

CYBERBULLYING PREVENTION LAW

AN ADL MODEL STATUTE

OVERVIEW – ABOUT THE MODEL LAW

With the rise in a unique and ubiquitous form of bullying -- cyberbullying -- schools and communities are seeking ways to create a safe environment. For years, governments, schools and courts have been wrestling with how to deal with the issue -- a school's duty to maintain a safe learning environment for students must be balanced with a student's right to privacy and free speech.

ADL has continued its efforts to respond effectively to this issue by developing curriculum and programming for teachers, students and the community on how to recognize and respond to cyberbullying, and by developing a model **Cyberbullying Prevention Law** for states to adopt and implement.

The *ADL Model Cyberbullying Prevention Statute* requires school districts to adopt an anti-bullying policy in their schools that is comprehensive, practical and effective. The policy gives schools the resources they need to combat and respond to bullying and cyberbullying.

A strong and comprehensive anti-bullying statute will:

- include a strong definition of bullying, which includes cyberbullying;
 - address bullying motivated by race, religion, ethnicity, sexual orientation and other personal characteristics;
 - include notice requirements for students and parents;
 - set out clear reporting procedures;
- require regular training for teachers and for students about how to recognize and respond to bullying and cyberbullying.

In 1981, ADL developed a model hate crimes bill and advocated for its passage in states nationwide. Today, 45 states and the District of Columbia have passed hate crime statutes, many based on

ADL's model. We hope that ADL's model anti-bullying bill will similarly be a guidepost for legislators and advocates to create smart, comprehensive bullying prevention legislation, so that all our children are safe.

ADOPT A POLICY

A strong bullying prevention bill will require each school district to adopt an anti-bullying policy. Such a requirement will let the parents, students, and concerned community members know that the issue is being taken seriously. The bill should require that school districts work with parents, teachers, students, law enforcement and other community stakeholders in the creation and implementation of the policy because this is a community issue and any response needs the community support.

Model bill language:

(a) Each school district shall adopt a policy prohibiting harassment, intimidation, bullying and cyberbullying, which includes the definition in this Act.

(b) The school district shall involve students, parents, administrators, school staff, school volunteers, community representatives, and local law enforcement agencies in the process of adopting the policy. The school district policy must be implemented in a manner that is ongoing throughout the school year and integrated with a school's curriculum, a school's discipline policies, and other violence prevention efforts.

STRONG DEFINITION

A strong definition of bullying is necessary in any bullying prevention law. The definition will notify school administrators, students, and teachers exactly what is unacceptable. The definition should not be overbroad, or vague – it must not punish constitutionally protected speech.

"Electronic communications" must be included in any definition of bullying.

With increasing access to online technology, the Internet has become yet another vehicle to harass and bully. Cyberbullying may be more harmful than traditional bullying because of the invasive and pervasive nature of the communication: Messages are circulated far and wide and there is no refuge -- it is ubiquitous.

Enumerated characteristics must be included in any definition of bullying.

Naming certain categories provides clear guidance to those who must apply the standard and will remove all doubt that particular identity-based harassment can be bullying and is unacceptable.

Model bill language:

(a) As used in this Act, "harassment, intimidation, bullying or cyberbullying" means any written, verbal or physical act, or any electronic communication including, but not limited to, one shown to be motivated by a student's actual or perceived race, color, religion, national origin, ancestry or ethnicity, sexual orientation, physical, mental, emotional, or learning disability, gender, gender identity and expression, or other distinguishing personal characteristic, or based on association with any person identified above, when the written, verbal or physical act or electronic communication is intended to:

(i) Physically harm a student or damages the student's property; or

(ii) Substantially interfere with a student's educational opportunities; or

(iii) Be so severe, persistent, or pervasive that it creates an intimidating or threatening educational environment; or

(iv) Substantially disrupt the orderly operation of the school.

(b) As used in this Section, "electronic communication" means any communication through an electronic device including but not limited to a telephone, cellular phone, computer or pager, which communication includes but is not limited to E-Mail, instant messaging, text messages, blogs, mobile phones, pagers, online games, and Web sites.

ADDRESS OFF-CAMPUS SPEECH

Any new bullying prevention law must address cyberbullying originated off-campus which interferes with the school's educational mission. As a significant amount of cyberbullying is created on computers, cell phones and other devices that are not owned by the school, or are not located on school property, but still disrupt the school environment and the welfare of the students, it is important to ensure that schools are given adequate legal framework to address the issue.

While courts nationwide are engaging in debates about balancing a student's right to free speech with another student's right to learn in a safe environment when dealing with electronic harassment, most courts agree that schools may discipline speech which results in a substantial disruption of the operation of the school.

Model bill language:

This policy will apply to an electronic communication whether or not this conduct originated on school property or with school equipment so long as:

(a) a reasonable person should know, under the circumstances, that the act will have the effect of harming a student or damaging the student's property, or placing a student in reasonable fear of harm to his or her person or damage to his or her property; and has the effect of insulting or demeaning any student or group of students in such a way as to cause substantial disruption in, or substantial interference with, the orderly operation of the school; or

(b) the act is directed specifically at students and intended for the purpose of disrupting school, and has a high likelihood of succeeding in that purpose.

GIVE NOTICE

A bullying prevention law must require that schools give notice about the policy to students and guardians and should require that notice be publicized in conduct codes, handbooks, bulletin boards, school Web sites, and other appropriate places.

The notice will send a message to students, teachers and parents that the school is taking this issue seriously and does not accept inappropriate conduct. The notice will also serve to instruct students, parents, and school staff how to identify, respond to and report incidents of bullying.

Model bill language:

The policy shall contain:

(a) A statement of how the policy is to be publicized, including requirements that: annual written notice of the policy is provided to parents, guardians, staff, volunteers, and students, with age appropriate language for students; the policy is posted throughout all schools in the district, including but not limited to cafeterias, school bulletin boards, administration offices, and the school district's Web site; and the policy is included in all student and employee handbooks;

(b) A procedure for providing immediate notification to the parents or guardian of a victim of, harassment, intimidation, bullying or cyberbullying and the parents or guardian of the perpetrator of the harassment, intimidation, bullying or cyberbullying;

(c) The identification by job title of school officials responsible for ensuring that the policy is implemented.

REPORT & INVESTIGATE

A comprehensive bullying prevention law will require a process be established within the school for reporting and investigating bullying.

Students and witnesses should know a safe place to come to report incidents. There should be a point person in the school who is responsible for receiving reports of bullying and communicating with appropriate personnel for investigation.

Further, the law should create process for schools to report incidents to the superintendents, who must then report to the designated state repository agency. State authorities must set an example that this is an important issue that is being monitored and examined.

Model bill language:

The school policy shall contain:

(a) A procedure for reporting an act of harassment, intimidation, bullying or cyberbullying, including a provision that permits a person to report such act anonymously. No formal disciplinary action shall be taken solely on the basis of an anonymous report;

(b) A requirement that any school employee that has reliable information that would lead a reasonable person to suspect that a person is a target of harassment, intimidation, bullying or cyberbullying shall immediately report it to the principal or the principal's designee;

(c) A procedure for each school to document any prohibited incident that is reported and a procedure to report all incidents of, harassment, intimidation, bullying or cyberbullying and the resulting consequences, including discipline and referrals, to the Board of Education on a semi-annual basis;

(d) A procedure for reporting to law enforcement all acts of harassment, intimidation, bullying or cyberbullying which may constitute criminal activity;

(e) A procedure for prompt investigation of reports of violations and complaints, identifying either the principal or the principal's designee as the person responsible for the investigation.

ESTABLISH CONSEQUENCES & PROVIDE COUNSELING

Bullying prevention laws must require that consequences for unacceptable activity be established. These clear consequences are important to put students, and staff, on notice that inappropriate behavior will not be tolerated and will be taken seriously.

Further, any law should require that a strategy for counseling be provided for both targets and perpetrators, as severe bullying can have long-lasting effects.

Model bill language:

The school policy shall contain:

(a) Consequences and appropriate remedial action for a person who commits an act of harassment, intimidation, bullying or cyberbullying;

(b) Consequences and appropriate remedial action for a student found to have falsely accused another as a means of retaliation, reprisal, or as a means of harassment, intimidation, bullying or cyberbullying;

(c) A strategy for providing counseling or referral to appropriate services, including guidance, academic intervention, and protection to students, both targets and perpetrators, and appropriate family members, affected by harassment, intimidation, bullying or cyberbullying, as necessary;

(d) A statement encouraging public schools and school districts to form bullying prevention task forces, programs, and other initiatives involving school staffs, pupils, administrators, volunteers, parents, law enforcement, community members, and other stakeholders.

REQUIRE TRAINING

Thorough training of school administrators, teachers and counseling staff is essential to ensure that the Model Policy is properly implemented and enforced and any bullying prevention law should require training.

A section which mandates training may have clear resource implications for the school districts and so it may be necessary for supporters to advocate for funds to accompany the enactment of this statute.

Model bill language:

Each School District shall provide the following educational programs in its efforts to prevent harassment, intimidation, bullying or cyberbullying:

(a) Annual training for administrators, school employees and volunteers who have significant contact with students in preventing, identifying, responding to, and reporting incidents of, harassment, intimidation, bullying or cyberbullying; and

(b) An educational program for students and parents in preventing, identifying, responding to, and reporting incidents of, harassment, intimidation, bullying or cyberbullying.

STATE INVOLVEMENT

The State Board of Education should play a significant role in the implementation of any bullying prevention policy. School Districts will take their lead from the Superintendents, and the State Department of Education.

The State should lead by example and provide inclusive sample policies so that schools districts have guidance in creating comprehensive policies.

Model bill language:

The State Board of Education shall:

a) Develop a model policy and training materials on the components that should be included in any district policy;

b) Periodically review school district programs, activities, and services to determine whether the school boards are complying with this statute;

c) Compile and make available to all schools a list of programs appropriate for the prevention of harassment, intimidation, bullying or cyberbullying of students;

d) Establish and maintain a central repository for the collection and analysis of information regarding harassment, intimidation, bullying or cyberbullying as defined in this statute;

e) Report to the state legislature annually on the current levels and nature of harassment, intimidation, and bullying in the schools and the effectiveness of school policies under this statute in combating harassment, intimidation, bullying or cyberbullying, including recommendations for appropriate actions to address identified problems.