



AN EXPLORATORY STUDY OF EXISTING STATE ANTI-BULLYING STATUTES:
Executive Summary and Legislative White Paper

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This exploratory study would not have been possible without the ground breaking work of Sameer Hinduja, and Justin W. Patchin, (2015) and Sacco, D, Silbaugh, K, Corredor, F, Casey, J, Doherty, D. (2013) and their analyses of the 50 state anti-bullying statutes currently in existence. Also, the work of the International Institute for Restorative Practices, with Terry O'Connell and Ted Wachtel, PhD, has led the way in providing both practical examples and research based evidence for the life changing impact of Restorative Practice on students, schools, and communities.

ABSTRACT

AN EXPLORATORY STUDY OF EXISTING STATE ANTI-BULLYING STATUTES

This qualitative exploratory study examines the current state of school anti-bullying legislation in the United States by reviewing the 50 state statutes and builds on the work of Sameer Hinduja, and Justin W. Patchin, (2015) and Sacco, D, Silbaugh, K, Corredor, F, Casey, J, Doherty, D. (2013). Their work on comparing state bullying statutes did not address restorative justice/practices, protections for special populations, safe-reporting systems, or stakeholder knowledge. This study addresses these four areas that were not addressed and they are the focus. In addition, this exploratory study addresses the following questions:

- What are the theories that explain youth bullying?
- How effective is current state legislation in preventing and correcting bullying behavior at the local level; are there specific problems with current legislation?
- What might be done to improve the current legislation at the local, state and national level?
- Is there a new strategy that incorporates a three-part system of knowledge, safe reporting, and restorative practice that could be included in state statutes to help local schools deal with bullying for all school populations?

A bullying environment has been linked to virtually every one of the horrific school shootings in the United States, (Vossekuil, Fein, Reddy, Borum, Modzeleski, 2002). A strong relationship connects youth bullying behavior with subsequent crime. Students identified as bullies by the age of eight are six times more likely to become involved in criminal behavior (Olweus, 1993; National School Safety Center, 1999). Bullying has been shown to be one of the three fast tracks for juveniles that evolve into adult criminals (Loeber, 1990). Targets of bullying have been shown to have long-term negative health consequences (Olweus 1984; Boston Children's Hospital, Healthy Passages 2014). Experience shows that school officials are often hesitant to develop comprehensive anti-bullying strategies until either a school tragedy occurs or state statutes require schools to adopt anti-bullying plans and policies.

This study presents Restorative Justice and Safe-Reporting Systems as tools for correcting school bullying and suggests 'model legislative language' to assist states in determining what statute amendments might impact bullying at the local school level in their states. Additionally, this study presents the need for: (1) effective programs for intervening with bullies at the individual and relationship level; (2) structural strategies that interrupt bullying incidents; (3) social norm change that reduces the appeal of bullying; (4) reporting systems that can track bullying perceptions and incidents, and thereby support a climate change at each of the aforementioned levels; (5) restorative justice and restorative practice strategies and programs to deal with the harm done to all the participants, offenders, targets, and bystanders. If a program is to become effective in changing bullying behavior, all three groups involved, the targets, the offenders, and the bystanders, must be included and become part of the restorative resolution (Braithwaite, 1996; IIRP 2009).

Key Search Words: bullying, harassment, restorative practices, civility, social justice, special school populations, and school reporting.

Introduction

Every day thousands of teens wake up afraid to go to school. Bullying affects millions of students of all races and classes. Bullying worries everyone, not just the kids on its receiving end. Yet because parents, teachers, and other adults do not always see it, they may not understand how extreme bullying can get, (*TeensHealth, June 2007*).

Bullying has been highly correlated to be one of the three fast tracks to adult crime (Loeber, 1990). A bullying environment has been linked to virtually every one of the horrific school shootings in the United States (Vossekuil, Fein, Reddy, Borum, & Modzeleski, 2002). A relationship exists between bullying and subsequent crime: students identified as bullies by the age of eight are six times more likely to become involved in criminal behavior (Olweus, 1993; National School Safety Center, 1999). Several criminal justice theories exist that help explain bullying behavior, including ecological systems theory, (Bronfenbrenner, 1979) that behavior is influenced by various environments encountered in one lifespan. Social learning theory, (Bandura, 1960) and Akers and Burgess work using social learning theory to explain deviant behavior and demonstrate that bullying is a learned activity. All 50 states have passed anti-bullying legislation but the legislation has not necessarily improved the anti-bullying climate at local schools. This brochure is intended to help states address bullying at the local school level and to provide examples of model legislation to facilitate the improvement.

Importance of the Legislative Problem

Over the last ten years all 50 states have passed legislation intended to correct the bullying problems in their schools. Their efforts have encouraged and often mandated that local schools and districts to begin developing bullying policies at the local level. Unfortunately, few states provided sufficient guidance for schools and the statutes did not address elements to make the state statutes effective in reducing and correcting bullying at the local school level. Since most statutes are directed at having schools report incidents to the state, many schools have begun reclassifying incidents so as to not be required to report (DOE, 2015). The effect of schools reclassifying bullying incidents causes bullying statistics to be unreliable and difficult to use for historical comparisons. It is therefore difficult to determine if bullying is reducing or if only the reported numbers are being reduced.

The more important problem to be addressed is how to reduce bullying and provide corrective restorative measures for victims, offenders and bystanders, (Duncan 2010). Until states amend their legislation to include strategies and procedures for local schools to employ the problem will continue.

Youth Bullying in Historical Perspective

There exists a long-standing misconception that bullying is a part of growing up, or surviving bullying is a rite of passage and that the effects are short term and soon forgotten. That bullies mature and abandon their negative behaviors. Another misconception involves how to deal with a bully; it is sometimes referred to as the 'Christmas Story'¹ notion, in that the way to stop being bullied is to fight back. In the movie, Ralphie confronts and fights the local bully and the bully shows himself to be a coward. This misconception, like the others

¹'A Christmas Story', based on semi-fictional anecdotes by Jean Sheppard in his book *In God We Trust: All Others Pay Cash*, was made into a popular movie in 1983.

mentioned are myths and are more destructive than informative. In addition many people believe that all bullying is essentially the same type of physical abuse and they miss the long-term health effects to the victims and also to the offenders, (Olweus 1994). They also often overlook the cruelty of social exclusion that is often more common with female bullies which again has lasting health effects, (Boston Children's Hospital, 2014). Cyberbullying and other technology-based forms of bullying have sometimes been thought to be different from the more traditional forms, but upon further examination cyberbullying has the same underlying motives, (Sacco, et al, 2013). The major difference with cyberbullying is that it can be anonymous, around the clock, and the speed with which others can join into the bullying, (DOE 2010). Traditionally, attempts to deter bullying have involved punishment of the bully, with little attention paid to rehabilitation or counseling for the bully, the victim, or the bystanders, (Duncan 2010).

Need for Institutional Knowledge

Most of the existing state anti-bullying legislation directs schools to develop policies to address bullying and several, require to various degrees, that schools should make sure that all participants, i.e. students, faculty, staff parents and others directly working with students understand the seriousness of bullying, cyberbullying and harassment. Schools need to know what happens and what the consequences are, if the behavior is ignored and not corrected as shown in the list provided by "Dear Colleague Letter' Office for Civil Rights: Office of the Assistant Secretary, October 26, 2010. The list provided explains that prospective effects of student-on-student harassment and bullying include:

- 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

The letter also emphasized schools need to know how dangerous it is to do the wrong things; i.e. nothing, zero-tolerance, immediate punishment or other strictly punitive actions.

Zero tolerance policies have fundamentally changed the role of expulsion in the American public school system. Justification for denying educational access after expulsion would be more persuasive under a disciplinary system in which schools expelled only a few older students, for violent offenses, as a last resort (Biegel, 2012). By their very definition, zero tolerance policies involve expelling students for first offenses rather than reserving the most serious disciplinary option for cases of last resort. Thus, under zero tolerance policies, schools expel students, who may have not had other disciplinary problems, (Biegel, 2012).

The problem associated with zero tolerance policies was made abundantly clear to the attendees at the U.S. Department of Education's, Safe and Drug Free Conference in August 2012. There, at the request of federal officials, were the parents of two students who had been suspended from their respective schools under zero tolerance policies. Both students, in spite of having no previous disciplinary problems were suspended without any

opportunity to explain their actions, or tell their stories. Tragically, both students committed suicide believing that they had ruined their lives and the lives of their families. The youngest was only 11 years old and had been assured by his parents that he was not in trouble and that they understood that he had acted in self-defense. After the school had failed to deter the bullying he was receiving, even though it had been repeatedly reported, he fought back, was caught, and suspended. In both cases the students involved were caught in a 'mindless trap' of good school intentions gone terribly wrong. Zero tolerance, although politically popular, is fundamentally flawed, dangerous, unfair, and may raise serious due process questions, (Biegel, 2012).

The Need to Amend Current State Statutes

When Montana changed its policy to a statute it joined the other 49 states that also have relatively ineffective anti-bullying statutes for correcting bullying at the local school level, (DOE, 2012). The Minnesota, Massachusetts, Georgia, and Colorado statutes are arguably better than most others, but still fall short in affecting bullying at the local school level, (DOE, 2015). Since most if not all of the state anti-bullying laws basically cobbled together existing juvenile statutes into their bullying law, this has had the effect of making incidents that were already reportable under existing statutes reportable under their new bullying statutes. The reorganization of the existing statutes into new bullying statutes did not produce improved results. Many critics and anti-bullying experts, including the Federal government, see the state statutes as little more than window dressing to allow legislators to claim that they have addressed the problem, (DOE, Safe Schools Conference 2012). The incidents that are reportable are at a misdemeanor or felony levels and unfortunately the statutes do little if anything to address the majority of ongoing issues of bullying below the criminal level at local schools and only a few states require any corrective programs based on restorative justice, (Duncan, 2010).

Clearly, states may need to amend their statutes and policies to assist schools in addressing and correcting bullying at much earlier stages. *"Bullying fosters a climate of fear and disrespect that can seriously impair the physical and psychological health of its victims and create conditions that negatively affect learning, thereby undermining the ability of students to achieve their full potential."* Russlynn Ali, "Dear Colleague Letter" Office for Civil Rights: Office of the Assistant Secretary, October 26, 2010. The Assistant Secretary continued that *"some student misconduct that falls under a school's anti-bullying policy also may trigger responsibilities under one or more of the federal antidiscrimination laws enforced by the Department's Office for Civil Rights (OCR)...by limiting its response to a specific application of its anti-bullying disciplinary policy's schools may fail to properly consider whether the student misconduct also results in discriminatory harassment"*. The letter explains in detail the way in which schools can be in compliance with the law as well as the consequences and prospective effects of student bullying and harassment. The current state statutes have largely been ineffective in reducing bullying at the local level. New amended statutes are needed to contain the requirement for local innovation strategies that will reduce bullying and other harassing behavior, (DOE, 2012).

Current Programs and Interventions

Increasingly, bullying prevention initiatives have gained momentum in many United States schools. Interventions have largely focused on individual-level strategies, some of which have been found to reduce aggression and other forms of school violence (CDC, 2008). Structural interventions, such as adapting staffing patterns in schools and increasing monitoring functions, have also been implemented to a lesser degree.

The preceding discussion underscores the need for: (1) effective programs for intervening with bullies at the individual and relationship level; (2) structural strategies that interrupt bullying incidents; and (3) social norm change that reduces the appeal of bullying; (4) reporting systems that can track bullying perceptions and incidence, and thereby support a climate change at each of the aforementioned levels; (5) restorative justice and restorative practice strategies (Braithwaite, 1996); and (6) programs to deal with the harm done to all the participants, offenders, targets, and bystanders. The bystanders can include those that were present and those who learn of the bullying later. They can readily include students, parents, family, staff, faculty, and administrators. They are not a homogeneous group and will have strong and often opposing opinions as to the cause, nature and severity of the bullying. If a program is to become effective in changing bullying behavior all three groups, offenders, targets, and bystanders must be included in the resolution, (IIRP, 2009).

Experience has shown that school officials can sometimes be reluctant to develop comprehensive anti-bullying strategies until either there is a school tragedy or they are required to adopt anti-bullying plans by state statutes. The importance of having comprehensive, best practice based state statutes to address bullying at the local school level is a critical component of reversing the impact of bullying. States should encourage, and mandate that schools adopt a three-part strategy of stakeholder knowledge, safe-reporting, and restorative justice/restorative practices, (DOE, Safe Schools Conference, 2012).

Restorative Practice Effectiveness in Schools

The International Institute for Restorative Practice (IIRP), reports that “they are seeing improved teacher-student relationships in classrooms with a high level of restorative practices implementation, and that this improvement tends to narrow the ‘racial-discipline gap,’ a concern in schools nationwide”, (IIRP, 2009). Classrooms with a high level of restorative practice implementation had fewer disciplinary referrals for defiance and misconduct compared with classrooms with little or no restorative practices, (Anne Gregory, Rutgers University, (IIRP, 2009). Researchers have also found that restorative practices are not just for discipline; they are also essential to high-quality teaching and learning, (IIRP, 2009). Schools involved in restorative justice/practice have learned that the process builds social capital and a sense of community with students feeling connected to their group and beginning to take responsibility for each other. Students need to feel safe in their learning communities. Restorative justice practices have shown to address the needs of students as well as the overall positive climate of schools, “*My students are now in better shape –both academically and behaviorally—than they’ve ever been*”, Rhonda Richetta, Principal, City Springs Elementary/Middle School Baltimore, Maryland, (IIRP, 2009).

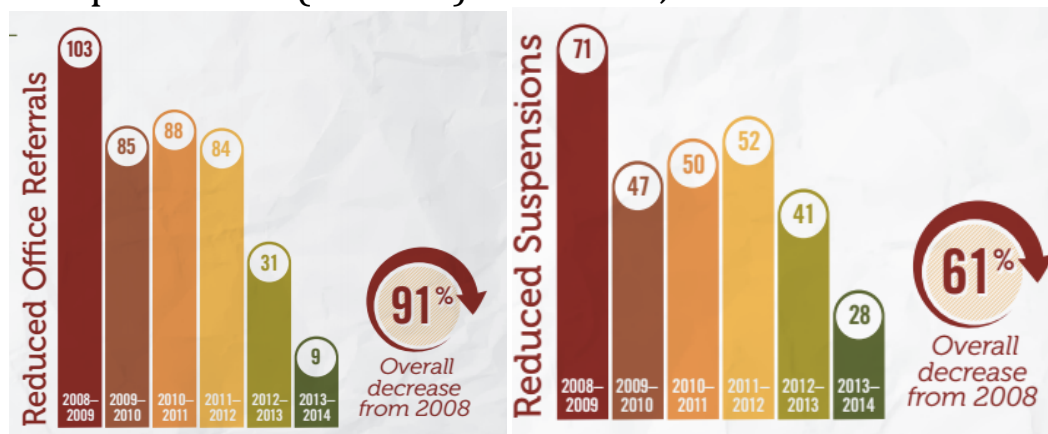
Currently several studies are underway to further validate the effectiveness in schools through such groups as Johns Hopkins University and the RAND Corporation studying 16 schools in Maine with additional funding from the National Institutes of Health, the U.S. Department of Justice and the National Institute of Mental Health. Their studies are exploring effects on graduation rates, social competency, academic achievement, alcohol abuse and bullying, (IIRP 2015).

Additional support for restorative justice in schools has come from the American Federation of Teachers with encouragement for more teachers to adopt restorative discipline practices as well as using restorative practices to foster healthy relationships and promote positive discipline, (AFT, 2014). Other support for restorative practices has come from the Education Week Research Center in their description of social and emotional learning, (edweek.org, 2012). In a written statement to the Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights, the American Civil Liberties Union encouraged the Subcommittee to look to restorative practice as a positive way to address the fundamental human rights of American students and to end the school to prison pipeline, (ACLU, 2015). The American Psychological Association Zero Tolerance Task Force argued for addressing zero tolerance policies in schools and recommended restorative practices as a potential solution, (APA, 2014). The NAACP Legal Defense and Educational Fund in a letter to Vice President Biden recommended ways of preserving school safety in the Wake of the Sandy Hook tragedy, and urged the Vice President to look at alternatives for school safety including restorative practices, (NAACP, 2013).

The restorative justice process works well provided the school is committed to making positive change in regard to the school environment, (McCluskey, Lloyd, Kane, Riddell, 2008). Restorative justice is highly successful where good relationships, mutual respect and a sense of belonging are seen as being key to successful teaching and integrates restorative principles and practice into every policy, every lesson, every meeting and every event in the school day, (Hopkins, 2003). A restorative justice approach has been demonstrated to be a success in schools and can readily be customized to meet the needs and resources of different schools, (Morrison, 2002).

What follow are some school results as measured in studies released through the IIRP in 2015:

School Results of Restorative Practices (IIRP 2015) Hampstead Hill (Pre-K-8) Baltimore, MD



Freedom High School, Bethlehem, PA Glenmount School (K-8), Baltimore, MD



Restorative justice, restorative practice shows great promise in helping schools change their social and learning environments in positive ways, (Gregory at al Rutgers University, (IIRP, 2009). The question of how to encourage more school, districts, and states to explore the successes of restorative justice, restorative practices and make them available at the local school level remains a challenge. As more studies are released and encouragement to schools comes from the U.S. Departments of Education, and Justice, and from the major teachers' unions, scholars, think tanks, and private citizens, perhaps more schools, districts, and states will begin to look to the practice as a new, although ancient, way for communities and schools to dramatically alter their current practices and move to a more reasoned approach through restorative justice and restorative practices.

Despite numerous documented success stories, from local schools throughout the United States, most notably, San Francisco, Philadelphia, Baltimore, Bethlehem, and the State of Colorado, and in spite of the many school personnel trained by the IIRP, many schools have not been willing to change or embrace restorative practices. At the state level there has been a noticeable lack of inclusion of restorative justice in state anti-bullying statutes, (Duncan, 2010). As noted above the exceptions are Colorado, Maine, and Minnesota that has shown that school discipline improved after the state passed restorative justice requirements for local schools. Even though restorative justice has shown to dramatically and positively affect local school environments, interrupted the school to

prison pipeline, and helped all students return to positive directions in their lives, many schools, districts, and states have yet to adopt the practice. Often the reasons given for not adopting restorative justice, range from a fear of additional cost, to a fear of another time commitment for an already overworked staff. Since many schools are reluctant to change without either experiencing a bullying tragedy, or having to adjust to a state directive, the best approach may be to encourage states to amend their anti-bullying statutes to include provisions and training for restorative justice at the local school level, (Duncan, 2010).

Bullying as a Public Health Issue

The long-term mental health impact of bullying to victims, offenders and bystanders makes it ripe for a public health approach, (Mercy & O'Carroll, (1998), (Olweus et al). The importance of treating bullying as a public health issue will allow states to consider amending their state statutes to find the root causes of bullying at the local school level. States could develop intervention strategies to correct behavior before the behavior leads to serious health, safety, and criminal issues.

Braithwaite's work along with the work of Wachtel, O'Connell and Wachtel (2010) in restorative practice, show a roadmap for greatly improved approaches to public policy. The continuing negative implications of strictly punishing, labeling, and stigmatizing offenders has had little success, (Duncan 2010). A different public policy may be needed at the local school, state and national levels. Punishment does not equate with accountability. Punishment perpetuates negativity, isolation, resentment, and revenge and does little to restore citizens to re-integrate into society, (Braithwaite, 1989). Punishment does little to nothing for the victims or bystanders and sets the stage for an ongoing perpetuation of the classic drama triangle (Karpman, 1968). The Drama Triangle is a psychological and social model of human interaction, based on the work of Eric Berne, M.D in "*Games People Play; The basic Handbook of Transactional Analysis*" (1964). Typically, the drama triangle consists by interchanges the roles of offender, victim, and rescuer, thereby becoming cyclical providing continued drama to all three groups unless interrupted through a restorative process. For example, in bullying incidents if some bystanders intervene and physically or electronically attack the bully then the original bully becomes bullied and the new victim. Then bystanders become the bullies and the original victim becomes the new bystander. If the original victim, now the new bystander, were to attempt to intervene with the bullying of the original offender by the original bystanders then the cycle is again reversed. If not interrupted or treated, the drama triangle can simply continue as a sick, damaging and expanding game.

The public policy change of treating bullying as a public health issue, rather than a criminal issue, shows great promise in positively impacting the lives and re-integration of offender, targets, and bystanders to healthy roles in society. This approach coupled with early restorative practice (Wachtel, O'Connell and Wachtel 2010) at the first instances of bullying, may interrupt the continuing learned behavior rewards of bullying and change the offender's behavior to a more positive direction.

A Three-Part System for Treating Bullying as a Public Health Issue at the Local School Level

There are three distinct roles in every bullying incident, the offender, the victim, and the bystanders. The bystanders can include those that were present and those that learn of the bullying later. They can readily include students, parents, family, staff, faculty, and administrators. They are not a homogeneous group and often have a constellation of strong and often opposing opinions as to the cause, nature and severity of the bullying. If a program is to become effective in changing bullying behavior all three groups, targets, offenders, and bystanders, must be included and become part of the resolution (Braithwaite, 1996). Long-term, well-trained and active bystanders can be the most important group for continual improvement of the school environment. Through education of the school community, and thereby potential future bystanders, a school can begin to change the social norm from an appeal of bullying to individuals, to a new social norm whereby bullying behavior is seen in a negative context by all including offenders.

It is important that states encourage schools adopt a three-part strategy; consisting of stakeholder knowledge, safe-reporting, and restorative practices to fully address bullying at the local school level.

Stakeholder Knowledge: The stakeholder knowledge requirements vary greatly between states with only a few states providing information to students, parents, faculty, staff, board, and other interested stakeholders. Schools should insure that all participants, i.e. students, faculty, staff parents and others directly working with students understand the seriousness of bullying, cyberbullying and harassment. They need to know what potentially happens and what the consequences are if the behavior is ignored and not corrected. They also need to know how dangerous it is to do the wrong things, i.e. zero-tolerance, immediate punishment or other punitive actions. In addition, they need to understand that all bullying incidents have three components, the offender, the target and the bystanders and successful intervention requires attention be given to all three groups.

Safe-Reporting: Schools need a safe and secure reporting system for students, parents and staff to safely report incidents. The system needs to be safe in the eyes of the reporter and not just the school administration, if it is to be fully utilized by those needing to report. “Just come and tell us” is not a safe system, neither is the “anonymous box”, since it is easily perceived by victims and bystanders as another way that they can be discovered and further victimized by the offenders. Additionally, since parents and school personnel often misunderstand each other, simply telling the school has proven to be ineffective since many times the school misunderstands what they are being told and the parent misbelieves that either the school heard them or chose to do nothing. There is a famous case from South Hadley Massachusetts where a 15-year-old recent Irish immigrant, Phoebe Prince, committed suicide after weeks of cruel bullying by her classmates. In the court case the mother explained how six weeks before Phoebe’s tragic death she told the school. The school personnel testified that they only learned about bullying two-days before the tragedy and not from the mother. In reading the transcripts and in discussions with several parties that were involved in the case, it is clear that both the mother and the school personnel were all telling the truth. The mother told the school how unhappy Phoebe was with the

new school and did not specifically say that Phoebe was being bullied. Since often people do not really hear each other, the school personnel did not ask if Phoebe was being bullied, and incorrectly assumed that she was just going through a new student adjustment period, and since there was no safe-reporting system, the communication was incomplete. Had there been a safe-reporting system the mother could have used the system, or the school personnel could have asked her to input into the system. The South Hadley, Massachusetts's school would have known the extent of the negative behavior that was occurring and the mother would have known that she had formally told them.

A second famous case involves the child molestation problem at Penn State University where a graduate assistant from the football program attempted to report the incident. The language used to describe what had occurred used the term "horsing around" which may have been interpreted by those that received the verbal reports as normal locker room banter. Since there was no formal safe-reporting system the verbal reporting was misinterpreted and no corrective action was taken until several years later when the incident exploded on the national press and resulted in major penalties for Penn State, its president, athletic director, hall of fame coach, and the original offender who is now in prison. If Penn State had a formal safe-reporting system available, to the graduate assistant at the time of the incident, a more complete investigation would have taken place. Penn State would have formal records to show their due diligence. The safe-reporting process would have allowed for the speedy restoration of the incident with help for the child, prosecution for the offender, and protection for the graduate assistant, coach, athletic director, and president. Since those involved would have had the facts they would, most likely, not have covered up for the offender. Without a formal safe-reporting system, each person in authority interpreted the information they were given in their own way, minus the facts, that were either confusing or non-existent. Each then made a serious mistake in judgment as distorted information moved up the chain of command.

Restorative Practices: School personnel need to be trained in restorative practices in order to correctively address all three groups, to enable and restore all parties, target, offender, and the constellation of bystanders, to a stable position that deals with the harm done and the obligations to rectify that harm. The process should help all three groups move in a positive direction to set goals, objectives, and progressive steps to begin to achieve their goals and objectives. The restorative practice process provides all three groups the opportunity to establish the foundation for their own personal growth and collectively begin to develop a shared environment of trust, respect, and dignity.

It is important that states encourage schools to adopt a three-part strategy to address bullying. *First*, they should make sure that all participants, i.e. students, faculty, staff parents and others directly working with students understand the seriousness of bullying, cyberbullying and harassment. It also includes the dangers and consequences of bullying, what happens if the behavior is ignored and also the consequences of doing the wrong things, i.e. zero tolerance, suspension, and other only punitive actions. An adoption and implementation of restorative practices at the local school level would go a long way to improving each school's response. *Second*, they need a safe and secure school-based reporting system for students, parents and staff to safely report incidents. *Third*, school personnel need to be trained in restorative practices in order to correctively address all three groups and first restore all parties to a stable position that deals with the harm done

and the obligations to rectify that harm. They need to help all three groups, offenders, victims and bystanders, move in a positive direction and to set goals, objectives, and necessary progressive steps to begin to achieve the goals and objectives. The restorative practice process provides all three groups the opportunity to establish the foundation for their own personal growth and collectively begin to develop an environment of trust, respect, and dignity.

Proposed Model Language for Use in Amending Existing State Statutes

Definition of Bullying

The information provided to states, as part of this study, builds from the definition of bullying as defined by DOE and established researchers.

“Bullying and cyberbullying are defined as unwanted, aggressive behavior among school aged children that involves a real or perceived power imbalance. The behavior is repeated, or has the potential to be repeated, over time. The negative behavior may be electronic or in person. It can occur on or off campus and since it will ultimately be introduced into the learning environment schools should address the behavior under restorative practices.”

“In order to be considered bullying, the behavior must be aggressive and include:

- *An Imbalance of Power: Kids who bully use their power—such as physical strength, access to embarrassing information, or popularity—to control or harm others. Power imbalances can change over time and in different situations, even if they involve the same people.*
- *Repetition: Bullying behaviors happen more than once or have the potential to happen more than once.”*

“Bullying includes actions such as making threats, spreading rumors, attacking someone physically or verbally, and excluding someone from a group on purpose and includes both personal actions and electronic actions that are often referred to as cyberbullying.”

Stakeholder Knowledge

“Schools must provide all stakeholders, students, parents, teachers, staff and others information on the seriousness of bullying, including the long-term effects of bullying on the target, the offender and the bystanders. The school should provide its bullying policy, and state the need to address bullying incidents in a positive restorative manner.”

Safe Reporting System

“Each local school should provide a safe-reporting system for students, parents, teachers, staff and others to report bullying or suspected bullying to a trained counselor that can investigate, document, and recommend restorative practice for resolution. The safe-reporting system must be safe in the “eyes” of the reporter to insure that the system does not deter clear and honest reporting”

Restorative Justice--Restorative Practices

“School personnel need to be trained and experienced in school based restorative practices as defined by the U.S. Department of Education and the International Institute for Restorative Practices.”

Protections for Special Populations

“Anti-bullying policies, procedures, reporting, and restorative practices must clearly address the additional needs of the special populations of students including LGBT, disabled, and homeless students. Special attention should be made to assure the safe-reporting system selected addresses the needs of all students including special populations. Restorative practice facilitators should be trained in working with special populations. This training should include and understanding of emotional, spiritual (transpersonal), and cultural intelligence.”

MODEL SCHOOL STUDENT BULLYING STATUTE

The following model statute language borrows a good deal of language from the State of Minnesota Statute passed in the spring of 2015, but has been updated and adapted to include stakeholder knowledge, safe-reporting and restorative practices.

Scope and Application

- (a) This section applies to bullying by a student against another student enrolled in a public school and which occurs:
 - (1) on the school premises, at the school functions or activities, on school transportation, or away from school if the incident causes subsequent disruption at school;
 - (2) by use of electronic technology and communications on the school premises, during the school functions or activities, on the school transportation, or on the school computers, networks, forums, and mailing lists; or
 - (3) by use of electronic technology and communications off the school premises to the extent such use substantially and materially disrupts student learning or the school environment.
- (b) All nonpublic schools and all home schools are encouraged to adopt policies and procedures consistent with this statute for the purpose of protecting all students from the effects of bullying.
- (c) A school-aged child who voluntarily participates in a public school activity, such as policy provisions applicable to the public school students participating in the activity.

Definitions.

- (a) For purposes of this section, the following terms have the meanings given them.

- (b) "Student" means a student enrolled in a school.
- (c) "Bullying," means intimidating, threatening, abusive, or harming conduct that is objectively offensive and:
 - (1) there is an actual or perceived imbalance of power between the student engaging in prohibited conduct and the target of the behavior and the conduct is repeated or forms a pattern; or
 - (2) materially and substantially interferes with a student's educational opportunities or performance or ability to participate in school functions or activities or receive school benefits, services, or privileges.
- (d) "Cyberbullying" means bullying using technology or other electronic communication, including but not limited to a transfer of a sign, signal, writing, image, sound, or data, including a post on a social network Internet Web site or forum, transmitted through a computer, cell phone, or other electronic device.
- (e) Intimidating, threatening, abusive, or harming conduct may involve, but is not limited to, conduct that causes physical harm to a student or a student's property or causes a student to be in reasonable fear of harm to person or property; under (*Insert State Name*) common law, violates a student's reasonable expectation of privacy, defames a student, or constitutes intentional infliction of emotional distress against a student; is directed at any student or students, including those based on a person's actual or perceived race, ethnicity, color, creed, religion, national origin, immigration status, sex, marital status, familial status, socioeconomic status, physical appearance, sexual orientation, including gender identity and expression, academic status related to student performance, disability, or status with regard to public assistance, or age. However, prohibited conduct need not be based on any particular characteristic defined in this paragraph.
- (f) "Prohibited conduct" means bullying or cyberbullying as defined under this subdivision or retaliation for asserting, alleging, reporting, or providing information about such conduct or knowingly making a false report about bullying.
- (g) "Remedial response" means restorative practice measures to stop and correct prohibited conduct, prevent prohibited conduct from recurring, and protect, support, and intervene on behalf of the student who is the target of the prohibited conduct, and the bystanders who are aware of the negative behavior. The bystanders may have a constellation of interest, from support of the target, support of the offender, support of justice, or an interest in perpetuating drama. All bystanders should be addressed under the restorative practice model.
- (h) "Safe-reporting" means a system or procedure for incidents of bullying to be reported to the school in a manner that the 'reporter' considers safe. The reporter should be assured they have notified the school. The school should, as soon as possible, notify the reporter that they have received the report and begin to intervene under restorative practices procedures.

Local district and school policy

- (a) Districts and schools, in consultation with students, parents, and community organizations, to the extent practicable, shall adopt, implement, and, on a cycle

consistent with other district policies, review, and revise where appropriate, a written policy to prevent and prohibit student bullying consistent with this statute. (b) Each local district and school policy must establish research-based, developmentally appropriate best practices that include preventive and remedial measures and effective restorative discipline for deterring policy violations; apply throughout the school or district; and foster active student, parent, and community participation.

The policy shall:

- (1) define the roles and responsibilities of students, school personnel, and volunteers under the policy;
- (2) emphasize remedial responses under accepted restorative practices ;
- (3) be distributed to all parents, staff, faculty and students and be conspicuously posted in the administrative offices of the school and school district in summary form;
- (4) be given to each school employee, volunteer, and independent contractor, if a contractor regularly interacts with students, at the time of employment with the district or school;
- (5) be included in the student handbook on school policies; and
- (6) be available to all parents and other school community members in an electronic format in the languages appearing on the district or school Web site, consistent with the district policies and practices.

(c) Consistent with its applicable policies and practices, each district must discuss its policy with students, school personnel, and volunteers and provide appropriate training for all school personnel to prevent, identify, and respond to prohibited conduct. Districts and schools must establish a training cycle, not to exceed a period of three school years, for school personnel under this paragraph. Newly employed school personnel must receive the training within the first year of their employment with the district or school. A district or school administrator may accelerate the training cycle or provide additional training based on a particular need or circumstance.

(d) Each district and school must submit an electronic copy of its prohibited conduct policy to the commissioner.

4. Local policy components.

(a) Each district and school policy implemented under this section must, at a minimum:

- (1) designate a staff member as the primary contact person in the school building to receive reports of prohibited conduct, ensure the policy and its procedures including restorative practices, consequences, and sanctions are fairly and fully implemented, and serve as the primary contact on policy and procedural matters implicating both the district or school and the department;

- (2) require school employees who witness prohibited conduct or possess reliable information that would lead a reasonable person to suspect that a student is a target of prohibited conduct to make reasonable efforts to address and immediately report the prohibited conduct, through the safe-reporting system;
- (3) provide a procedure to begin to investigate reports of prohibited conduct within three school days of the report, and make the primary contact person responsible for the investigation and any resulting record and for keeping and regulating access to any record;
- (4) indicate how a school will respond to an identified incident of prohibited conduct, including immediately intervening to protect the target of the prohibited conduct.
- (5) A district or school official will notify the parent of the reported target of the prohibited conduct and the parent of the actor engaged in the prohibited conduct; providing other remedial restorative practice responses to the prohibited conduct; and ensuring that remedial responses are tailored to the particular incident and nature of the conduct and the student's developmental age and behavioral history;
- (6) prohibit reprisals or retaliation against any person who asserts, alleges, or reports prohibited conduct or provides information about such conduct and establish appropriate restorative practice consequences for a person who engages in reprisal or retaliation;
- (7) Establish a safe-reporting system to allow both identified reporting and anonymous reporting.
- (8) provide information about available community resources to the target, actor, and other affected individuals, as appropriate;
- (9) where appropriate for a child with a disability, or for homeless students provide additional protections to prevent or respond to prohibited conduct, and to allow the child's individualized education program or section 504 plan to address the skills and proficiencies the child needs to respond to or not engage in prohibited conduct;
- (10) use new employee training materials, the school publication on school rules, procedures, and standards of conduct, and the student handbook on school policies to publicize the policy;
- (11) require ongoing professional development, to build the skills of all school personnel who regularly interact with students, including but not limited to educators, administrators, school counselors, social workers, psychologists, other school mental health professionals, school nurses, cafeteria workers, custodians, bus drivers, athletic coaches, extracurricular activities advisors, and paraprofessionals to identify, prevent, and appropriately address prohibited conduct;
- (12) allow the alleged actor in an investigation of prohibited conduct to present a defense and through restorative practices be reintegrated into the school community.
- (13) inform affected students and their parents of their rights under state and federal data practices laws to obtain access to data related to the

incident and their right to contest the accuracy or completeness of the data.
Inform them of their rights and protections under restorative practices.

- (b) Professional development under a local policy includes, but is not limited to, information about:
- (1) developmentally appropriate strategies both to prevent and to immediately and effectively intervene to stop prohibited conduct;
 - (2) the complex dynamics affecting an actor, target, and bystanders to prohibited conduct;
 - (3) research on prohibited conduct, including specific categories of students at risk for prohibited conduct in school;
 - (4) the incidence and nature of cyberbullying; and
 - (5) Internet safety and cyberbullying.
 - (6) Ongoing training in restorative practices.

Safe and supportive schools programming.

- (a) Districts and schools are encouraged to provide developmentally appropriate programmatic instruction to help students identify, prevent, and reduce prohibited conduct; value diversity in school and society; develop and improve students' knowledge and skills for solving problems, managing conflict, engaging in civil discourse, and recognizing, responding to, and reporting prohibited conduct; and make effective prevention and intervention programs available to students. Districts and schools must establish strategies for creating a positive school climate and use evidence-based social-emotional learning to prevent and reduce discrimination and other improper conduct.
- (b) Districts and schools are encouraged to:
- (1) engage all students in creating a safe and supportive school environment;
 - (2) partner with parents and other community members to develop and implement prevention, restorative practice, and intervention programs;
 - (3) engage all students and adults in integrating education, intervention, and other restorative practice responses into the school environment;
 - (4) train student bystanders to intervene in and report incidents of prohibited conduct to the school's primary contact person, through the school's safe-reporting system;
 - (5) teach students to advocate for themselves and others;
 - (6) prevent inappropriate referrals to special education of students who may engage in prohibited conduct; and
 - (7) foster student collaborations that foster a safe and supportive school climate.

State model policy.

- (a) The commissioner, in consultation with the commissioner of human rights, shall develop and maintain a state model policy. A district or school that does not adopt and implement a local policy must implement and may supplement the provisions of

the state model policy. The commissioner must assist districts and schools to implement the state policy. The state model policy must:

- (1) define prohibited conduct, consistent with this section;
- (2) apply the prohibited conduct policy components in this section;
- (3) for a child with a disability, whenever an evaluation by an individualized education program team or a section 504 team indicates that the child's disability affects the child's social skills development or the child is vulnerable to prohibited conduct because of the child's disability, the child's individualized education program or section 504 plan may address the skills and proficiencies the child needs to not engage in and respond to such conduct; and provide a similar positive strategy for homeless children: and
- (4) encourage violence prevention and character development education programs;
- (5) provide guidance on restorative practice programs;
- (6) provide guidance on safe-reporting systems.

- (b) The commissioner shall develop and post departmental procedures for:
- (1) periodically reviewing district and school programs and policies for compliance with this section;
 - (2) investigating, reporting, and responding to noncompliance with this section, which may include an annual review of plans to improve and provide a safe and supportive school climate; and
 - (3) allowing students, parents, and educators to file a complaint about noncompliance with the commissioner.

7.Relation to existing law.

This section does not:

- (1) establish any private right of action;
- (2) limit rights currently available to an individual under other civil or criminal law; or
- (3) interfere with a person's rights of religious expression and free speech and expression under the First Amendment of the United States Constitution.

* * * * *

What follows is a Matrix State Anti-bullying Laws as of January 2016

State	Law	Cyber-bullying	Electronic Harassment	Criminal Sanction	School Sanction	School Policy Knowledge	Off-Campus Behavior	Restorative Justice or Practices	Stakeholder Knowledge	Safe School Reporting System
Alabama	Yes	No	Yes	No	No	Yes	No	No	No	No
Alaska	Yes	No	No	Yes	Yes	Yes	No	No	No	No
Arizona	Yes	No	Yes	No	Yes	Yes	No	No	No	No
Arkansas	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No
California	Yes	Yes	Yes	No	Yes	Yes	Yes	No	No	No
Colorado	Yes	No	Yes	Yes	Yes	Yes	No	Yes	No	No
Connecticut	Yes	Yes	Yes	No	Yes	Yes	Yes	No	Yes	Anonymous
Delaware	Yes	No	Yes	No	Yes	Yes	No	No	No	No
Florida	Yes	Yes	Yes	No	Yes	Yes	Yes	No	Yes	Anonymous
Georgia	Yes	Proposed	Yes	No	Yes	Yes	Proposed	No	No	Anonymous
Hawaii	Yes	Yes	Yes	Proposed	Yes	Yes	No	No	No	No
Idaho	Yes	No	Yes	Yes	Yes	Yes	No	No	No	No
Illinois	Yes	Yes	Yes	No	Yes	Yes	Yes	No	No	No
Indiana	Yes	No	Yes	No	Yes	Yes	No	No	No	No
Iowa	Yes	No	Yes	Yes	Yes	Yes	No	No	No	No
Kansas	Yes	Yes	Yes	No	Yes	Yes	No	No	No	No
Kentucky	Yes	Proposed	Yes	Yes	Yes	Yes	No	No	No	No
Louisiana	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No
Maine	Yes	Yes	Yes	No	Yes	Yes	No	Yes	Yes	No
Maryland	Yes	No	Yes	Yes	Yes	Yes	No	No	Yes	No
Massachusetts	Yes	Yes	Yes	No	Yes	Yes	Yes	No	Yes	Anonymous
Michigan	Yes	Yes	Yes	Proposed	No	Yes	No	No	No	No
Minnesota	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	No	Yes
Mississippi	Yes	No	Yes	Yes	Yes	Yes	No	No	No	No
Missouri	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No	No
Montana	Yes	No	Yes	Yes	No	No	No	No	No	No
Nebraska	Yes	Proposed	Yes	No	Yes	Yes	Proposed	No	No	No
Nevada	Yes	Yes	Yes	Yes	No	Yes	No	No	Yes	No
New Hampshire	Yes	Yes	Yes	No	No	Yes	Yes	No	Yes	No
New Jersey	Yes	No	Yes	Yes	Yes	Yes	Yes	No	Yes	Anonymous
New Mexico	Yes	Yes	Yes	No	Yes	Yes	No	No	No	No
New York	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No
North Carolina	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No	Anonymous
North Dakota	Yes	No	Yes	Yes	Yes	Yes	No	No	No	Anonymous
Ohio	Yes	NO	Yes	No	Yes	Yes	No	No	No	No
Oklahoma	Yes	No	Yes	No	Yes	Yes	No	No	No	No
Oregon	Yes	Yes	Yes	No	Yes	Yes	No	No	No	Anonymous
Pennsylvania	Yes	No	Yes	No	Yes	Yes	No	No	No	No
Rhode Island	Yes	Yes	Yes	No	Yes	Yes	No	No	No	Anonymous
South Carolina	Yes	No	Yes	No	Yes	Yes	No	No	No	Anonymous
South Dakota	Yes	No	Yes	No	Yes	Yes	Yes	No	No	No
Tennessee	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Anonymous
Texas	Yes	No	Yes	No	Yes	Yes	No	No	No	No
Utah	Yes	Yes	Yes	No	Yes	Yes	No	No	No	No
Vermont	Yes	No	Yes	No	Yes	Yes	Yes	No	No	No
Virginia	Yes	Yes	Yes	No	Yes	Yes	No	No	No	No
Washington	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes	No
West Virginia	Yes	No	Yes	No	Yes	Yes	No	No	No	No
Wisconsin	Yes	No	No	Yes	Yes	Yes	No	No	No	No
Wyoming	Yes	No	Yes	No	Yes	Yes	No	No	No	Anonymous
State Totals	50	23	48	18	45	49	14	3	9	13

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