



MODEL STATE ANTI-BULLYING & HARASSMENT LEGISLATION

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**Model Language,
Commentary, & References**

TABLE OF CONTENTS

SECTION 1 LEGISLATIVE PURPOSE AND FINDINGS PAGE 3
LOCAL MEDIA CONSIDERATIONS
SHOULD PRIVATE SCHOOLS BE COVERED?

SECTION 2 DEFINITIONS AND SCOPE OF PROSCRIBED CONDUCT PAGE 4-5
ENUMERATION

SECTION 3 STATE DEPARTMENT OF EDUCATION RESPONSIBILITIES PAGE 6

SECTION 4 DISTRICT RESPONSIBILITIES PAGE 6-7
TRAINING AND PREVENTION PROGRAMS

SECTION 5 SANCTIONS AND CIVIL LIABILITY PAGE 8
PRIVATE RIGHTS OF ACTION

SECTION 6 MISCELLANEOUS PAGE 3

This document presents our Model State Anti-Bullying and Harassment Legislation, explains the policy objectives for each section of the Model, and presents some key points and alternatives to consider. The commentary below will help you tailor the model language to the specific needs of your state, while keeping the original intent of the legislation intact. While this document provides a useful model, it is still necessary to carefully consider the legislative background of your state, the local political environment, the fiscal impact of any proposal, and any existing laws with which this legislation might interact.

If you have any questions about this document or would like GLSEN’s assistance to construct your own anti-bullying and harassment bill, you may contact our Public Policy Department at 202-621-5821 or by email at publicpolicy@gsen.org.

KEY

Beige: language of the Model State Anti-Bullying and Harassment Legislation, partitioned by section

White: Model Policy Language

Yellow: Additional Information

LEGISLATIVE PURPOSE & FINDINGS

MODEL LANGUAGE

Be it enacted by the Legislature of the State of _____:

Section 1. This Act, henceforth known as the Safe Schools Act, shall be hereby enacted to read as follows:

A. The Legislature finds and declares that:

1. All students have the right to participate fully in the educational process, free from bullying and harassment;
2. A safe and civil environment in school is necessary for students to learn and to achieve high academic standards;
3. Bullying and harassment, like other disruptive or violent behaviors, are forms of conduct that disrupt both a student's ability to learn and a school's ability to educate its students in a safe environment; and
4. Because students learn by example, school administrators, faculty, staff, and volunteers should be expected to demonstrate appropriate behavior, treat others with civility and respect, and refuse to tolerate bullying and harassment.

POLICY OBJECTIVES

- Explain the context and need for the legislation
- If appropriate, mention particular local needs or recognized incidents

This statement provides the context for the legislation, which clearly explains why anti-bullying and harassment legislation is important. Often in attempting to decide how to rule on a particular case, courts will look to the “legislative intent” behind the law. The inclusion of a section like this — which describes the importance of a safe school environment and the way in which bullying and harassment can adversely affect that environment — can help answer that question.

LOCAL MEDIA CONSIDERATIONS

In some states the need for state anti-bullying and harassment legislation is made particularly relevant by media recognition of incidents of bullying or their unfortunate consequences. If local media has been publicizing stories about bullying in schools, you may wish to include in the Legislative Findings section a short statement about the demonstrated need for this legislation in your state.

It's also possible to name the legislation after a particular student or students, especially if a high-profile event in the state has drawn attention to the issue of bullying and harassment. For example, Florida's anti-bullying law provides that “This section may be cited as the ‘Jeffrey Johnston Stand Up for All Students Act,’” after Jeffrey Johnston, a 15 year old boy that died by suicide after being bullied relentlessly.

SHOULD PRIVATE SCHOOLS BE COVERED?

Ideally, anti-bullying and harassment legislation should protect all students by applying to both public and private schools. However, state laws tend to treat public and private schools differently, and many safe schools laws cover only public schools. You should determine whether it's possible, in your state, to reach private schools and whether there will be higher levels of resistance. As an example, Minnesota's anti-bullying law specifically defines an “Education institution” to mean a:

Public or private institution and includes an academy, college, elementary or secondary school, extension course, kindergarten, nursery, school system, and a business, nursing, professional,

secretarial, technical, vocational school; and includes an agent of an education institution. Minn. Stat. Ann. § 363.01, Subd. 16.

If the proposed legislation is intended to govern private schools, consider whether to include an exception applicable to certain religious schools to accommodate their constitutional rights. For example, California's law provides that:

This article shall not apply to an educational institution which is controlled by a religious organization if the application would not be consistent with the religious tenets of that organization. Cal. Educ. Code § 220.5.

DEFINITIONS & SCOPE OF PROSCRIBED CONDUCT

MODEL LANGUAGE

Section 2. Definitions and Scope of Proscribed Conduct

A. This act applies to conduct occurring on all public elementary and secondary school premises, at any school-sponsored functions or activities, and on school-sponsored transportation. This act also applies to usage of electronic technology and electronic communications that occurs on all public elementary and secondary school premises, at any school-sponsored functions or activities, on school-sponsored transportation, and on school computers, networks, forums and mailing lists.

B. As used in this Chapter:

1. The term ‘bullying’ used in this act means conduct that:
 - a. Adversely affects the ability of one or more students to participate in or benefit from the school’s educational programs or activities by placing a student in reasonable fear of physical harm; and
 - b. Includes conduct based on a student’s actual or perceived race, color, national origin, sex, gender, disability, sexual orientation, gender identity or expression, religion, or any other distinguishing characteristics that may be defined by a State or local education agency; or
 - c. Is based on association with a person or group with any person with one or more of the actual or perceived characteristics listed in (b).
2. The term ‘harassment’ used in this act means conduct that:
 - a. Adversely affects the ability of one or more students to participate in or benefit from the school’s educational programs or activities because the conduct as reasonably perceived by the student is so severe, persistent, or pervasive; and
 - b. Includes conduct based on a student’s actual or perceived race, color, national origin, sex, gender, disability, sexual orientation, gender identity or expression, religion, or any other distinguishing characteristics that may be defined by a State or local educational agency; or
 - c. Is based on association with a person or group with any person with one or more of the actual or perceived characteristics listed in (b).

POLICY OBJECTIVES

- **Make the Act applicable to all public schools and school-related activities**
- **Focus definitions of bullying and harassment focus on effect of behavior**
- **Specify definitions of bullying and harassment that enumerate specific categories of students to be protected**
- **Provide separate definitions for bullying and harassment**

In some cases, state legislatures have defined bullying and harassment coextensively— as if they were the same thing. A better view recognizes that while certain behavior may represent both bullying and harassment, there are cases in which harassment will not constitute bullying, and vice versa. In defining bullying and harassment, the focus should be on how the conduct interferes with a student’s ability to participate in educational opportunities. By focusing on the impact of the behavior of the “bully” or “harasser,” we do not become involved in issues of the actor’s intent. Rather, we stay focused on real harm to real students—which can adversely affect their educational opportunities.

In addition, this focus will help the legislation comply with the free expression requirements of the First Amendment. To maintain consistency between various state and local bullying laws as well as proposed federal laws, you should use the definitions of bullying and harassment as we have laid them out here. Enumerated categories are a key element in making sure that the legislation will protect LGBTQ students.

ENUMERATION

As an advocate for anti-bullying and anti-harassment laws, policies and programs at the national, state and local level, you will be challenged to explain why enumerated categories are better than no categories at all.

When a law enumerates categories it usually identifies types of individuals or things that need to be protected. We generally

refer to these individuals or things as groups or classes. Anti-bullying and harassment bills are designed to address the needs of students who experience bullying and harassment in their schools. This is best achieved through a policy which both requires that all students are protected from bullying and harassment and also specifies categories of students who must be included by name (e.g., LGBTQ students).

CONT.

DEFINITIONS & SCOPE OF PROSCRIBED CONDUCT

ENUMERATION (CONT. FROM PAGE 4)

of students who must be included within the protection of the law. While the goal of any anti-bullying and harassment legislation is to protect all students, We know that enumeration that not only focuses on race, sex, or religion—all of which are very important—but also on the basis of sexual orientation and gender identity or gender expression is critical.

Unfortunately, there are a large number of legislators, community leaders and others who believe that singling out by name any one group through enumeration gives that group special privileges. This is the area where your anti-bullying advocacy is likely to be most controversial and have the greatest opposition. However, we know that enumeration is absolutely necessary to protect ALL students as research has consistently shown that students experience less bullying, they feel safer overall, and teachers are more likely to intervene to prevent incidents of bullying in a school with an enumerated policy.

- The strength of an enumerated law or policy is that it underscores that those students that research shows are most likely to be bullied and harassed and least likely to be protected by generic antibullying and harassment laws and policies are protected, as well as ALL other students.
- Proponents of non-enumerated bullying laws argue that enumerated categories protect fewer students than generic laws because only certain students are protected. However, although enumerated bullying laws place an emphasis on certain categories because of their prevalence, all students are still protected. Furthermore, our research shows that students who live in states or school districts with enumerated laws and policies are provided greater protections across the board.
- Research has shown that students in schools with non-enumerated bullying policies are no more protected from bullying than students who go to schools without any anti-bullying and harassment policies. 72.5% of students in schools with generic policies vs. 74.5% of students in schools with no policies report hearing “gay” used in a negative way. Similarly, 63.7% of students in schools with generic policies vs. 66.3% of students in schools with no policies reported hearing negative remarks regarding gender expression.
- Students report less overall harassment when they know

their school has a comprehensive policy that includes enumeration. Students whose schools have a policy that specifically includes sexual orientation and gender identity or expression are more likely than students at schools with a generic policy to report that they feel do not unsafe at school (54.4% vs. 45.1%).

- Enumeration gives teachers and other educators the tools they need to implement anti-bullying and harassment policies, which makes it easier for them to intervene to prevent bullying. School personnel often fear that they will themselves be targeted for intervening on behalf of LGBTQ students. When they can point to language that provides clear protection for LGBTQ students, they feel more comfortable enforcing the policy. Students reported that teachers were significantly more likely to intervene when they hear homophobic remarks most of the time or always in schools with comprehensive enumerated policies, as compared to schools with either non-enumerated policies or no policies at all (27.9% vs. 13.6% vs. 8.4%).
- Students whose schools have a policy that specifically includes sexual orientation and gender identity or expression are more likely than students at schools with a generic policy to report that they feel do not unsafe at school (54.4% vs. 45.1%).

ALL STATISTICS QUOTED ABOVE ARE FROM THE FOLLOWING TWO REPORTS:

Greytak, E. A., Kosciw, J.G., Villenas, C., & Giga, N. M. (2016). *From Teasing to Torment: School Climate Revisited, A Survey of U.S. Secondary Students and Teachers*. New York: GLSEN.

Kosciw, J. G., Greytak, E. A., Zongrone, A. D., Clark, C. M., & Truong, N. L. (2018). *The 2017 National School Climate Survey: The experiences of lesbian, gay, bisexual, transgender, and queer youth in our nation's schools*. New York: GLSEN.

STATE DEPARTMENT OF EDUCATION RESPONSIBILITIES

MODEL LANGUAGE

Section 3. State Department of Education Responsibilities

A. To assist school districts in developing policies for the prevention of bullying and harassment, the Department of Education shall develop and maintain a model policy that is:

1. Applicable to grades kindergarten through 12; and
2. Contains definitions of bullying and harassment consistent with this Act.

B. The Department of Education shall adopt rules to implement this legislation.

C. The Department of Education shall develop appropriate procedures for:

1. Investigating violations of this Act;
2. Reporting of and responding to failures to implement this Act by districts, schools, and administrators;
3. Reporting of incidents of bullying and harassment by districts and schools;
4. Publication of statewide statistics concerning bullying and harassment, as defined in this chapter; and
5. Filing complaints regarding district failure to develop and implement policies that provide the protections set forth in this chapter.

POLICY OBJECTIVES

- **Require the Department of Education (DOE) to maintain a model policy**
- **Require that the DOE Model Policy is consistent with the Act**
- **Grant DOE the responsibility to implement regulations**
- **Specify that DOE should develop procedures for investigating and responding to violations and publicizing bullying statistics**
- **Provide a procedure for filing complaints with the DOE**

Throughout this text, we have used the term Department of Education. Your state may use a slightly different term and you should modify your legislation accordingly.

STATE DEPARTMENT OF EDUCATION RESPONSIBILITIES

MODEL LANGUAGE

Section 4. District Responsibilities

A. Each school district shall adopt a policy prohibiting harassment and bullying as defined in this legislation. Such policies shall, at a minimum, incorporate the model policy established by the Department of Education.

B. Each school district shall adopt policies pursuant to this legislation that, at a minimum:

1. Prohibit bullying and harassment of all students, as specified and defined in this legislation;
2. Designate one person in the district as the primary contact regarding the anti-bullying and harassment policy. The primary contact shall receive copies of all formal and informal complaints, have responsibility for assuring the implementation of the policy and procedure, and serve as the primary contact on the policy and procedures between the school district and the Department of Education;
3. Require that school employees and trained volunteers who witness incidents of bullying or harassment, or possess reliable information that would lead a reasonable person to suspect that a person is a target of bullying or harassment, promptly report that information to the school principal and district designee;
4. Provide a procedure for prompt investigation of reports of

complaints of bullying or harassment, identifying either the principal or the principal's designee as the person responsible for the investigation;

5. Delineate the range of ways in which a school will respond once an incident of bullying or harassment is identified, including a range of age-appropriate consequences that may or will attach to the prohibited bullying and harassment;
6. Prohibit reprisal or retaliation against any person who reports an act of bullying or harassment and describe appropriate remedial action for a person who engages in reprisal or retaliation;
7. Allow for anonymous reporting while clarifying that no remedial action may be undertaken solely on the basis of an anonymous report;
8. Include a statement of how the policy is to be publicized, including that the school district's policy shall appear in new employee training materials, any publication of the school district that sets forth the comprehensive rules, procedures and standards of conduct for schools within the school district, and in any student handbook; and
9. Describe a process by which data on incidents of bullying and harassment shall be collected, reported and analyzed at least on an annual basis.

CONT.

DISTRICT RESPONSIBILITIES

POLICY OBJECTIVES

- **Ensure that the policy is mandatory in every school district**
- **Include a reporting procedure with a primary contact in each district**
- **Require a defined disciplinary process and consequences**
- **Provide protection from retaliation for those who report incidents**
- **Provide for initial anonymous reporting of incidents**
- **Require that policy must use definitions of bullying and harassment that include enumerated categories of students**
- **Require publication of the antibullying and harassment policy**
- **Require the incorporation of the model DOE policy**

You should note that school districts and schools will, in all cases, have an existing code of student conduct, which includes many of the provisions called for in the model legislation. Therefore many if not most of these requirements will not impose major new obligations on schools or districts. At most, schools and districts will be required to amend existing policies to include the specific projections set forth in the legislation.

This is one area in which you will want to carefully review existing state law. It is likely that your state already requires a student discipline code and, if so, you should consider presenting this legislation as an amendment to the legislation which requires the discipline code.

In some states, local control is a very important issue and legislation that appears to ignore or supersede local authority may face difficulties. In such situations, another option is to state that each local jurisdiction must adopt a policy “that has a definition of harassment and bullying no less inclusive than state law.”

TRAINING & PREVENTION PROGRAMS

In order to ensure that school staff and teachers are actually aware of district policies enacted under this law to prevent bullying and harassment, it is advisable to have a requirement that they be trained about the policy. Generally, training requires resources, which may present a stumbling block to getting this legislation passed, particularly in a poor economic environment. At a minimum, however, the District Responsibilities section should include a requirement that information regarding the policy be incorporated into training programs for new employees. Because most districts require training for new employees anyway, this will present few resource implications. For example:

C. Information regarding a local school district policy against bullying and harassment shall be incorporated into a school's employee training program.

Additionally, you may add a subsection encouraging but not requiring training and education programs to be developed at the district level. For example:

D. Schools and school districts are encouraged to establish programs designed to help eliminate bullying and harassment, and other initiatives involving school staff, students, administrators, volunteers, parents, law enforcement, and community members.

Alternately, you may require training at the local level if resources are later appropriated. For example:

- E. School districts are encouraged to; and to the extent funds are appropriated for these purposes, they are required to:*
1. At least annually ensure that all schools provide training regarding the school district's/ school's bullying and harassment policies that conform to this legislation to school employees and volunteers that have significant contact with students; and
 2. Develop and implement a program for discussing bullying and harassment issues and related school policies with all students.

SANCTIONS & CIVIL LIABILITY

MODEL LANGUAGE

Section 5. Sanctions and Civil Liability

- A. Any district or school not complying with the terms of this title shall be ineligible to receive state funds.
- B. This act is not intended to establish any private right of action.
- C. This act is not intended to limit the rights of any individual currently available under any other available law, civil or criminal.
- D. A school employee is immune from a cause of action for damages arising from any failure to remedy the reported incident, if they:
 1. Promptly report an incident of bullying or harassment to the appropriate official designated by the school district's policy; and
 2. Make this report in compliance with the procedures in the district's policy.
- E. A school employee, student or volunteer shall not engage in reprisal, retaliation or false accusation against a victim, witness or one with reliable information about an act of bullying or harassment.

POLICY OBJECTIVES

- **Allow for administrative sanctions, such as denial of funds for noncompliance**
- **Ensure that the language does not limit current legal remedies**
- **Create a provision for immunity, so that the Act encourages teachers who witness bullying to report it**
- **Forbid reprisals or false accusations against those who bring complaints and witnesses**

MISCELLANEOUS

MODEL LANGUAGE

Section 6. Miscellaneous

- A. The provisions of this title shall be severable, and if any court of competent jurisdiction declares any phrase, clause, sentence or provisions of this title to be invalid, or its applicability to any government agency, person or circumstance is declared invalid, the remainder of this article and its relevant applicability shall not be affected.
- B. The provisions of this article shall be liberally construed to give effect to the purposes thereof.
- C. Nothing in this title is intended to interfere with the First Amendment rights of free speech and expression of any person affected.

PRIVATE RIGHTS OF ACTION

You may decide to propose legislation that establishes a student's right to sue a school or district for failure to adhere to the requirements of this law. If you want the legislation to include such a private cause of action, it must be spelled out in the legislation. A court will typically not infer a private right of action where the legislation is not specific. Ideally, this provision should specify that monetary damages, injunctive relief, and any other appropriate relief may be awarded for a violation of the statute.

It is also important to make clear that any remedies specifically provided by the legislation do not waive one's right to pursue other legal remedies. For example, the California law provides that, "It is the intent of the Legislature that ... the remedies provided herein shall not be the exclusive remedies, but may be combined with remedies that may be provided by the above statutes." Cal. Educ. Code § 201(g).

It is important to note that a private cause of action may prove to be very controversial and may create larger challenges in getting your legislation passed. Creating a private right of action can be a very complex issue, and you should consult with an attorney familiar with this area of the law before proceeding. In addition, when considering whether to create a private right of action, you should be familiar with sovereign immunity principles in your state. Sovereign immunity is the principle that the government is generally immune to law suits unless it consents to be sued.

POLICY OBJECTIVES

- **Allow for severability so that provisions of the Act may remain in effect even if other sections are found unconstitutional**
- **State that the Act should be interpreted liberally in order for judges to consider the intent of the law, as laid out in Section 1**
- **Ensure that the Act is not intended to interfere with any individual's freedom of expression**



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