

Bullying Prevention State Laws

Introduction

Although school-related bullying has been a long-standing problem, the past decade has seen a dramatic shift in its public perception. Once viewed as a normal part of growing up or as a rite of passage, bullying is now being seen as a deeply harmful and unacceptable behavior that must be stopped and prevented. As a result, schools are now being required to accept professional and legal responsibility for taking the lead in our society to ensure that students will be safe to learn in bullying-free environments. To date, 47 states have passed bullying prevention legislation requiring schools to take leadership in addressing this problem. Safe Schools /Healthy Students (SS/HS) initiatives are at the forefront of developing, implementing, and evaluating bullying prevention programs and practices that protect students from harm and create a positive school culture, allowing for the greatest possible academic, social, and emotional achievement of all students.

Bullying has recently received unprecedented public attention due to highly publicized tragic cases of bullying-related suicides, graphic first-hand accounts and depictions of the bullying behavior in the media, and a growing public awareness of a relatively new form of bullying—cyberbullying. The first-ever White House Conference on Bullying was held on March 10, 2011, coinciding with the release of the updated resource website www.StopBullying.gov (White House, 2011). Research presented at this conference indicated that almost 30 percent of students in the United States are affected by bullying each month, (Bell & Spencer, 2006) and the potential negative effects of bullying are deep and long lasting. As identified by the U.S. Department of Education, Office for Civil Rights, these effects can include the following:

- Lowered academic achievement and aspirations
- Increased anxiety
- Loss of self-esteem and confidence
- Depression and post-traumatic stress
- General deterioration in physical health
- Self-harm and suicidal thinking
- Feelings of alienation in the school environment, such as fear of other children
- Absenteeism from school

Bullying can happen in schools in any state, county, or district, and it affects students of all ages, beginning as early as preschool. According to the 2011 National Education Association's Nationwide Study of Bullying, 43 percent of school staff surveyed reported that bullying was a moderate or major problem at their elementary or secondary school. (Bradshaw et al., 2011)

Historic View of State Legislation

In the early 2000s, an increased focus on school bullying and violence occurred due to several high-profile U.S. school shootings, including the most infamous one at Columbine High School. In nearly 75 percent of these school shooting events, the perpetrators reported that they felt "persecuted, bullied, or threatened by their school peers" (Limber & Small, 2003). These tragic events, in part, prompted legislation to address school climate and violence, including bullying prevention statutes. The first state to enact a bullying prevention law was Georgia in 1999. By 2003, 15 states had enacted laws to address school-related bullying. The development of legislation was a significant milestone in recognizing bullying as a distinct form of violence requiring individual attention and response.

Most of the original bullying prevention laws were incorporated into larger, pre-existing school safety plan mandates, although only 9 of the 15 states included a distinct definition and scope of bullying (Limber & Small, 2003). Most of these original laws focused solely on physical forms of aggression, ignoring more indirect acts, such as social exclusion. As part of a nationwide survey on school bullying prevention laws, researchers at Clemson University identified five common elements in state statutes existing in 2003: (Limber & Small, 2003)

1. A requirement or encouragement for administrators to develop a bullying prevention policy as part of a larger school safety plan
2. Encouragement for schools to implement bullying prevention programs
3. Inclusion of provisions for employee training on bullying prevention and/or model policies to address the unique identification and intervention needs of bullying prevention
4. A requirement or encouragement for individuals to report bullying to authorities
5. Inclusion of disciplinary action for perpetrators of bullying

Only West Virginia's law addressed the importance of developing plans to protect the victims of bullying, and only two states included the need for improving communication among staff and students related to bullying (Limber & Small, 2003). Identifying these common trends was an encouraging development; however, it also became apparent that the state laws lacked cohesive policies across states, likely the result of just how new these types of policies were.

The years following this initial legislation saw an increase in state and federal attention to bullying prevention. By 2007, 35 states had passed school-related bullying prevention legislation. Many of these laws were increasingly more comprehensive in scope; however, states still differed in how they defined bullying. Many states continued to include bullying prevention policies as part of general harassment and school safety protocols (Srabstein et al., 2008). Some changes included 21 states recognizing that bullying can have serious health consequences and 24 states encouraging local school boards to develop bullying prevention programs, highlighting the important connection between bullying and school climate (Srabstein et al., 2008 & Bradshaw et al., 2011).

Current View of State Legislation

Currently, 47 states have bullying prevention laws; the exceptions are Michigan, Montana, and South Dakota. School districts in these states are nevertheless also responsible for preventing and responding to bullying incidents. The past few years have seen an increase in bullying-related lawsuits. Many of these cases are based on a school's alleged failure to appropriately respond to reports of bullying when the school had a bullying prevention policy in place. The Massachusetts Department of Education has created a guiding document addressing what elements should be included in a comprehensive bullying prevention policy, available at <http://www.doe.mass.edu/news/news.aspx?id=5680>.

A recent legislative trend has been for state laws to include statutory due dates for policy development and enactment. To stay ahead of the curve, it is important for SS/HS school districts to view these due dates not only as deadlines for having a school board approve a policy, but also as a deadline for school districts to have both a written, approved policy and all staff trained and prepared to implement these protocols at the classroom level (Education Development Center, 2010).

Another increasingly common element found in state legislation is the requirement of having a bullying prevention program in place to contribute to the school's prevention and intervention plan, and some states specify that the program must be evidence based. This component can be challenging since most states have not appropriated specific funds for the implementation and evaluation of bullying prevention programs. SS/HS initiatives are well positioned to include a bullying prevention program in their school's overall plan.

In addition to programming components, state laws increasingly specify reporting standards for bullying incidents. In fact, both Iowa and Ohio require an annual tally and public reporting of all bullying incidents. If your SS/HS site has a similar requirement, your communications specialist may be helpful in

framing communication with parents, staff, and community partners about reported bullying instances. The laws in several states (e.g., Georgia and Massachusetts) specify that schools need to provide ways to make anonymous reports available, such as a tip line or a texting service. Under some statutes, teachers and other adults can be considered mandatory reporters for bullying. In Mississippi, for example, the law states that school staff “shall” report bullying, while adult volunteers “should” report these incidents. No current laws penalize student bystanders for not stepping in. Given the positive impact that student bystanders can have, this may be an important area to promote as part of your SS/HS programming (Storey et al., 2008).

It is important for schools to create not only effective methods for reporting but also a climate in which students feel comfortable reporting bullying incidents. A 2007 survey, administered by the Regional Education Laboratory Northeast and Islands at Education Development Center, Inc., found that 64 percent of students surveyed replied that bullying incidents were most likely not reported (Education Development Center, 2010). Levels of reporting differed based on the type of bullying. Bullying was more likely to be reported when it included “injury, physical threats, destruction of property, physical contact, greater frequency, multiple types, more than one location, or at least one occurrence on a school bus” (Education Development Center, 2010). These results coincide with those of the 2011 *National Education Association’s Nationwide Study of Bullying*, which found a divide between how students and school staff viewed bullying, thus creating a disincentive for students to report bullying if they felt that the staff would not appropriately handle the situation (Bradshaw et al., 2011). Taken together, these findings highlight the importance of schoolwide training and education programs for staff. In fact, the most effective bullying prevention programs include multi-level, whole-school, and community components (Bradshaw et al., 2011). Programs of this type are aligned with the overarching goals of SS/HS and reflect how SS/HS sites are well positioned for this work.

Other important recent legislative trends include the addition of specific provisions for (a) cyberbullying; (b) lesbian, gay, bisexual, transgender, and questioning (LGBTQ) students; and (c) students with disabilities. The Kansas law includes a specific definition of cyberbullying to mean “bullying by use of any electronic communication device through means including, but not limited to, e-mail, instant messaging, text messages, blogs, mobile phones, pagers, online games and websites” (Ryerson, 2011). Oregon, for example, recently added a cyberbullying mandate as part of its state law. On April 26, 2010, the Oregon senate unanimously voted to support a bill that requires school staff to report instances of cyberbullying (Melton, 2011).

According to the 2011 *National Education Association's Nationwide Study of Bullying*, staff was generally least comfortable addressing bullying related to sexual orientation, highlighting the need for school districts to create policies that address bullying targeted at LGBTQ students (Bradshaw et al., 2011). This is especially important given that LGBTQ students have been shown to be at a higher risk for bullying. The California legislature recently addressed this issue by introducing a bill that requires school districts to “increase anti-bullying efforts, provide a system to make sure reports are addressed immediately, and to create anti-harassment policies and programs that include bullying based on perceived or actual sexual orientation, if they don't already exist” (Tucker, 2011).

Research has also shown that students with disabilities are two to three times more likely than students without disabilities to be victims of bullying, and the bullying they experience is more chronic in nature and usually directly related to their disability (Bell & Spencer, 2006). Some studies have found that 60 percent of students with special needs report being bullied (Ability Path, 2011). Massachusetts recently included a provision in its state law requiring schools to have a plan in place to “address the skills and proficiencies needed to avoid and respond to bullying, harassment or teasing” of any student with an Individualized Education Program (Ryerson, 2011).

Elements of a Bullying Prevention Plan

In addition to the trends described above, several elements should be included when creating or revising a district policy based on your state's law: (Ryerson, 2011)

- **Definition and scope:** Having a clear definition and scope of what constitutes bullying is critical for both educational purposes and liability protection. Some states require districts to define bullying, and it is increasingly common for bullying definitions to include language about power dynamics, repetitive behaviors, and social exclusion. For example, Illinois defines bullying to mean “any severe or pervasive physical or verbal act or conduct, including communication made in writing or electronically, directed toward a student...”
- **Protection:** It is also important to include some means of protection for students against reprisal, retaliation, or false accusations. There also needs to be protections for school districts against lawsuits when they are in compliance with their state law and district policy.
- **Student supports:** A related consideration is how to include student supports. Not many state laws currently include student support provisions; however, these supports can be incorporated into a district policy even if they are not part of the state law. SS/HS initiatives

are well positioned to include student supports, such as mentoring by community partners, mental health services, and counseling for both bully and victim.

In considering the elements listed above, the U. S. Department of Education has compiled a list of key components for state anti-bullying laws as listed below: (StopBullying.gov, 2011)

- Purpose statement
- Statement of scope
- Specification of prohibited conduct
- Enumeration of specific characteristics
- Development and implementation of local educational agencies (LEA) policies
- Components of LEA policies
- Review of local policies
- Communication plan
- Training and preventive education
- Transparency and monitoring
- Statement of rights to other legal recourse

The complete list of key components and accompanying examples and resources can be found at http://www.stopbullying.gov/community/state_laws/key_components.html.

The School's Legal Responsibilities

From a legal perspective, there are three main elements that would constitute negligence by a school district in pertaining to a state school bullying prevention law. (Laws related to negligence are civil laws) (Ryerson, 2011).

1. A standard of care exists.

A standard of care is essentially the standard for protecting and responding to instances of bullying set by school district policies and based on state laws. When a state law is created, a standard of care is also created, which schools are then responsible for meeting. However, school districts in states without legislation are also required to address bullying. The fact that 47 states have bullying prevention laws has essentially created a national standard of care that district policies and state laws detail. For SS/HS sites in states without bullying prevention laws or in districts without specific policies, the most conservative approach would be to meet the highest standard set (Ryerson, 2011).

2. The school district fails to meet the state set standard of care.

A school district can become liable when a standard of care exists, and they fail to meet the standard. An example of this recently happened in Massachusetts when the Department of Elementary and Secondary Education cited six school districts for incomplete anti-bullying plans, despite the law mandating that all Massachusetts school districts have bullying prevention policies by March 2011 (Rosenberg, 2011).

3. A harm results from that failure.

A school district can become liable if a “reasonable person” would consider that harm has resulted from a district failing to meet a standard of care. Examples could include a student committing suicide or even a student who no longer attends school because of fear (Ryerson, 2011).

Bullying as a Civil Rights Issue

In some instances, bullying crosses the line from being the domain of school-specific policies to being a civil rights matter under one or more federal antidiscrimination laws. This is most likely to happen when bullying is targeted at individuals of protected groups or because of specific characteristics, such as race, color, national origin, sex, or disability and is “sufficiently serious that it creates a hostile environment and such harassment is encouraged, tolerated, not adequately addressed, or ignored by school employees” (Office for Civil Rights, 2010). The U.S. Department of Education, Office for Civil Rights, distributed a Dear Colleague letter on October 26, 2010, to address the responsibilities of schools in this area, as quoted below: (Office for Civil Rights, 2010).

- Once a school knows or reasonably should know of possible student-on-student harassment, it must take immediate and appropriate action to investigate or otherwise determine what occurred.
- If harassment has occurred, a school must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment, and prevent its recurrence. These duties are a school’s responsibility even if the misconduct also is covered by an anti-bullying policy and regardless of whether the student makes a complaint, asks the school to take action, or identifies the harassment as a form of discrimination.

Any SS/HS site should make sure that its district policy properly covers these rights and that staff are appropriately educated.

Steps SS/HS Sites Should Take

In a webinar presented on February 23, 2011, the National Center for Mental Health Promotion and Youth Violence Prevention presented several recommendations that SS/HS sites should take (Ryerson, 2011). They are not meant as legal advice; however, they can provide guidelines for making sure your SS/HS site is well positioned to create and/or implement state law and district policy. (Also see: <http://sshs.promoteprevent.org/webinar/state-anti-bullying-laws-responsibilities-and-liabilities>)

a. Find your law.

If you have not already read your state law, find out what it includes and requires. The following two websites may be useful in locating state-specific bullying laws. However, please note, neither site is endorsed by the National Center for Mental Health Promotion and Youth Violence Prevention, and they include the personal commentaries and opinions of their creators.

- AnonymousTips.com: <http://www.anonymoustips.com/state-bullying-laws.php>. This website also includes pending legislation, which, it is important to note, can always be amended.
- Bully Police USA: <http://www.bullypolice.org>. This site includes a scoring system and a model policy.

b. Find your district policy.

Most schools have a copy of their district policy on file. If not, it is important to locate your policy and create a centralized, easy-to-access storage place. Schools should consider how to best communicate with staff how to access the district policy.

c. Match your district policy with your state law.

After you have located both your state law and district policy, compare them to make sure that your policy meets the highest available district or state standard set by law. If they do not align, a possible area of negligence is present. Try to consider what revisions would be needed so that the two documents align and your school is compliant with the law. If you are in a state that currently does not have a law, you can create a school policy and match it against one from a state with a strong law. Massachusetts is generally recognized as having a strong and comprehensive anti-bullying law. However, you may need to revise your policy if a state law is enacted where none existed before, and your policy is not in compliance with the new state law. This would most likely require that your school board approve any necessary amendments.

d. Educate district leadership on legal responsibilities.

Your careful review can provide an opportunity to inform district leadership about any discrepancies or legal liabilities associated with not having and/or not properly implementing a district policy. A conversation with leadership focusing on potential liabilities can serve as an incentive to provide

students with the best prevention and response to bullying, as well as to protect school districts against possible negligence.

e. Ensure that your policy is being properly implemented.

It is equally important to make sure that any policy is being properly implemented at the classroom level. This may involve, for example, providing teachers and other school staff with the necessary background information on bullying and educating them on your policy so that they can develop the appropriate skills.

f. Contact local legislators on pending legislation or possible legal revisions.

Bullying prevention state laws directly affect SS/HS districts. As representatives of SS/HS districts, you may find it beneficial to create relationships with legislators to educate them about the issues and challenges of bullying prevention laws. It is important to note that this does not mean lobbying legislators in favor of or in opposition to specific measures, but rather seizing an opportunity to build awareness.

Conclusion

As anti-bullying efforts continue to play an increasing role in schools time and legal responsibilities, it is important to be educated about what the laws state and how your school can be best prepared to properly address any bullying incidents that occur as well as to prevent bullying from happening.

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