

MODEL STATE ANTI-BULLYING AND HARASSMENT LEGISLATION

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**Model Language,
Commentary,
and References**

MODEL STATE ANTI-BULLYING AND HARASSMENT LEGISLATION

Model Language, Commentary, & Resources

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GLSEN is a non-profit organization dedicated to the improvement of educational experiences and learning environments in grades kindergarten through 12 (K–12) for all students, regardless of their sexual orientation, gender identity, gender expression, race, disability status, national origin, ethnicity, and/or religion. GLSEN works in collaboration with students, educators, and lawmakers to advance evidence-based solutions in the improvement of school climate and culture for all students and educators. Over the past two decades GLSEN has been a leading champion in the passage of state laws that expand protections for students who experience bullying and harassment. The Model State Anti-Bullying and Harassment Legislation presented here includes GLSEN’s recommendations on how to structure these important bills that are designed to protect all students. If you have any questions about the model legislation, please contact GLSEN’s Public Policy Office at policy@glsen.org.

Acknowledgements:

With thanks to state legislators whose anti-bullying and harassment legislation inspired many of the new components included in this model policy, staff across GLSEN Departments for their feedback, and colleagues in partner organizations for their review, including staff from the National Center for Transgender Equality and the National Center for Lesbian Rights.

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LEGISLATIVE PURPOSE & FINDINGS

Policy Objectives

- Explain the context and need for the legislation.
- Apply research that informs legislative components.
- If appropriate, mention particular local needs or recognized incidents.

This statement explains why anti-bullying and harassment legislation is important. It outlines the legislative intent of the law that can serve as reference in the context of relevant court cases. The inclusion of this section— which describes the importance of creating a safe school environment, and the ways in which bullying and harassment adversely affects students —can help in the implementation and enforcement of the law.

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. Bullying and harassment foster a climate of fear and disrespect that can seriously impair the physical and psychological health of its victims, creating conditions that negatively affect learning, thereby undermining the ability of students to achieve their full potential;
2. Bullying and harassment contribute to high dropout rates, increased absenteeism, and academic underachievement;
3. Bullying and harassment include a range of behaviors that negatively impact a student's ability to learn and participate in educational opportunities and activities that schools offer. Such behaviors can include hitting or punching, biased language and use of slurs, intimidation through gestures or social exclusion, and sending insulting or offensive messages through electronic communications, such as internet sites and social networks, e-mail, instant messaging, texting, telephone, or any other means;
4. Schools with enumerated anti-bullying and harassment policies have an increased level of reporting and teacher intervention in incidents of bullying and harassment, thereby reducing the overall frequency and number of such incidents;
5. Students are commonly targeted for bullying and harassment on the basis of their actual or perceived race, color, national origin, sex, disability status, sexual orientation, gender identity, or religion, among other categories;
6. Some young people experience a form of bullying called relational aggression or psychological bullying, which harms individuals by damaging, threatening, or manipulating their relationships with their peers, or by injuring their feelings of social acceptance;
7. Interventions to address bullying and harassment should incorporate evidence-based discipline policies and practices, such as Positive Behavior Interventions and Supports (PBIS) and other restorative practices that can minimize suspensions, expulsions, and other exclusionary and harmful discipline practices to ensure that students are not "pushed-out" or diverted to the juvenile justice system;
8. Perpetrators of bullying and harassment often have a history of trauma or psychological distress, or have been bullied themselves. These students, often discussed as "bully-victims," require additional trauma-informed interventions and consideration; and
9. Students, parents, educators, and lawmakers have come together to call for leadership and action to address bullying and harassment in our schools.

DEFINITIONS & SCOPE OF PROSCRIBED CONDUCT

POLICY OBJECTIVES

- Make the Act applicable to all K–12 public schools and school-related activities.
- Ensure that definitions of bullying and harassment focus on the effect rather than intent of behavior.
- Enumerate specific categories that will be explicitly protected under the law, e.g. sexual orientation, gender identity, and gender expression.
- Provide separate definitions of bullying and harassment.

To maintain consistency between various state anti-bullying and harassment laws, as well as federal law, legislators should consider using the definitions of bullying and harassment provided here. In some cases, state legislatures have defined bullying and harassment coextensively— as if they were the same thing. 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” rather than their intent, educators are more readily able to focus on improving outcomes for all students.

Enumeration

Anti-bullying and harassment legislation that applies to K–12 education is designed to address the needs of students who experience victimization in their schools. The most effective policies require protections for all students and also specify, or enumerate, categories of students who are particularly vulnerable due to bias and who research shows experience the highest rates of victimization. State anti-bullying and harassment legislation, and local education agency policies, should specifically protect students based on their actual or perceived race, color, national origin, sex, disability status, sexual orientation, gender identity or expression, ethnicity and religion.

Enumeration of protected categories is necessary to protect all students as research has consistently shown that students experience less bullying, feel safer overall, and that teachers are more likely to intervene to prevent incidents of bullying in schools with enumerated policies. Research conducted by GLSEN

MODEL LANGUAGE

Section 2. Definitions and Scope of Proscribed Conduct

A. This Act applies to conduct occurring on and adjacent to 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, school computers, networks, forums, and mailing lists.

B. As used in this Chapter:

1. The term ‘bullying’ used in this Act:

- a. Means conduct that 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 fear of physical harm.
- b. Can include, but is not limited to, conduct based on:
 - (i) a student’s actual or perceived race, color, national origin, sex, disability status, sexual orientation, gender identity, gender expression, ethnicity, religion; or
 - (ii) other distinguishing characteristics that may be defined by a state or local education agency; or
 - (iii) association with a person or group with one or more of the actual or perceived characteristics listed in (i) or (ii).

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Enumeration *(cont'd)*

found that students who attended schools with an enumerated policy heard fewer homophobic and racist remarks compared to students with no anti-bullying policy. Students were more likely to feel unsafe in schools with generic policies or no policies. These students were also less likely to perceive bullying, name-calling, or harassment as a problem at their school compared to students in schools with a generic policy or with no policy. Additional findings:

- Students from schools with an enumerated policy hear less often the expressions “that’s

so gay” or “you’re so gay” (47.2% vs. 63.3%), and sexist remarks (49.4% v. 64.9%) than students attending schools with a generic policy, and hear less often racist remarks (33.7% v. 44.1%) than students attending schools without any policy.

- LGBTQ+ students who attend schools with an enumerated policy experience less victimization in school based on their sexual orientation (17.5% v. 30.8%) or gender expression (22.6% v. 31.6%) than students who attend a school with a generic policy.
- Educators in schools with enumerated anti-bullying policies reported higher levels of comfort addressing bullying based on sexual orientation (77.7% v. 53.9%) and gender expression (72.3% v. 52.2%) than educators in schools with no anti-bullying policy.
- Educators report feeling “somewhat” or “very comfortable” intervening in bias-based bullying behavior based on sexual orientation (77.7%), gender expression (72.3%), and race (80.5%) in schools with an enumerated anti-bullying policy.

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.

MODEL LANGUAGE *(cont'd)*

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 of the conduct; and
 - b. Can include conduct based on a student’s actual or perceived race, color, national origin, sex, disability status, sexual orientation, gender identity, gender expression, ethnicity, 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).

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STATE EDUCATION AGENCY RESPONSIBILITIES

POLICY OBJECTIVES

- Require the State Education Agency (SEA) to author and publish an up-to-date model policy.
- Require that Local Education Agency (LEA) policies are in compliance with the legislation.
- Grant SEAs the responsibility to issue guidance, regulations, and provide technical assistance.
- Address the unique needs of transgender, non-binary, and gender-nonconforming students as part of the legislation.
- Specify that SEAs should develop procedures for monitoring LEA policy adoption, collecting local and aggregated statewide data on incident reports that inform efforts to strengthen bullying prevention programs, and a reporting mechanism to identify LEAs and schools that are non-compliant

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Section 3. State Education Agency Responsibilities

- A. To assist LEAs in developing policies for the prevention of bullying and harassment, the SEA shall develop and maintain a model LEA policy that is:
1. Applicable to grades under their governance, including but not limited to, pre-K, and kindergarten through 12;
 2. Contains definitions of bullying and harassment consistent with this Act; and
 3. Contains enumeration of protected student categories and other requirements consistent with this Act.
- B. Hire a safe school specialist who will identify evidence-based training resources and provide additional technical assistance on LEA policy implementation that incorporates state bullying prevention standards.
- C. The SEA shall issue guidance on how to implement this legislation, including:
1. Guidance on LEA policy adoption and implementation; and
 2. Guidance on the needs of transgender, non-binary, and gender-nonconforming students that, at minimum, addresses—
 - a. maintenance of a safe and supportive learning environment free from discrimination and harassment for all students;
 - b. terms, definitions, and discussion of gender identity and expression;
 - c. maintenance of gender, name, and pronoun information to reflect a student's gender identity;
 - d. protection of student privacy and the confidentiality of sensitive information;
 - e. student participation in sex-segregated school activities and events, including athletics, and use of school facilities; and
 - f. compliance with all applicable state and local nondiscrimination and privacy laws or ordinances.
- D. The SEA shall develop appropriate procedures for--
1. Monitoring LEA compliance with policy adoption and implementation;
 2. Collecting reports on incidents of bullying and harassment from LEAs and schools while maintaining student confidentiality;
 3. Biannual publication of statewide statistics concerning bullying and harassment that are disaggregated by enumerated characteristics, as defined in this chapter;
 4. Reporting of and responding to failures to implement this Act by LEAs, schools, and administrators;
 5. Investigating violations of this Act; and
 6. Filing complaints regarding district failure to develop and implement policies that provide the protections set forth in this chapter.

LOCAL EDUCATION AGENCY RESPONSIBILITIES

POLICY OBJECTIVES

- Specify that LEA policy adoption and implementation is required and must align with the legislation.
- Establish LEA procedures for managing and reporting incidents of bullying and harassment.
- Establish the use of restorative vs. punitive disciplinary process and consequences in response to incidents of bullying and harassment.
- Require publication of the anti-bullying and harassment policy on the LEA website and distribution through other communications channels.
- Require professional development for educators and training for students.

Section 4. Local Education Agency Responsibilities

- A. Each LEA shall adopt a policy prohibiting harassment and bullying as defined in this legislation. Such policies shall, at a minimum, be consistent with the model policy established by the SEA.
- B. Each school district shall adopt policies pursuant to this legislation that, at minimum--
 1. Are based on the state model policy that incorporates all requirements that are 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 LEA and SEA;
 3. Require that school employees and volunteers who witness incidents of bullying or harassment, or possess reliable information that would lead a 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 and 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;
 6. Encourage positive and preventative approaches to school discipline that minimize students' removal from instruction and ensure that students are not subject to disproportionate punishment;
 7. 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;
 8. Allow for anonymous reporting while clarifying that no remedial action may be undertaken solely on the basis of an anonymous report;

Family Notification of Bullying and Harassment Incidents Based on Anti-LGBTQ+ Bias

Most LGBTQ+ students never report incidents of harassment or assault to school staff, commonly because they fear being outed as LGBTQ+ to staff or to family members; 96.6 percent of LGBTQ+ students said they did not always report these types of victimization experiences. Further, 10.8 percent of LGBTQ+ students reported that school staff had actually outed them to their families without their permission. In recognition of potential harms to students from being outed to parents, caregivers, or other family members who may not affirm their sexual orientation, gender identity, and/or gender expression, educators should create family notification plans at the LEA and school levels for processing reports of bullying and harassment based on sexual orientation, gender identity, and gender expression.

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

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9. Include a statement of how the policy is to be publicized, including that the LEA policy shall appear in new employee training materials, LEA website, any publication of the LEA that sets forth the comprehensive rules, procedures and standards of conduct for schools within the school district, and in any student handbook;
10. Describe the process for maintaining student confidentiality while reporting incidents that are disaggregated based on enumerated characteristics to the SEA at least on a biannual basis.
11. Establish a procedure for the custodial parent or guardian of any student involved in a prohibited incident be notified. The procedure shall take into account the circumstances of the incident when communicating with parents, caregivers, and other family members to ensure the safety and wellbeing of the student.
12. Incorporate bullying and harassment prevention policies into employee training programs for any new employee.
13. Ensure that all schools provide evidence-based training regarding bullying and harassment policies to school employees and volunteers that have significant contact with students, on an annual basis.
14. Implement an evidence-based program for discussing bullying and harassment issues and related school policies with all students.

SEA Supports for LEA Policy Adoption and Implementation

Once legislation is passed, these laws often require LEAs to adopt a policy that incorporates all of the requirements of the state standards. This process authorizes and serves as a catalyst for implementation of the state law in schools under an LEA's jurisdiction. A 2015 study conducted by GLSEN found that over 26% of LEAs had not adopted an anti-bullying policy as required by state law. In states with laws enumerating sexual orientation and gender identity, 38.7% and 60.3% of LEAs were not including similar protections in their policies, respectively.

SEAs can encourage and accelerate comprehensive LEA policy adoption and implementation at the school level by providing additional support. SEAs should author and disseminate a statewide model LEA policy and related guidance. GLSEN's research shows that the availability of SEA guidance on adoption and implementation of anti-bullying and harassment laws was the strongest predictor of the inclusion of key characteristics (LGBTQ+ enumeration, professional development requirements, and accountability stipulations) in LEA policies. SEAs across the country have recognized the need to promulgate guidance to address the unique needs of students who are transgender, non-binary, gender-nonconforming and are protected under fully enumerated anti-bullying and harassment laws. In some states, including Maryland and Iowa, SEAs have developed data collection systems for statewide reporting on bullying and harassment incidences. At least two states — Illinois and Delaware — have created an inventory of all LEA bullying and harassment policies to help monitor and encourage policy adoption and implementation that is in alignment with state legislation.

Lawmakers might consider adding the following language from existing legislation to future bills to establish a process for collecting and providing technical assistance to LEAs on policy adoption using the following language from Illinois:

Additional Provision on Establishing Anti-Bullying and Harassment Task Forces

As educators know, local communities have unique characteristics which play a role in the types of programs that can remove barriers to LGBTQ+ safety and educational attainment effectively. At least 13 states and the District of Columbia have convened anti-bullying and harassment task forces to help identify ways to make schools safer. These efforts can be a valuable resource for evaluating implementation of anti-bullying and harassment legislation. In addition to creating recommendations on new ways to strengthen existing legislation, these bodies conducted research and organized community listening sessions to better understand existing issues and programs. Educators, students, school counselors, and other community leaders on these task forces helped guide the content of regulations and model policies that state agencies subsequently issued. Local leaders and participants crafted recommendations on professional development for educators and anti-bullying and harassment trainings for students.

Task forces have the potential to provide leadership on a broader set of issues. For example, task force members can examine the work of advocates in a growing number of states who are building support for the adoption and implementation of inclusive curricular standards. In 2019, Maryland became the sixth state to approve the addition of LGBTQ+ inclusive curricular standards following Illinois, California, New Jersey, Colorado, and Oregon. Other jurisdictions have amended their statewide curricular standards to include the experiences of persons with disabilities and communities of color in K–12 curriculum.

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SEA Supports for LEA Policy Adoption and Implementation (cont'd)

Every 2 years, each school district, charter school, and non-public, non-sectarian elementary or secondary school shall conduct a review and re-evaluation of its policy and make any necessary and appropriate revisions. The policy must be filed with the State Board of Education, after being updated. The State Board of Education shall monitor and provide technical support for the implementation of policies

To effectively evaluate and establish accountability on making progress to make schools safer for all students, legislators might also consider incorporating elements from Maryland's Safe Schools Reporting Act of 2005:

FOR the purpose of requiring the State Department of Education to require a county board of education to report certain incidents against certain students; authorizing certain persons to file a report regarding certain incidents; requiring the State Department of Education to create a standard victim of harassment or intimidation report form; providing for the contents and distribution of a certain form; requiring a county board to submit summaries of a certain form to the State Department of Education on or before a certain date each year; requiring a county board to delete identifying information from certain forms under certain circumstances; requiring the State Department of Education to submit a certain report on or before a certain date each year to certain committees consisting of certain information relating to victim of harassment or intimidation reports filed with county boards; providing for the termination of this Act; and generally relating to reporting incidents of harassment or intimidation of students at public schools

GLSEN (2020). Case Studies: State Education Agency Supports for Implementation of Enumerated Anti-bullying and Harassment Laws. Washington, DC: GLSEN.

Kull, R.M., Kosciw, J.G., & Greytak, E.A. (2015). From Statehouse to Schoolhouse: Anti-Bullying Policy Efforts in U.S. States and School Districts. New York: GLSEN

Additional Provision on Establishing Anti-Bullying and Harassment Task Forces (cont'd)

The sample language on establishing a taskforce that is included below was adopted from H.R. 5286 STOP Bullying Act of 2019 sponsored by U.S. Representative Raja Krishnamoorthi (IL-8):

There is established a task force for the purpose of strengthening bullying and harassment prevention efforts across the state.

- *The task force shall evaluate and make recommendations on implementation of the [name of existing legislation];*
- *The task force shall conduct an evaluation of state and local policies and practices that will inform recommendations submitted to the Chief Education Officer;*
- *The task force shall evaluate and submit recommendations on teacher, parent, and student education with respect to bullying and harassment.*

To better facilitate community leadership in policy evaluation and development, legislators

might consider adding specific language to enumerate participating individuals, and ensure inclusion for different voices and perspectives:

Chair – The Chief Education Officer shall designate one individual to serve as the chair of the task force.

Composition – The Chair shall designate at least 11 additional task force members and at least one individual from each of the following categories to serve on the task force:

- *At least one teacher at elementary schools and/or secondary schools;*
- *At least one school administrator;*
- *At least one parent of students;*
- *At least one K–12 student;*
- *At least one guidance counselor;*
- *At least one child psychologist;*
- *At least one paraprofessional;*
- *At least one lawyer;*
- *At least one representative from a community-based organization who specializes in providing supportive services to students who identify as lesbian, gay, bisexual, transgender, or queer; and*
- *At least one individual from the State Education Agency office focused on school improvement and school climate.*

It is important that a process and timeline be established for reporting and publicizing task force recommendations to the Chief Education Officer, who has responsibility for overseeing the state's bullying prevention efforts. Sample language on reporting to the Chief Education Officer is available here:

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Additional Provision on Establishing Anti-Bullying and Harassment Task Forces *(cont'd)*

Each year the task force shall submit a report to the Chief Education Officer containing—

- the annual findings and conclusions of the task force;
- the recommendations of the task force for legislation or administrative actions; and
- best practices with respect to bullying in elementary schools and secondary schools that includes recommendations for how—
 - to address and reduce bullying;
 - to best educate all relevant school staff on recognizing bullying; and
 - parents can best address and discuss with their children the early warning signs of bullying.

SANCTIONS & CIVIL LIABILITY

It is important to hold schools and districts accountable to the requirements laid out in the legislation. This section sets out how schools or districts will be investigated, notified, and held responsible for a failure to comply with the law. Additionally, it addresses the possibility of retaliation, ensuring that reporting parties are safe from retaliatory action.

Private Rights of Action

Legislators may decide to introduce bills that establish a private right of action that will allow students to seek legal recourse in response to failures to adhere to the requirements of anti-bullying and harassment laws. 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 law. Additionally, the legislation should specify the standard of liability: school districts are liable for failing to effectively respond to incidents of bullying and harassment when the school had constructive notice of the incident or its effects and the incident or its effects are sufficiently severe or pervasive to deny a protected student equal access to educational opportunity. The knowledge of school personnel shall be imputed to the school and district.

It is important to note that including a private right of action in legislation has been met with opposition during previous efforts to pass anti-bullying and harassment laws, and involves addressing significant legal questions. In addition to addressing potential political concerns, legislators should seek consultations from local legal experts with subject matter expertise. Legal experts might provide helpful

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.

MODEL LANGUAGE

Section 5. Sanctions and Civil Liability

- A. Any district or school found or believed to be out of compliance shall be subject to investigation by the governing SEA. The SEA will issue a report, detailing guidance for compliance. Following such an investigation and report, a district or school shall be given one month to make appropriate changes to be in compliance with the law. Failing to make appropriate changes, the governing SEA will seek a court order declaring the school or district to be in violation of state law, thereby deeming the LEA ineligible for state funding.
- B. This act is not intended to limit the rights of any individual currently available under any other available law, civil or criminal.
- C. 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.

advice on making sure remedies specifically provided by the legislation do not waive student'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).



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