

Bridging the Gap in Federal Law:

Promoting Safe Schools and Improved Student Achievement By Preventing Bullying and Harassment in Our Schools

Almost 30 national education, health care, civil rights, law enforcement, youth development, and other organizations call on Congress to make changes in federal law that will assure that schools and districts maintain sensible anti-bullying and anti-harassment policies, which will have a dramatic impact in improving school safety, and correspondingly, student achievement for all students. This policy brief provides a summary of the research and educational experience that compels Congress to act to help ensure that students do not suffer the adverse consequences associated with bullying and harassment in our nation's schools.

Overview

As national, state, and local leaders continue to invest in America's school systems so that all students, regardless of background, graduate prepared for citizenship, college, and the workforce of the 21st Century, it is imperative that our leaders address all of the challenges we face in reaching this shared goal. The focus on issues of accountability—including, for instance, the development of high learning standards, aligned systems of instruction and assessment, and the like—must extend to *all* issues that indisputably affect student development and achievement. In short, any robust system of accountability should provide direction and support for educators in all critical areas that affect student learning.

This means that as our education leaders work to develop and implement policies that will further improve student learning outcomes, it is imperative that they meaningfully address school safety issues, with a focus on bullying and harassment. The problems of bullying and harassment are among the most prevalent and profound that schools face; they continue to seriously disrupt our school environments and affect the lives of millions of students every year, with major adverse academic and safety consequences. Congress should take steps to ensure that no student is denied access to a quality education based on fear or degradation associated with bullying and harassment.

To this end, members of the National Safe Schools Partnership, a growing coalition of education, health, civil rights, law enforcement, youth development, and other organizations have come together in support of federal policy recommendations based on long-standing research and experience. If adopted, these recommendations will fill an obvious gap in federal law—and will promote school improvement and safety, along with student achievement throughout the country.¹ Specifically, Partnership members recommend that Congress amend federal law to ensure that:

1. Schools and districts have **comprehensive and effective student conduct policies** that include clear prohibitions regarding bullying and harassment;
2. Schools and districts focus on effective **prevention strategies and professional development** designed to help school personnel meaningfully address issues associated with bullying and harassment; and
3. States and districts **maintain and report data** regarding incidents of bullying and harassment in order to inform the development of effective federal, state, and local policies that address these issues.

Despite abundant research and experience that confirms the power of prevention in addressing the short- and long-term consequences of bullying and harassment, and despite the American public's clear and primary concern about school safety, federal law does not comprehensively address the issue. In order for federal law to address the well-established factors that have a direct bearing on student achievement and the success of our schools, Congress must act to help eliminate the safety and achievement problems associated with bullying and harassment.

WHAT IS BULLYING? WHAT IS HARASSMENT?

Historically, bullying and harassment have been defined in different ways, depending on the particular context in which the terms have been used. In general, however, each has been associated with actual harm to individuals defined with reference to the kind of conduct at issue and the setting in which it has occurred. Perhaps most notably, federal non-discrimination laws define prohibited racial and sexual harassment—which can include verbal, as well as physical harassment.

In addition, bullying and harassment represent distinct, but overlapping kinds of conduct. Some instances of abusive or harmful conduct by students may constitute harassment and bullying, while other instances may constitute only one or the other.

National Safe Schools Partnership members have proposed federal legislation that would effectively implement the recommendations contained in this policy paper through amendments to the

Elementary and Secondary Education Act [ESEA] (as amended by the No Child Left Behind Act of 2001) through the reauthorization process. That proposed legislation defines bullying and harassment:

- With specific reference to conduct that causes harm to students, defined as conduct that adversely affects one or more students, depriving them of access to educational opportunities or benefits provided by their schools.
- To clarify that it can be based on any grounds set forth by a district or state; and to enumerate specific bases related to the highest frequency of such incidents, including conduct that is based on a student's actual or perceived race, color, national origin, sex, disability, sexual orientation, gender identity, or religion.
- To exclude any action that would constitute protected free expression.

See Proposed Federal Legislation transmitted on behalf of National Safe School Partnership members to Congress, March 30, 2007 and May 21, 2007 (copies on file with Holland & Knight LLP, Washington, D.C.).

What We Know About Bullying and Harassment

Decades of wide-ranging research and experience confirm a number of indisputable facts that, when taken together, compel Congress to act regarding bullying and harassment:

BULLYING AND HARASSMENT ARE WIDESPREAD PROBLEMS WITH SIGNIFICANT, ADVERSE CONSEQUENCES. Bullying and harassment directly interfere with student learning and achievement, just as they threaten the safety and well-being of millions of students each year.²

- Bullying and harassment are pervasive problems in America's schools. Studies consistently demonstrate the breadth of the problem: one national study demonstrates that bullying affects nearly one in every three American schoolchildren in grades six through ten,³ another confirms that harassment in schools is experienced by a majority of students.⁴

Moreover, incidents of bullying and harassment adversely affect both girls and boys, just as they have negative consequences for students in both lower grades and higher grades.⁵

- “Bullying is serious business...[it] can actually result in long-term social, academic, psychological, and physical consequences.”⁶ The academic consequences of bullying include decreased interest in school, increased absences, and decreased concentration levels for students. Long-term effects associated with bullies include violent and antisocial behaviors.
- Student behavior—specifically including bullying and other “inappropriate” student behavior—is the most commonly cited problem in schools by middle school students.⁷

PROACTIVE, COMPREHENSIVE EFFORTS BY SCHOOL COMMUNITIES—INCLUDING DEVELOPING AND IMPLEMENTING COMPREHENSIVE POLICIES—MAKE A DIFFERENCE. Research and experience demonstrate that comprehensive and proactive efforts—such as effective policy development and implementation—are likely to be effective in preventing incidents of bullying and harassment. Preventative steps can be taken to raise the consciousness of the school community and to educate teachers, staff, parents, and students regarding the nature of the issues, as well as effective responses, before bullying and harassment become a serious problem.

- Teachers believe that policies prohibiting bullying and harassment are among the most helpful strategies to pursue when working to create safe school environments. Correspondingly, students in schools that have comprehensive harassment policies describe their schools as having a better atmosphere with respect to bullying and harassment.⁸
- By definition, comprehensive policies must:
 - Enumerate bases of such conduct that must be specifically covered because of its prevalence—such as race, color, national origin, sex, disability, sexual orientation, gender identity, and religion;⁹ and
 - Permit local judgments regarding additional bases of enumeration, based on local patterns of behavior or concerns.
- Effective anti-bullying programs “require strong leadership and an ongoing commitment from school personnel.” Staff development and training are essential elements in sustaining effective anti-bullying programs.¹⁰

CONSISTENT WITH THE VIEWS OF MOST EDUCATORS, THE AMERICAN PUBLIC IS CONCERNED ABOUT SCHOOL SAFETY AND SUPPORTS PROTECTION FOR ALL STUDENTS. The American public identifies school safety in general—and bullying and/or harassment in particular—as among the public school issues of most concern.¹¹ Teachers echo this concern: The majority of teachers believe that bullying and harassment are “serious problems” in their schools.¹²

The Gap in Federal Law

Current federal legislation does not comprehensively address the issue of bullying and harassment. A limited number of federal laws do address particular kinds of harassment (most notably based on race, national origin, and sex). However, federal legislation does not prohibit *all* kinds of harassment in schools; and *no federal legislation* specifically prohibits bullying in schools.¹³

In this context, the No Child Left Behind Act of 2001 does:

- *Permit* states to spend specified amounts on training, technical assistance, and demonstration projects to address violence that is associated with prejudice and intolerance; and
- *Condition* certain funding to school districts upon their written assurance that they (or the schools to be served) have a plan for keeping schools safe and drug-free that includes “appropriate and effective school discipline policies that prohibit disorderly conduct” and “a code of conduct policy for all students that clearly states the responsibilities of students, teachers and administrators in maintaining a classroom environment that,” among other things, “allows all students in the class to learn” and “has consequences that are fair and developmentally appropriate.”¹⁴

Recommendations to Bridge the Gap in Federal Law

Schools and districts throughout the country have student conduct codes that describe and prohibit certain conduct (such as carrying weapons, the use of profanity, etc.), along with the consequences associated with a violation of those prohibitions. In order to comply with long-standing federal law, schools and districts must also include in their conduct codes specific prohibitions and grievance procedures associated with certain forms of harassment.

The recommendations endorsed by the National Safe Schools Partnership members (listed below) build on common practice and existing federal requirements. These recommendations do not advance radical or dramatic changes to school and district policies. Instead, they bridge the gap that exists under federal law—which, in too many cases, schools and districts have not addressed. Implementation of these recommendations will have a dramatic, positive impact on the lives of thousands of students annually—helping them achieve academic (and ultimately professional) success in a safe and secure school environment.

1. **Federal law should ensure that schools and districts have comprehensive and effective student conduct policies that include clear prohibitions against bullying and harassment;**
2. **Federal law should ensure that schools and districts focus on effective prevention strategies and professional development designed to help school personnel meaningfully address issues associated with bullying and harassment; and**
3. **Federal law should ensure that states and districts maintain and report data regarding incidents of bullying and harassment in order to inform the development of effective federal, state, and local policies that address these issues.**

Congress can take a critical step toward promoting school safety and enhancing student achievement throughout the country by enacting these recommendations.

Broad-Based Support for Recommendations

Almost 30 organizations—representative of constituencies in education, health, civil rights, law enforcement, youth development, and other areas—have joined together in support for federal legislation that would reflect these recommendations.¹⁵ They include:

- 1. AMERICAN ASSOCIATION OF SCHOOL ADMINISTRATORS**
The American Association of School Administrators (AASA) is the professional organization for over 13,000 educational leaders across America and in many other countries. AASA's mission is to support and develop effective school system leaders who are dedicated to the highest quality public education for all children.
- 2. AMERICAN FEDERATION OF TEACHERS**
The American Federation of Teachers (AFT), AFL-CIO, with more than 1.3 million members, works to strengthen the institutions in which AFT members work, to improve the quality of their services.
- 3. AMERICAN LIBRARY ASSOCIATION**
The American Library Association is the oldest and largest library association in the world, with more than 64,000 members. Its mission to promote the highest quality library and information services and public access to information.
- 4. AMERICAN SCHOOL COUNSELOR ASSOCIATION**
The American School Counselor Association (ASCA) supports school counselors' efforts to help students focus on academic, personal/social and career development so they achieve success in school and are prepared to lead fulfilling lives as responsible members of society. ASCA serves more than 20,000 professional school counselors around the world.
- 5. AMERICAN COUNSELING ASSOCIATION**
The American Counseling Association (ACA) is a not-for-profit professional and educational organization dedicated to the growth and enhancement of the counseling profession. Founded in 1952, ACA is the world's largest association exclusively representing professional counselors in various practice settings, serving nearly 45,000 members.
- 6. AMERICAN SCHOOL HEALTH ASSOCIATION**
The American School Health Association is an organization of administrators, counselors, health educators, physical educators, psychologists, school health coordinators, school nurses, school physicians, and social workers. Its mission is to protect and promote the health and well-being of children and youth through coordinated school health programs as a foundation for school success.
- 7. BIG BROTHERS BIG SISTERS OF AMERICA**
Brothers Big Sisters of America is the oldest and largest youth mentoring organization in the United States. In 2006, the organization served more than 246,000 youth, ages five through 18, in 5,000 communities across the country through a network of 425 agencies.
- 8. COMMUNITIES IN SCHOOLS, INC.**
Communities In Schools is anchor to the nation's leading community-based organization helping young people stay in school and prepare for life. Each year, more than two million young people in 27 states and the District of Columbia have access to services through Communities In Schools, through its 200 local affiliates in 27 states.
- 9. COUNCIL FOR CHILDREN WITH BEHAVIORAL DISORDERS**
The Council for Children with Behavioral Disorders is the division of the Council for Exceptional Children committed to promoting and facilitating the education and general welfare of children and youth with emotional or behavioral disorders.
- 10. FIGHT CRIME: INVEST IN KIDS**
Fight Crime: Invest in Kids is a bipartisan, nonprofit anti-crime organization led by more than 3,000 police chiefs, sheriffs, prosecutors, victims of violence and leaders of police officer associations.
- 11. THE GAY, LESBIAN AND STRAIGHT EDUCATION NETWORK**
The Gay, Lesbian and Straight Education Network (GLSEN) is an education organization dedicated to ensuring safe schools for all lesbian, gay, bisexual and transgender students. With over forty local chapters, GLSEN strives to ensure that each member of every K-12 school community is valued and respected regardless of sexual orientation or gender identity/expression.
- 12. HUMAN RIGHTS CAMPAIGN**
The Human Rights Campaign (HRC) is America's largest civil rights organization working to achieve gay, lesbian, bisexual and transgender equality. By inspiring and engaging all Americans, and with a membership of over 700,000, HRC strives to end discrimination against GLBT citizens and realize a nation that achieves fundamental fairness and equality for all.
- 13. LEADERSHIP AND RENEWAL OUTFITTERS**
Leadership and Renewal Outfitters is a national not-for-profit organization focused on creating, inspiring, and renewing opportunities for leaders and their organizations by grounding people in who they are; connecting people to each other; and inspiring people's beliefs about what they can actually do to positively impact the lives of young people.
- 14. LEARNING DISABILITIES ASSOCIATION OF AMERICA**
Learning Disabilities Association of America (LDA) is the largest non-profit volunteer organization advocating for individuals with learning disabilities and has over 200 state and local affiliates in 42 states and Puerto Rico. LDA's international membership of over 15,000 includes members from 27 countries around the world.
- 15. NATIONAL ASSOCIATION FOR THE EDUCATION OF HOMELESS CHILDREN AND YOUTH**
The National Association for the Education of Homeless Children and Youth (NAEHY) is a national grassroots membership association that serves as the voice and the social conscience for the education of children and youth in homeless situations. NAEHY connects educators, parents, advocates, researchers, and service providers to ensure school enrollment and attendance, and overall success for children and youth whose lives have been disrupted by the lack of safe, permanent, and adequate housing.
- 16. NATIONAL ASSOCIATION OF SCHOOL PSYCHOLOGISTS**
The National Association of School Psychologists, with a membership of 23,000, represents and supports school psychology through leadership to enhance the mental health and educational competence of all children.
- 17. NATIONAL ASSOCIATION OF SECONDARY SCHOOL PRINCIPALS**
The National Association of Secondary School Principals is the preeminent organization of and national voice for middle level and high school principals, assistant principals, and aspiring school leaders from across the United States and more than 45 countries around the world. It has 33,000 members.

18. NATIONAL ASSOCIATION OF STATE DIRECTORS OF SPECIAL EDUCATION

The National Association of State Directors of Special Education is an organization dedicated to providing services to state education agencies to maximize educational outcomes for children with disabilities.

19. NATIONAL CENTER FOR LESBIAN RIGHTS

The National Center for Lesbian Rights is a non-profit, public interest law firm that advocates for equitable public policies affecting LGBT community, provides free legal assistance to LGBT clients and their legal advocates, and conducts community education on LGBT legal issues.

20. NATIONAL COLLABORATION FOR YOUTH

The National Collaboration for Youth (NCY), a 30-year old organization, is a coalition of organizations that have a significant interest in youth development focused on a mission of providing a united voice as advocates for youth to improve the conditions of young people in America, in order to help young people reach their full potential. Members of NCY include fifty national, non-profit, youth development organizations.

21. NATIONAL COUNCIL OF LA RAZA

The National Council of La Raza, the largest national constituency-based Hispanic organization and the leading voice in Washington, DC for the Hispanic community, is a private, nonprofit, nonpartisan organization established to reduce poverty and discrimination and improve life opportunities for Hispanic Americans.

22. NATIONAL EDUCATION ASSOCIATION

The National Education Association (NEA) is the nation's largest professional employee organization and is committed to advancing the cause of public education. NEA's 2.7 million members work at every level of education, from pre-school to university graduate programs.

23. THE NATIONAL NETWORK FOR YOUTH

The National Network for Youth is a 30-year old national non-profit

membership and advocacy organization that provides education, networking, training, materials and policy work with federal, state, and local lawmakers. The mission of the National Network for Youth is to champion the needs of runaway, homeless, and other disconnected youth through advocacy, innovation and services — one community at a time.

24. NATIONAL PTA

The largest volunteer child advocacy association in the nation, representing 5.5 million parents, teachers, students, and other child advocates, National PTA reminds our country of its obligations to children and provides parents and families with a powerful voice to speak on behalf of every child while providing the best tools for parents to help their children be successful students.

25. SCHOOL SOCIAL WORK ASSOCIATION OF AMERICA

The School Social Work Association of America is dedicated to promoting the profession of School Social Work and the professional development of School Social Workers in order to address barriers to learning and enhance the educational experience of students and their families.

26. SIKH AMERICAN LEGAL DEFENSE AND EDUCATION FUND

The Sikh American Legal Defense and Education Fund is a national civil rights and educational organization. The group empowers Sikh Americans through legal assistance, educational outreach, legislative advocacy, and media relations.

27. SOCIETY OF STATE DIRECTORS OF HEALTH, PHYSICAL EDUCATION AND RECREATION

The Society aims to have a significant and enduring effect on the health, achievement, and life success of children and youth through school health education and physical education within a coordinated school health approach. The Society utilizes strategic advocacy, creative partnerships, state-of-the-art professional development, and timely identification of resources to enhance the leadership capacity of its members.

References and Sources on Bullying & Harassment

American Association of University Women, *Hostile Hallways: Bullying, Teasing, and Sexual Harassment in School* (2001).

Devoe et al., U.S. Departments of Education and Justice, *Indicators of School Crime and Safety: 2002*, NCEs 2003-009/NCJ 196753 (Washington, D.C. 2002).

Fight Crime: Invest in Kids, *Bullying Prevention Is Crime Prevention* (2003).

Harris Interactive, GLSEN, *From Teasing to Torment: School Climate in America* (2005)

Massachusetts Department of Education, *2001 Massachusetts Youth Risk Behavior Survey Results* (September 2002).

Nansel et al., *Bullying Behaviors Among U.S. Youth: Prevalence and Association with Psychosocial Adjustment*, 285 *Journal of the American Medical Association* 2094, 2094-2100 (April 25, 2001).

National Association of Secondary School Principals and Phi Delta Kappa, *Middle School Student Poll* (2007)

National Association of State Boards of Education, *Bullying in Schools*, 11 Policy Update No. 10, June 2003.

National Institute of Child Health and Human Development, Health Behaviour in School-aged Children: A World Health Organization Cross-National Study Research Protocol for the 1997-98 Survey (1998).

U.S. Department of Education Office of Safe and Drug-Free Schools, *Bullying Prevention in the School: Research-Based Strategies for Educators*. 11 The Challenge No. 3, (2003).

ENDNOTES

¹ This document is published on behalf of members of the National Safe Schools Partnership that have recommended that Congress enact federal law consistent with the principles discussed herein. The Partnership is an informal coalition of leading education, health, civil rights, law enforcement, youth development, and other groups committed to ensuring that America's schools are safe for all children.

² See, e.g., American Association of University Women, *Hostile Hallways: Bullying, Teasing, and Sexual Harassment in School* (2001);

³ U.S. Department of Education Office of Safe and Drug-Free Schools, *Bullying Prevention in the School: Research-Based Strategies for Educators* (2003), citing National Institute of Child and Health and Human Development, *Health Behaviour in School-aged Children: A World Health Organization Cross-National Study? Research Protocol for the 1997-98 Survey* (1998).

⁴ Harris Interactive, GLSEN, *From Teasing to Torment: School Climate in America* (2005)

⁵ See U.S. Department of Education Office of Safe and Drug-Free Schools, *Bullying Prevention in the School: Research-Based Strategies for Educators* (2003); American Association of University Women, *Hostile Hallways: Bullying, Teasing, and Sexual Harassment in School* (2001); Devoe et al., U.S. Departments of Education and Justice, *Indicators of School Crime and Safety*. 2002, NCES 20003-009/NCJ 196753 (Washington, D.C. 2002).

⁶ U.S. Department of Education Office of Safe and Drug-Free Schools, *Bullying Prevention in the School: Research-Based Strategies for Educators* (2003). See also Nansel et al., *Bullying Behaviors Among U.S. Youth: Prevalence and Association with Psychosocial Adjustment*, 285 *Journal of the American Medical Association* 2094 (2001); American Association of University Women, *Hostile Hallways: Bullying, Teasing, and Sexual Harassment in School* (2001).

⁷ National Association of Secondary School Principals and Phi Delta Kappa International, Middle School Student Poll (May, 2007).

⁸ Harris Interactive, GLSEN, *From Teasing to Torment: School Climate in America* (2005).

⁹ Comprehensive policies with enumeration help ensure safety and reduce absenteeism; and promote environments with fewer incidents of reported harassment. See Harris Interactive, GLSEN, *From Teasing to Torment: School Climate in America* (2005). Correspondingly, enumeration facilitates more responsive teacher and staff interventions when bullying and harassment occurs. Indeed, the U.S. Supreme Court has recognized that "[e]numeration is the essential device used to make the duty not to discriminate concrete and to provide guidance for those who must comply." *Romer v. Evans*, 517 U.S. 620 (1996).

¹⁰ See U.S. Department of Education Office of Safe and Drug-Free Schools, *Bullying Prevention in the School: Research-Based Strategies for Educators* (2003); see also National Association of State Boards of Education, *Bullying in Schools*, 11 Policy Update No.10, (June 2003).

¹¹ See, e.g., Massachusetts Department of Education, *2001 Massachusetts Youth Risk Behavior Survey Results* (September 2002); American Association of University Women, *Hostile Hallways: Bullying, Teasing, and Sexual Harassment in School* (2001).

¹² Harris Interactive, GLSEN, *From Teasing to Torment: School Climate in America* (2005).

¹³ Current federal laws prohibit harassment based on:

- Race, color and national origin (see *Title VI of the Civil Rights Act of 1964* and *"Racial Incidents and Harassment Against Students at Educational Institutions: Investigative Guidance: Notice,"* 59 Fed. Reg. 11448 (March 10, 1994));
- Sex (see *Title IX of the Education Amendments of 1972, 20 U.S.C. §1681 et seq.* and *"Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties,"* 66 Fed. Reg. 5512 (January 19, 2001)); and
- Disability (see *Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794; Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §12134; and "Dear Colleague Letter" from U.S. Department of Education, dated July 25, 2000*).

¹⁴ See 20 U.S.C. §§7114-7115 (2002).

¹⁵ Two legislative proposals—nearly identical in substance—have been submitted to Congress. One would implement the recommendations of this paper through amendments to Title IV of the ESEA, Safe and Drug Free Schools and Communities; the other would implement the recommendations of this paper through amendments to Title IX of ESEA. Organizations listed in this document have endorsed one or both of those proposals. Details regarding other endorsing organizations and the specific positions of all endorsing organizations are on file with Holland & Knight LLP, Washington, D.C.