rep. [381] (2010); Martha McCarthy, *Anti-Harassment Policies in Public Schools: How Vulnerable Are They?*, 31 J.L. & EDUC. 52 (2002).

⁴² VT. STAT. ANN. 16 § 11(A)(26) (2007) (Department of Education policy implementing Vermont Act 91). Far, efficient, and effective laws strike a proper balance between legitimate competing interests. Anti-bullying laws and policies must strike a proper balance, for example, between protecting individuals from harassment, and respecting individual rights to expression; between protecting individuals from abuse, and assuring a fair hearing for the accused.

⁴³ NEV. REV. STAT. § 388.125 (2007).

⁴⁴ VT. STAT. ANN. 16 § 11(A)(26) (2007).

⁴⁵ Nansel T.R., et al., *Bullying Behaviors Among U.S. Youth: Prevalence and Association with Psychosocial Adjustment*, 285 JAMA 2094 (2001).

⁴⁶ *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.")

5) *State-wide policy mandates must be 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 are protected by the essential elements of anti-bullying laws, 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.⁴⁷

6) *School officials must be assigned an enforceable duty and given the necessary jurisdiction and*

authority to implement anti-bullying laws: Unless anti-bullying laws are implemented by local school officials, they will not change bullying behavior. There should be an unambiguous, enforceable duty for all school officials to implement anti-bullying laws, assuring a safe and respectful learning environment free of bullying, harassment, and intimidation.⁴⁸ Further, there should be clear and certain consequences for school officials when there is sufficient evidence of a willful failure to comply with laws establishing protections for children in their care.⁴⁹ School officials must be given the necessary jurisdiction and authority to fulfill their duty to protect students. Their jurisdiction must extend beyond the physical limits of the school and school activities so that school officials may address and combat off-campus bullying that is disrupting

⁴⁷ Weddle, *supra* note 29 at 702 (“There should be enough flexibility in the requirements to allow adaptability of approaches to local school settings, and enough specificity to prevent pro forma development of policies that will never themselves create the fundamental changes in school climate that are at the heart of effective bullying intervention.”)

⁴⁸ NEV. REV. STAT. § 388.125 (2007).

⁴⁹ Less ethical and responsible school officials who most need the push of legal mandates to address seriously bullying in their schools are also most likely to ignore anti-bullying laws that remain optional. *See* Weddle, *supra* note 29 at 700. (“[B]ullying and violence flourish in particular kinds of school climates, and those climates are largely within the control of school officials. School officials, then, should be forced to take control of the climates in their schools and to reduce the prevalence of bullying and related peer-on-peer violence. No one expects schools to eliminate all bullying; but educators no longer have any excuse for turning a blind eye to the problem and ignoring the research in their own field.”) *Id.* at 658-59.

the educational process, denying equal educational opportunity, or threatening student safety.⁵⁰

7) *There must be clear lines of accountability concerning who is responsible for implementing all aspects of the policy, from reports through remedies, with reasonable and well defined time-lines:* Policies should clearly designate who is responsible for all reports and include a requirement for prompt investigations and timely remedial actions as appropriate.⁵¹

8) *All school employees have an affirmative duty to model appropriate conduct:* Policies establish that all school employees, teachers, administrators, child services professionals, food services workers, custodial staff, and transportation personnel, etc., have an affirmative duty to demonstrate appropriate behavior on the premises of any public school by treating students, colleagues, and all persons they encounter while on duty with appropriate civility and respect, and by refusing to tolerate harassment, abuse, or intimidation.⁵² This includes serving as consistent roles models of nonviolent behaviors that do not present or condone sexual, racial, or other harassment, or allow student hazing.⁵³ School personnel 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 certification officials.⁵⁴

9) *Mandatory reporting requirements apply to all school personnel and students, with the protection of immunity for good-faith reporting:* Bullying often occurs with the knowledge of

⁵⁰ CONN. GEN. STAT. § 10-222(D) (2007).

⁵¹ Fred Hartmeister & Vickie Fix-Turkowski, *Getting Even With Schoolyard Bullies: Legislative Responses to Campus Provocateurs*, 195 Ed. Law Rep. [1,5] (2005) (noting that New Hampshire requires a “48-hour notification window for every principal or designee to notify parents or guardians of all students involved in a bullying occurrence.”)

⁵² NEV. REV. STAT. § 388.125 (2007).

⁵³ MINN. STAT. § 120(B).22 (2007).

⁵⁴ VT. STAT. ANN. 16 § 11(A)(26) (2007) (Department of Education policy implementing Vermont Act 91).

many persons including school officials, other 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.⁵⁵ To encourage necessary reporting, and to protect those that report, there should be immunity for all reports made in good faith.⁵⁶ For those reports made in bad faith, policies should provide for appropriate disciplinary action for any person who knowingly and maliciously makes a false report.⁵⁷

10) *Establish a system for anonymous reporting*: 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 notice that they are likely to be reported by someone if they engage in prohibited bullying conduct.⁵⁸

11) *Policies include anti-retaliation prohibitions*: There should be clear, strong, and effective prohibitions against any retaliation towards persons who make good faith reports.⁵⁹

⁵⁵ Altruism is a most admirable quality, but for some it may be a less reliable motivator than personal consequences in assuring that all 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 is a legal requirement and not a choice. *But see* Susan Hanley Kosse & Robert H. Wright, *How Best to Confront the Bully: Should Title IX or Anti-Bullying Statute be the Answer?*, 12 DUKE J. GENDER L. & POL'Y 53, 65 (2005) ("Only a few states actually require a school employee who witnesses an act of bullying to report it to a principal or other designated school official.") *See. e.g.*, N.J. STAT. ANN. § 18A:37-13 (2007).

⁵⁶ NEV. REV. STAT. § 388.125 (2007).

⁵⁷ N.J. STAT. ANN. § 18A:37-13 (2007).

⁵⁸ Due process of law proscribes the use of anonymous reports as evidence in disciplinary hearings. *See generally Goss v. Lopez*, 419 U.S. 565 (1975). Direct disciplinary action is not, however, the purpose of this information. These anonymous reports should be used solely to alert school officials to a situation that may be endangering the health and safety of a child so that they can investigate and assure that all children in their school are safe. If, however, the follow-up investigation by school officials independently reveals evidence of misconduct, this subsequent evidence may be used in a disciplinary proceeding.

⁵⁹ *See Doe v. Brimfield Grade School*, 552 F. Supp. 816, 820 (C.D. Ill, 2008) (a severely bullied student's mother "a teacher at the school, was retaliated against for voicing objections, through false accusations of unprofessional conduct and challenges to her competence as a teacher.")

12) *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. The policies should recognize that securing a safe, supportive environment for all children is a necessary prerequisite to maximizing learning.⁶⁰

13) *Policies mandate a curriculum that promotes constructive actions and prevention:* To the extent possible, the curriculum and policies should go beyond mere negative prohibitions and punishments after the fact.⁶¹ They should 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. Students should be positively instructed what to do to improve their school culture and the quality of life for all students and not just negatively warned what not to do. Students and all school personnel should be provided with conflict resolution skills, and age-appropriate civility and anti-bullying lessons should be thoroughly integrated into the curriculum and school culture at all grade levels.⁶²

14) *Policies appropriately balance discipline and counseling for children that engage in bullying:* Bullying is not normal, healthy behavior, and many bullies likely have personal problems that may require counseling and other professional assistance. 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 and its consequences, and

⁶⁰ Weddle, *supra* note 29 at 658-659 (“Current legal theories and approaches to bullying suffer from a common flaw: they view bullying from an incident-based perspective rather than from a school culture perspective. They focus on what school officials knew about a specific bullying incident rather than addressing what school officials have done to ensure a culture where bullying is unacceptable to everyone in the school.”)

⁶¹ OKLA. STAT. § 24-100.1 (2007).

⁶² MINN. STAT. § 120(B).22 (2007).

effective counseling programs are necessary to stop the harmful behaviors.⁶³

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 a concerted anti-bullying effort. Students should be provided with age-appropriate training,⁶⁴ including how to avoid potentially dangerous situations, walk away from unnecessary conflicts, and other essential self-protection skills.⁶⁵

Additionally, all school personnel, including teachers, administrators, and all support personnel should be provided with high quality anti-bullying training programs with proven efficacy.⁶⁶

16) *Policies require reasonable parental responsibility and involvement*: Parents are required to take appropriate parental responsibility for the behavior of their minor children, and are required to participate, as necessary, with school officials in reasonable remedial efforts. Continued willful refusal by parents to participate in reasonable efforts to address serious behaviors that threaten harm to the child or others may be deemed actionable neglect under state child protection laws.⁶⁷

⁶³ CONN. GEN. STAT. § 10-222(D) (2007).

⁶⁴ 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).

⁶⁵ MINN. STAT. § 120(B).22 (2007).

⁶⁶ 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>.

⁶⁷ See generally Eric W. Johnson, *Educational Neglect as a Proper Harm to Warrant a Child Neglect Finding*, 76 IOWA L. REV. 167 (1990). See also Howard Davidson, *No Consequences-Re-Examining Parental Responsibility Laws* 7 STAN. L. & POL'Y REV. 23, 23 (1995-1996) ("...parents whose actions or indifference contribute to their children's violent and destructive behavior must be held to a legally appropriate standard of responsibility, with civil and criminal sanctions imposed where warranted..."); Kristin Henning, *It Takes a Lawyer to Raise a Child?: Allocating Responsibilities Among Parents, Children, and Lawyers in Delinquency Cases*, 6 NEV. L.J. 836, 857 (2006) ("In an effort to hold parents accountable for the behavior of their children, policymakers now require parents to participate in every aspect of the juvenile justice system . . . and are increasingly required to attend court hearings under the threat of contempt...Parents are also increasingly required to participate in treatment...to participate in family counseling, parenting skills classes, individual therapy, or community service.")

17) *Criminal acts are dealt with as criminal acts*: School policies should treat serious criminal acts such as assault, sexual assault, terroristic threats, stalking, and malicious harassment as what they are: criminal acts, and not just common misbehavior in school.⁶⁸ An act that constitutes a crime off-campus is also a crime on-campus. When children are victims of criminal acts, school officials should notify law enforcement officials and treat criminal acts as criminal acts, holding the perpetrators of on-campus crimes equally accountable for the commission of crimes, regardless of location.⁶⁹ For perpetrators of crimes against children, being on school property should not convey any special immunity from accountability under the law.

18) *Anti-bullying efforts must be 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.⁷⁰ 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

⁶⁸ See WASH. REV. CODE § 28A.300.285 (2007) (defining "Malicious harassment"). See also Jonathan W. Blodgett, *Bullying and the Violence it Causes*, 40 Prosecutor 34, 34 (2006) ("[B]ullying behavior can result in crimes such as assault and battery, making threats, criminal harassment, stalking, and violation of a person's civil rights.... Bullying prevention is crime prevention. Bullying is not child's play. It is not 'just part of growing up.' Bullying, and the violence it causes, has become an increasingly serious problem in our communities.")

⁶⁹ In order to fully protect children, states may also need to look at current criminal codes and how they are applied. Improvements to current laws (such as harassment laws) and new applications of existing laws may help protect children in situations where anti-bullying laws fail. For example, thirteen-year-old Megan Meier committed suicide after receiving abusive statements that were part of a MySpace hoax perpetrated in part by her adult neighbor. As an adult with no relationship to Megan's school, the neighbor, Lori Drew, was not subject to any anti-bullying legislation. Drew was found guilty by a California federal jury of violations of the Computer Fraud and Abuse Act, an Act not previously used in bullying cases. See Sarah Castle, *Note and Comment: Cyberbullying on Trial: The Computer Fraud and Abuse Act and United States v. Drew*, 17 J.L. & Pol'y 579 (2009).

⁷⁰ MINN. STAT. § 120(B).22 (2007).

community.⁷¹

19) *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.⁷² The perpetrators of bullying are often relatively higher social status students, or students from higher social status families, targeting more vulnerable lower social status children. School officials may have a social or political incentive to ignore misconduct perpetrated by socially or politically powerful individuals unless that incentive is counter-balanced by legal mandates for reporting, and requirements for a full and objective investigation in all cases regardless of the social or political status of the alleged victim or perpetrator.

20) *All parties are guaranteed a fair and objective review of disputes*: When bias in the implementation of policies on the part of a school official is credibly alleged, there should be a reasonable opportunity for an independent review by qualified neutral parties outside the school system.⁷³ Providing an opportunity for an external independent review protects both the rights of individual students and the public integrity of the school.

21) *Policies must be focused on protecting children and not just on limiting school district liability*: Ethical, responsible educators understand that it is their duty as adults and professionals to protect the safety and well-being of children in their care. Ethical, responsible laws are aimed at supporting educators in this task, not at financially absolving individuals and institutions that

⁷¹ 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.")

⁷² NEV. REV. STAT. § 388.125 (2007).

⁷³ VT. STAT. ANN. 16 § 11(A)(26) (2007).

neglect their duties to children and allow them to be abused in their schools.⁷⁴

22) *Anti-bullying programs must be adequately funded to achieve long-term success*: Effective programs require adequate funding and a long-term commitment of support.⁷⁵

23) *Policies support continued research and improvement in legislation, local policy, treatment methods, and prevention*: The policy supports ongoing efforts to find and use best practices and research in preventing bullying in schools, and policies are periodically reviewed to assure that they effectively address current problems in schools.

Conclusion

Good legislation can communicate just and powerful ideas to the community it serves. In a single generation U.S. civil rights laws opened doors of opportunity that had previously been closed, transforming American culture including the workplace and schools into more open, inclusive, and just institutions.⁷⁶ Effective anti-bullying legislation can also transform the culture of educational institutions and improve the daily lives and learning opportunities of all children by rallying the authority of the law, the resources of the common government, and the support of the community. It is long past time to convert schools from forums for abuse into institutions

⁷⁴ When school officials knowingly refuse to protect children from abuse the law should protect children and not the adults and institutions that failed to protect the children. *See, e.g., Doe v. Brimfield Grade School*, 552 F. Supp. 2d 816, 819-823(C.D. Ill, 2008) (in *Doe* the court rejected school officials' motion to dismiss plaintiff's complaint. The plaintiff alleged that "harassment was both verbal and physical, with the physical 'sexual misconduct consist[ing] predominantly of grabbing, twisting, and hitting' John's testicles repeatedly beginning in November 2004 and continuing to November 2005. The school's principal was 'aware of the ongoing practice of male students hitting each other in the testicles', also known as 'sac stabbing.'" The plaintiff further alleged that the student's injuries required surgery, but parents' complaints to school officials continued to be ignored. "On his return to school after the surgery, John was teased about his surgery, and, intentionally struck in the testicles again. His stitches popped and his surgical incision broke open. The school's principal still did nothing to correct the situation. Instead, John was reprimanded by his coach for complaining, advising John that he needed to 'stick up for himself' ...to 'toughen up and stop acting like a little girl'.")

⁷⁵ Weddle, *supra* note 29 at 678 ("Unless the funds are guaranteed and the level of instruction is required to be research-based, rigorous, and ongoing, the schools' attempts to mount serious and sustained efforts against bullying will probably be doomed at the outset, despite everyone's best intentions.")

⁷⁶ *See, e.g.,* Rebecca E. Zietlow, *To Secure These Rights: Congress, Courts and the 1964 Civil Rights Act*, 57 RUTGERS L. REV. 945 (2005).

where all children can learn and grow in safety and dignity.

Legislative improvement is a never-ending task. The Preamble to the U.S. Constitution identifies the Constitution's purpose as the formation of a "more perfect union" recognizing the ongoing challenge of advancing justice and the general welfare.⁷⁷ Revising laws and policies towards these ends remains a perpetual work-in-progress, at all levels of government, to more perfectly achieve the purposes of the people and their common government. To address the plague of bullying in schools, at least forty-six U.S. states have enacted anti-bullying legislation.⁷⁸ However, not all legislation is created equal. In order to help guide further legislative improvement a model statute based on legislative research and resulting policy recommendations is provided as an appendix to this article.

Anti-bullying laws can serve as powerful tools for moving the shameful practice of bullying, and the equally shameful practice of tolerating bullying, out of the shadows and into the full light of public view. As Justice Brandeis said: "Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most

⁷⁷ U.S. CONST. pmb. (1787).

⁷⁸ ALA. CODE § 16-28B-1 (2009); ALASKA STAT. § 14.33.200 (2008); ARIZ. REV. STAT. § 15-341 (2008); ARK. CODE ANN. § 6-18-514 (2008); CAL. EDUC. CODE § 32261 (2008); COLO. REV. STAT. § 22-32-109.1; CONN. GEN. STAT. § 10-222d (2008); DEL. CODE ANN. tit. 14 § 4112D (2008); FLA. STAT. ANN. § 1006.147 (2008); GA. CODE ANN. § 20-2-751.4 (2008); IDAHO CODE § 18-917A (2006); 2008 Ill. Laws § 10-0.14; IND. CODE § 20-33-8-0.2 (2005); IOWA CODE § 280.28 (2007); KAN. STAT. ANN. § 72-8256 (2007); KY. REV. STAT. ANN. § 158.183 (2008); LA. REV. STAT. ANN. § 416.13 (2008); ME. REV. STAT. ANN. tit. 20 § 1001 (2009); MD. CODE ANN., EDUC. § 7-424 (2008); MASS. GEN. LAWS ANN. ch. 71 § 370 (2009); 2008 Minn. Laws 120B.22; MISS. CODE ANN. § 37-1-54 (2008); MO. ANN. STAT. 160.775 (West 2007); NEB. REV. STAT. § 79-267 (2008); NEV. REV. STAT. § 388.125 (2008); N.H. REV. STAT. ANN. § 193-F:3 (2008); N.J. REV. STAT. § 18A:37-13 (2008); N.M. ADMIN. CODE § 6.12.7 (2006); N.Y. EDUC. LAW § 10 (2010); N.C. GEN. STAT. ANN. § 14-458.1 (2009); N.D. CENT. CODE § 15.1-07 (2011); OHIO REV. CODE ANN. § 3301.22 (2006); OKLA. STAT. § 24-100.1 (2008); OR. REV. STAT. § 339.351 (2008); 24 § 13-1303.1-A (2008); R.I. GEN. LAWS § 16-21-26 (2008); S.C. CODE ANN. § 59-63-110 (2006); TENN. CODE ANN. § 49-6-812 (2005); TEX. EDUC. CODE ANN. § 25.0342 (Vernon 2011); UTAH CODE ANN. § 53A-11a-101 (2008); VT. STAT. ANN. tit. 16 § 11(a)(32) (2008); VA. CODE ANN. § 18.2-152.7:1 (2009); WASH. REV. CODE § 28A.300.285 (2008); W. VA. CODE § 18-2C-1 (2008); WIS. STAT. ANN. § 118.46 (West 2010); WYO. STAT. ANN. § 21-4-312 (2009).

efficient policeman.”⁷⁹ Anti-bullying legislation provides a critically important tool for focusing public attention on this urgent problem, and for publicly affirming a commitment to establishing an effective system to protect the safety, well-being, and dignity of all children.

⁷⁹ Louis Brandeis, *OTHER PEOPLE'S MONEY* 62 (National Home Library Foundation ed. 1933).

APPENDIX

Model Anti-Bullying Statute⁸⁰

An Act to Promote Student Safety, Civility, and Achievement in Schools

Legislative Findings:

The General Assembly finds that a safe and civil environment in schools is necessary for students to achieve high academic standards. Threats, intimidation, harassment, and other bullying behaviors are unwarranted and preventable acts of misconduct that interfere with students' ability to learn, disrupt educators' efforts to teach students in a safe and civil environment, and thereby waste essential educational opportunities and resources. Protecting the safety of children and assuring the unimpeded and effective utilization of educational resources are of paramount importance in all schools. Therefore, it is in the public interest to advance a concerted effort to end the harmful and counter-productive misconduct defined as bullying under this Act. The General Assembly further finds that children learn best by example, and commends the efforts of school administrators, faculty, staff, and student leaders who demonstrate civil and respectful behavior towards all persons, and who refuse to tolerate threats, intimidation, harassment, or other acts of bullying in their schools.

Bullying Defined

(a) As used in this Act the term "bullying" means:

- (1) Any intentional act by a student, attempted or completed, to harm the person or property of another student, which under the totality of the circumstances a reasonable person would perceive as part of a pattern of conduct intended to threaten, intimidate, or harass; or
- (2) Any intentional threat or display of force by a student including but not limited to threatening statements or gestures, brandishing a weapon, displaying an intimidating presence, or other similar intentional acts which would give another student reasonable cause to fear harm to person or property, and which under the totality of the circumstances a reasonable person would perceive as part of a pattern of conduct intended to threaten, intimidate, or harass; or
- (3) Any other intentional and malicious pattern of conduct by a student which under the totality of the circumstances a reasonable person would perceive as being clearly

⁸⁰ This model statute is based on a review of state anti-bullying legislation and the policy recommendations in this article. This model statute is presented for consideration for adoption by the State General Assembly as a state-level framework for state-wide policy. State administrative regulations and local school district policies should expand on this essential framework, using recommendations in this article and local needs to guide the development of more thorough regulations and policies most appropriate for their schools. This model statute is not intended as legal advice, and instead reflects only the academic opinions of the authors. Legal advice can only be obtained from a qualified attorney licensed to practice law in your jurisdiction.

intended to threaten, intimidate, or harass another student and that causes:

- (A) Significant physical, psychological, or emotional harm;
- (B) Significant property damage;
- (C) Significant interference with educational opportunities or achievement;
- (D) A threatening or intimidating educational environment; or
- (E) Material disruption, substantial disorder, or an invasion of the rights or privacy of others.

Anti-bullying Policy to be adopted by Local School Districts

(b) Each local school district shall adopt a policy prohibiting bullying on school property, on a school bus, at a school bus stop, and at all other school controlled, supervised, or sponsored events and forums, including but not limited to electronic devices controlled by the school; any electronic devices used by a student while under the supervision of the school; or any electronic devices when used by a student in a manner that constitutes an act of bullying against another student in violation of this Act. The school district shall adopt the local policy through a process that includes representation from parents, school administrators, teachers, students, and other appropriate community representatives. A local school district shall have control over the provisions of the local policy, provided that the local policy shall contain at a minimum the following elements:

- (1) A clear statement that all students have a right to a safe, civil, and respectful learning environment, that protection of that right shall be equal and impartial, and prohibiting bullying of any student in violation of this Act;
- (2) A definition of bullying no less comprehensive than the definition set forth in this Act;
- (3) A clear statement that all persons are expected to act civilly and respectfully toward all other persons while under the supervision and authority of the school;
- (4) A policy for incorporating age-appropriate instruction in conflict resolution, civility, mutual respect, constructive self-help skills, and anti-bullying lessons for all students, and professional development for all faculty and staff designed to support these goals.
- (5) A clear statement of age-appropriate remedial actions and disciplinary consequences for any student who commits an act of bullying in violation of this Act;
- (6) A procedure for reporting an act of bullying in violation of this Act, including a

provision that permits any person to make an anonymous report to the principal or designee. This shall not, however, be construed to permit any formal disciplinary action based solely on an anonymous report. An anonymous report shall serve only as a basis for further investigation which may or may not lead to evidence of a violation of this Act;

(7) A requirement that all students, teachers, and other school employees shall make a prompt report to the principal or designee when they have information that would cause a reasonable person to suspect bullying in violation of this Act, and that any clear and willful failure to make a required report shall be considered an act of insubordination;

(8) A procedure requiring prompt, thorough, and objective investigations by the principal or designee of all reports of alleged violations of this Act. A file shall be retained for not less than one calendar year including adequate documentation of the initial report(s) of the alleged violation of this Act, the results of the investigation, and the disposition of the case by the investigator;

(9) A statement requiring the principal or designee to report evidence of any criminal act discovered in an investigation of alleged bullying in violation of this Act to law enforcement officials, including but not limited to assault, sexual assault, theft, stalking, or terroristic threats;

(10) A statement mandating that the principal or designee shall take prompt and age-appropriate actions to protect children from any known bullying in violation of this Act, and that it shall be the duty of the principal or designee to administer age-appropriate remedies and consequences designed to restore safety, civility, and order among all students without unnecessary delay;

(11) A procedure for the timely notification of the parent(s) (or other person(s)) having control or charge of the student upon a finding by a school administrator or designee that the student has committed an offense of bullying, or the student has been a victim of bullying as defined by this Act, and that it shall be the duty of the parent(s) to make good faith efforts to cooperate with school officials to remedy student behavior in violation of this Act, and that a clear and willful failure to cooperate with reasonable remedial requests from school officials shall be considered an act of educational neglect;

(12) A procedure for the filing of formal complaints alleging failure to comply with this Act, and upon request, a procedure for a fair and objective independent review of these complaints by a qualified neutral party;

(13) A statement that any person who makes a good faith report concerning any alleged violation of this Act shall be immune from civil liability related to that report;

(14) A statement that prohibits any act of retaliation by anyone against any person who makes a good faith report under this Act;

(15) A statement that provides appropriate sanctions for any person who knowingly makes a false report under this Act;

(16) A statement mandating annual notification of this policy to all students and parents, and the publication of the local policy in compliance with this Act in all student codes of conduct, the school website, and other appropriate venues to achieve broad public notice of the local policy.

(c) The State Department of Education shall develop a model local policy that shall be revised annually and as needed, and shall post such policy on its website in order to assist local school districts in the development of local policy consistent with this Act. The State Department of Education shall further include any additional professional guidance necessary for effective implementation of this Act, and shall identify effective and age-appropriate anti-bullying resources for use by local school districts in advancing the purposes of this Act.

(d) Local schools and school districts are encouraged to establish bullying prevention programs, and other local initiatives to advance the purposes of this Act, involving all students, parents, school personnel, law enforcement personnel, and other appropriate community members.

(e) Any school system which is not in compliance with the requirements of this Act shall be ineligible to receive state funding. The State Department of Education shall conduct an annual audit to assure compliance with the requirements of this Act.