



## Model State Anti-Bullying & Anti-Harrasment Legislation: Model Language, Commentary and References

*This document explains the purpose and intent of our Model State Anti-Bullying & Anti-Harrasment Legislation, section by section. 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.*

### Legislative Purpose and Findings

*The Legislature finds and declares that:*

- *All students have the right to participate fully in the educational process, free from bullying and harassment;*
- *A safe and civil environment in school is necessary for students to learn and to achieve high academic standards;*
- *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*
- *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.*

You should include a statement that 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.

### Definitions and Scope of Proscribed Conduct

**(Essential)** *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.*

*The term 'harassment' used in this act means conduct that is:*

- a. *is directed at one or more students*
- b. *substantially interferes with educational opportunities, benefits or programs of such students; and*
- c. *adversely affects the ability of a student 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, pervasive, and objectively offensive.*
- d. *Is 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, or based on association with any person identified above, that may be define by a State or local educational agency.*

*The term 'bullying' used in this act means conduct that:*

- a. is directed at one or more students*
- b. substantially interferes with educational opportunities, benefits or educational programs of such students;*
- c. adversely affects the ability of a student to participate in or benefit from the school's educational programs or activities by placing a student in reasonable fear of physical harm;*
- d. is based on a student's actual or perceived race, color, national origin, sex, disability, sexual orientation, gender identity or expression, religion, or any other characteristics determined by the state department of education or local school district; and*
- e. is based on association with any person identified above.*

State laws tending to treat public and private schools differently. You should determine whether it's possible, in your state, to reach private schools and whether there will be higher levels of resistance. If the proposed legislation is intended to govern private schools, consider the necessity of including an exception applicable to certain religious schools.

Some legislation of this type will also purport to cover activities that take place at school bus stops. While we recognize that bullying does take place at bus stops, it is extremely difficult to argue that the school has effective control over activities that take place on property that is clearly not owned by the school.

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 likely help in defending the proposed legislation from the claim that it interferes with First Amendment free expression rights.

Whenever possible, you should use the federal definition of harassment as we have here. This eliminates confusion and inconsistencies between state and federal rules and result in less risk of the proposed legislation being attacked on federal constitutional grounds.

Enumerated categories is a key element in making sure that the legislation will protect LGBT students.

Enumeration removes all doubt that LGBT youth are protected, makes it easier for school officials to intervene, and gives LGBT youth the security of knowing they have protection. In addition, enumerated categories can allow you to reach out to other organizations for political support.

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.

This section reinforces the importance of this legislation by ensuring consequences should a particular district fail to develop and maintain a policy.

## **State Department of Education Responsibilities**

***(Optional)** 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 applicable to grades kindergarten through 12.*

*The Department of Education shall develop appropriate procedures for investigating, reporting and responding to district or school violations of this law, including the establishment of state administrative processes for complaints regarding district failure to develop and implement policies that provide the protections set forth in this legislation.*

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

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.

This section reinforces the importance of this legislation by ensuring consequences should a particular district fail to develop and maintain a policy.

## **District Responsibilities**

*Each school district shall adopt a policy prohibiting harassment and bullying as defined in this legislation.*

***(Optional)** Such policies shall be adopted through a process that includes representation of parents or guardians, school employees, volunteers, students, administrators, and community representatives.*

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

- *Prohibit bullying and harassment of all students, as specified and defined in this legislation;*
- *Describe the range of age-appropriate consequences that may or will attach to the prohibited bullying and harassment;*
- *Require that school employees witnessing incidents of bullying or harassment report that information to the school principal or other appropriate school and district authorities;*
- *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;*
- *Delineate the range of ways in which a school will respond once an incident of bullying or harassment is identified;*
- *Include a statement that prohibits reprisal or retaliation against any person who reports an act of bullying or harassment and the consequence and appropriate remedial action for a person who engages in reprisal or retaliation; and*
- *Include a statement of how the policy is to be publicized, including notice that the policy applies to conduct on school premises, during school-sponsored functions, and on transportation provided by the*

*school or district. (Notice of the school district's policy shall appear in 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.)*

- **(Optional)** *Describe a process by which data on incidents of harassment bullying shall be collected and reported.*

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

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 restrictive than the one contained herein."

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 existing legislation.

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.

## **Sanctions and Civil Liability**

*Any district or school not complying with the terms of this title shall be ineligible to receive state funds.*

*This act is not intended to establish any private right of action. (Optional: Include the above sentence only if you do not intend to create a private cause of action).*

*This act is not intended to limit the rights of any individual currently available under any other available law, civil or criminal.*

*Employee immunity from suit: A school employee who promptly reports an incident of bullying or harassment, to the appropriate school official designated by the school district's policy, and who makes this report in compliance with the procedures in the district's policy, is immune from a cause of action for damages arising from any failure to remedy the reported incident.*

There are two basic paths for establishing consequences for failure to adhere to this legislation: administrative (through an agency, such as a state department of education) and judicial (through the courts). See "Key Points of Focus" section for more detail.

At a minimum, language should establish state administrative consequences associated with a school or district's failure to adhere to the legislation.

You may also 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 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.

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. This is one area where you will want to review existing law and speak with any supporters you have in the legislative arena.

## **Retaliation**

*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.*

## **Training and Prevention Programs**

*(Optional) Schools and school districts are encouraged to establish bullying and harassment prevention programs, and other initiatives involving school staff, students, administrators, volunteers, parents, law enforcement and community members.*

*School districts shall: (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.*

A section such as this has clear resource implications so you should consider whether this type of clause will succeed in your state. Outside of the political implications, some states do not allow legislation of this type to include spending mandates.

## **Miscellaneous**

*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. The provisions of this article shall be liberally construed to give effect to the purposes thereof.*

*Nothing in this title is intended to interfere with the First Amendment rights of free speech and expression of any person affected.*

This section does two things. First, it clarifies that if one portion of this legislation is found to be invalid, the rest of the legislation will remain in effect. Second, it states that this legislation is to be "liberally construed." Basically, this serves as a reminder that the basic intent of the legislation is to protect students from bullying and harassment. Therefore, if a court is determining what any of the actual text means, it should do so with this in mind.