

Illinois Need For a Model Bullying Policy

By Deanna Hoyt

The media is constantly covering stories about teens being bullied and what the schools could have done to prevent the incident. Illinois legislatures have responded by creating the Bullying Prevention statute, which is aimed at helping schools across the state know how to take preventative measures and how to respond to bullying.¹ The Bullying Prevention statute defines bullying as:

Any severe or pervasive physical or verbal act or conduct, including communications made in writing or electronically, directed toward a student or students that has or can be reasonably predicted to have the effect of one or more of the following:

- (1) placing the student or students in reasonable fear of harm to the student's or students' person or property;
- (2) causing a substantially detrimental effect on the student's or students' physical or mental health;
- (3) substantially interfering with the student's or students' academic performance;
- or
- (4) substantially interfering with the student's or students' ability to participate in or benefit from the services, activities, or privileges provided by a school.²

Illinois is not alone the attempt to address the issue of bullying at schools. Forty-one states have adopted a Model Bullying Policy to help school in their state better prevent and respond to bullying.³ However, Illinois is one of the few states that has not yet adopted a Model Bullying Policy for school districts to implement.⁴ Illinois should adopt a Model Bullying Policy because it will help reduce the strain on school district resources and will help schools to better address and remedy bullying.

¹ Bullying Prevention, 105 Ill. Comp. Stat. § 5/27-23.7

² Bullying Prevention, 105 Ill. Comp. Stat. § 5/27-23.7 (b)

³ Victoria Stuart-Cassel, Ariana Bell, J. Fred Springer, U.S. Dept. of Ed., Analysis of State Bullying Laws and policies, at 57 (2011).

⁴ Supra.

Currently Illinois is \$175 billion dollars in debt, with \$146 billion of that debt coming from pensions.⁵ The Teachers Retirement System is the largest pension fund in Illinois when compared to all other pensions that the state is responsible for.⁶ Because of the budget deficit, the Teacher Retirement System is currently only receiving seventy-two center per dollar.⁷ As a result of this deficit, the unfunded liability grew by \$6.6 billion in 2013.⁸ With this large of a deficit, it is important that the state and schools look at ways to reduce the budget while not cutting services to students.

The requirement of having each district create their own policy may cause a financial strain on the budget.⁹ Part of the requirement of Bullying Prevention is that every school district, private or public, must create and update their bullying prevention and policies every two years.¹⁰ These policies must then be filed with the State Board of Education whom will monitor the implementation of these policies.¹¹ Currently, Illinois has 868 separate school districts, which is more than most other states.¹² By having the Model Bullying Policy, it would allow the state to keep track of a single bullying policy and more efficiently and effectively ensure that school districts were compliant with the Bullying Prevention statute.¹³ The amount of money that is being spent on reviewing 868

⁵ Jim Anderson, Group Examines Illinois Debt, Alton Daily News, Apr. 15, 2014, <http://www.altondailynews.com/news/details.cfm?clientid=17&id=122294#.U3OicfldXkU>.

⁶ Benjamin Yount, Tow Numbers, One Point: IL Can't Afford Pensions, Illinois Watchdog, Sept. 4 2013, <http://watchdog.org/104238/two-new-numbers-one-point-il-cant-afford-pensions/>.

⁷ Jim Anderson, supra.

⁸ Supra.

⁹ Bullying Prevention, 105 Ill. Comp. Stat. § 5/27-23.7 (d)

¹⁰ § 5/27-23.7 (d)

¹¹ § 5/27-23.7 (d)

¹² Yes, Classroom First, Chicago Tribune, Jan. 31, 2012, http://articles.chicagotribune.com/2012-01-31/opinion/ct-edit-consolidate-20120131_1_school-districts-restructuring-of-public-education-cost-effective-education.

¹³ Supra.

school districts' bullying policies could be greatly reduced by a state Model Bullying Policy.¹⁴

In addition, local school districts could also benefit financially from a State Model Bullying Policy. As a result of the current budget deficit in Illinois, school districts are not receiving all of the money that they were promised from the state government.¹⁵ In the 2013-2014 school year, school districts ended up receiving only 89% of what they were promised per pupil, by the state budget.¹⁶ It is estimated that during the 2014 -2015 school year that school districts will only receive 83.5% percent per pupil of what they are promised by the budget.¹⁷ Loss of state funding can cause a great problem in districts that are already under funded.¹⁸ It also possible that the school districts may need to spend additional funds in acquiring legal counsel when creating their bullying policy.¹⁹ They may need legal guidance in navigating the possible legal consequences resulting from the implementation of the bullying policy.²⁰ By having a single Model Bulling Policy Schools could divert funds back to students since they are facing the possibility of losing funds from the state.²¹

School districts are going to be looking for ways to be financially responsible during the coming years and having a State Model Bullying Policy can help reduce the

¹⁴ Supra.

¹⁵ Valerie Wells, Forum Delves Into State's School Funding Formula, Herald & Review, May 9, 2014, http://herald-review.com/news/local/education/forum-delves-into-state-s-school-funding-formula/article_9f5f4872-57b9-5a61-a406-6f8da7c63b6e.html.

¹⁶ Valerie Wells, supra.

¹⁷ Valerie Wells, supra.

¹⁸ Valerie Wells, supra.

¹⁹ Jewels Sacks, Robert S. Salem, Victims Without Legal Remedies: Why Kids Need Schools to Develop Comprehensive Anti-Bullying Policies, 72 Alb. Rev. 147, 190 (2009).

²⁰ Jewels Sacks, supra.

²¹ Valerie Wells, supra.

financial burden that many districts may face. If schools does not have to review and update their bullying policy every two years, they could instead use the money for school resources.²² Many school districts struggling for resources would more likely prefer to have the money to put towards student resources instead of researching and reviewing the bullying policy for effectiveness. There are sixteen high school districts and 138 elementary schools districts in Illinois, which have less than 500 students.²³ If the money for the updating and reviewing of the district's bullying policies was put back into the schools, it is possible to see a notable increase in the funds per pupil in smaller districts. Also, smaller districts may not have the necessary funds to update and review their bullying policy effectively. A State Model Bullying Policy could help financially at the local district level.

A State Model Bullying Policy also help the school districts resolve issues of bullying at the school and district level instead of judicially.²⁴ When disputes between students and administrators or other students are not resolved to the parent's satisfaction it can end up in costly litigation.²⁵ Many of the Model Bullying Policies already in place talk about the remedies to bullying at the school level instead of in the judicial system.²⁶ The school is better able to understand the students' personal situations and have developed resolutions to specific incidents which will not be a financial burden on the

²² § 5/27-23.7 (d)

²³ Yes, Classroom First, *supra*.

²⁴ Support the Kids Involved, StopBullying.org, (last visited May 10, 2014) <http://www.stopbullying.gov/respond/support-kids-involved/index.html>.

²⁵ Theno v. Tonganoxic Unified Sch. Dist. No. 464, 377 F.Supp 2d 952 (D. Kan. 2005). (A male student was being harassed by others and the school was only giving the aggressors warnings about their behavior. The mother of the child being bullied was not satisfied with the school's response so she sued the school district for civil damages.)

²⁶ Victoria Stuart-Cassel, Ariana Bell, J. Fred Springer, U.S. Dept. of Ed., Analysis of State Bullying Laws and policies, at 57 (2011).

district.²⁷ A study in California found that a civil case could end up costing the party found to be at fault significantly more than had a resolution outside of the justice system been obtained.²⁸ If the parent's claim is found to have no merit, after a trial they can face an average loss of \$43,000.²⁹ As for the school district, if they are found at fault and the court has awarded damages they can face a potential loss near \$1 million.³⁰ These costs need to be avoided especially when Illinois is facing an enormous budget debt and it can be done so by implementing a State Model Bullying Policy.³¹

A reality that the school also faces when being in a legal lawsuit is the option to appeal a trial verdict.³² The appeals process can add even greater costs to the parties involved in the case. One analysis found that when the Supreme Court grants certiorari it may end up costing each party well into millions of dollars once all the attorney and filing fees have been added together.³³ Also, the cost of filing a writ of certiorari could end up costing each party over \$200,000 in fees which may end up being for naught if the court decided to deny the claim which is more likely than not.³⁴ However, these costs are not including the fees that the party face during while appealing to the level of the Supreme Court so it makes much more sense financially to settle a dispute at the school

²⁷ Stop Bullying on the Spot, StopBullying.gov, (last visited May 10, 2014)

<http://www.stopbullying.gov/respond/on-the-spot/index.html> (Stop bullying.gov).

²⁸ Jonathan D Glatter, Study Finds Settling is Better than Going to Trial, N.Y. Times, Aug. 7, 2008, http://www.nytimes.com/2008/08/08/business/08law.html?_r=0.

²⁹ Jonathan D Glatter, Supra.

³⁰ Jonathan D Glatter, Supra.

³¹ Jim Anderson, Group Examines Illinois Debt, Alton Daily News, Apr. 15, 2014,

<http://www.altondailynews.com/news/details.cfm?clientid=17&id=122294#.U3OicfldXkU>.

³² Fed. R. Civ. P. 4.

³³ Adriene Hill, How Much Does A Big Supreme Court Case Like Gay Marriage Cost?, Marketplace, (last accessed May 10, 2014) <http://www.marketplace.org/topics/economy/how-much-does-big-supreme-court-case-gay-marriage-cost>.

³⁴ Adriene Hill, supra.

district level.³⁵ It is a real possibility that a case about bullying can end up at the Supreme Court.³⁶ These costs show that there is a large financial benefit to settling a dispute at the school district level. While Illinois is facing a budget crisis, schools cannot afford to divert funding for resources to help finance their legal battles. A State Model Bullying Policy will help ensure that proper resolution to a problem involving bullying will be achieved at the school level instead of judicially.

In addition to the cost benefits of a State Model Bullying Policy, a School will be better able to respond to bullying in a responsible and timely manner. One of the goals of the Illinois Education System is to educate students, parents, and school districts about what behaviors constitute bullying.³⁷ This is an important goal because 20.4% of female and 18.2% of male high school students in Illinois has reported that they were bullied at one point in their life.³⁸ Preventing and properly responding to bullying has become such an important goal nationally that forty-one states have enacted Model Bullying Policies.³⁹ These Policies help schools in their states know what the proper response to bullying is.⁴⁰ Principals, teachers, and support staff should all know how to respond to bullying and it may be difficult for a district to create an action plan without any guidance.⁴¹ If Illinois

³⁵ Adriene Hill, *supra*.

³⁶ *Davis ex rel Lashonda D. v. Monroe Cnty. Bd. Of Educ.*, 526 U.S. 629 (1999) (A female student was being sexually harassed by a male student. Administrators told her to just ignore it. The Supreme Court found that a school has a duty to respond in a reasonable manner in instances of sexual harassment involving two students.)

³⁷ Bullying Prevention, 105 Ill. Comp. Stat. § 5/27-23.7 (a)

³⁸ Centers for Disease Control and Prevention (CDC). *1991-2011 High School Youth Risk Behavior Survey Data*. (May 8, 2014, 6:18 PM), <http://apps.nccd.cdc.gov/youthonline>.

³⁹ Victoria Stuart-Cassel, Ariana Bell, J. Fred Springer, U.S. Dept. of Ed., *Analysis of State Bullying Laws and policies*, at 57 (2011).

⁴⁰ Victoria Stuart-Cassel, *supra*.

⁴¹ Jewels Sacks, Robert S. Salem, *Victims Without Legal Remedies: Why Kids Need Schools to Develop Comprehensive Anti-Bullying Policies*, 72 Alb. Rev. 147, 190 (2009).

were to create a Model Bullying Policy, it would help give schools guidance about how to properly react to bullying.

In addition, a Model Bullying Policy will help school know how better prevent to the harmful effects of bullying. The Illinois Legislature has determined that that bullying has harmful effects on students.⁴² The General Assembly has found that for students to learn they need a safe and civil environment and that bullying in addition to interfering with learning can cause physical, psychological, and emotional harm to students.⁴³ In addition, the General Assembly has also found bullying linked to other behaviors such as vandalism, shoplifting, skipping school, fighting, using drugs, sexual violence and other forms of antisocial behavior.⁴⁴ Case studies show that these findings about bullying are not unique to Illinois.⁴⁵ Not only does bullying have harmful effects, but is also will escalate when an adult fails to intervene.⁴⁶ A Model Bullying Policy created by the state can help schools properly address the issue that arise from bullying.

A Model Bullying Policy created by the state will help teachers know how to respond to stop bullying.⁴⁷ Schools have a duty to make sure that a student's learning environment is not disrupted by others.⁴⁸ This is why it is important for teachers to intervene immediately in bullying situations, not ignore it, separate the individuals, and to

⁴² Bullying Prevention, 105 Ill. Comp. Stat. § 5/27-23.7 (a)

⁴³ Supra.

⁴⁴ Supra.

⁴⁵ Jewels Sacks, Robert S. Salem, Victims Without Legal Remedies: Why Kids Need Schools to Develop Comprehensive Anti-Bullying Policies, 72 Alb. Rev. 147, 198 (2009).

⁴⁶ Supra.

⁴⁷ Stop Bullying on the Spot, StopBullying.gov, (last visited May 10, 2014)

<http://www.stopbullying.gov/respond/on-the-spot/index.html> (Stop bullying.gov).

⁴⁸ Bethel Sch. Dist. No. 403 v. Fraser, 478 U.S. 675, 680 (1986) (A student gave an inappropriate speech at a school assembly and was suspended as a result. The Court ruled that it was not a violation of his First Amendment rights. Schools can punish students when they become disruptive to the learning of others.)

question the students separately.⁴⁹ Also, when a teacher stops the bullying right away it can help prevent negative effects on bystanders.⁵⁰ Bystanders to bullying are more likely to have depression and anxiety or to skip school.⁵¹ The most important thing a school can do to prevent bullying is change the culture of the school.⁵² When teacher, students, and administration all become involved in the prevention of bullying, it becomes more effective.⁵³ Schools may not know what to do to help create an environment where all discourage bullying but a Model Bullying Policy from the state can help.

In conclusion, Illinois should adopt and mandate the use of a Model Bullying Policy. Schools may struggle to come up with an effective bullying policy on their own. A statewide Policy will help all teachers and administrators know how to effectively prevent and respond to bullying at their schools. It will also help a school to know how to prevent the harmful effects that result from bullying. When responding in a timely manner, administrators and teachers can help change the norms of their school regarding bullying. Also, Illinois is currently in debt and facing budget cuts. Schools will be looking for ways to cut spending without cutting services. Creating a Model Bullying Policy will help Illinois reduce spending without reducing classroom resources. By having a single Policy the State Board of Education will no longer have to exert the resources necessary to make sure that 868 separate school districts in Illinois are properly implementing their individually created bullying policies. In addition, a single bullying

⁴⁹ Stop Bullying on the Spot, Supra.

⁵⁰ Effects of Bullying, StopBullying.org, (last accessed May 10, 2014) <http://www.stopbullying.gov/at-risk/effects/index.html>.

⁵¹ Supra.

⁵² Jewels Sacks, Robert S. Salem, Victims Without Legal Remedies: Why Kids Need Schools to Develop Comprehensive Anti-Bullying Policies, 72 Alb. Rev. 147, 190 (2009).

⁵³ Supra.

policy for the state will help each individual district avoid costs related to updating and revising their bullying policy every two years. Illinois should create and implement a statewide Model Bullying Policy.

A Guide to What a Model Bullying Policy May Look Like

Prohibition of Bullying

It is the policy of the Illinois Board of Education that all students be provided with a safe and civil learning environment whether public or private.

Bullying” means any severe or pervasive physical or verbal act or conduct, including communications made in writing or electronically, directed toward a student or students that has or can be reasonably predicted to have the effect of one or more of the following:

- Placing the student or students in reasonable fear of harm to the student's or students' person or property;
- Causing a substantially detrimental effect on the student's or students' physical or mental health;
- Substantially interfering with the student's or students' academic performance; or
- Substantially interfering with the student's or students' ability to participate in or benefit from the services, activities, or privileges provided by a school.

Bullying on the basis of actual or perceived

- Race
- Color
- Religion,
- Sex
- National origin
- Ancestry
- Age
- Marital status
- Physical or mental disability
- Military status
- Sexual orientation
- Gender-related identity or expression
- Unfavorable discharge from military service
- Association with a person or group with one or more of the aforementioned actual or perceived characteristics, or any other distinguishing characteristic

is prohibited at all times.

No student shall be subject to bullying while

- At school
- On school property
- On school buses or other school vehicles
- At designated school bus stops waiting for the school bus
- At school-sponsored or school-sanctioned events or activities
- during any school-sponsored education program or activity

When a student uses a school computer, a school computer network, or other similar electronic school equipment to transmit a message all communications will be treated as if they had occurred on school property.

Prevention

- Annual professional development for administrators and staff to increase awareness of causes and consequences of bullying and prevention techniques.
- Promotion of student involvement in anti-bullying efforts, peer support, and a culture which encourages students to report bullying to adults
- Involvement of parents and community in prevention efforts.

Remedies

- Education/intervention for students exhibiting bullying behaviors.
- Remedial measures to protect the victim.
- Protection of the victim from retaliation

Consequences

After the school has determined that there was an incident of bullying, they may implement a consequence.

Suspensions, expulsions, or protective orders should not be viewed as punishment for the offender but as protection for the victim.

Responding to reports of bullying

- Investigate a student's allegation of bullying as soon as safety permits.
- If a student approaches a staff member to talk about an incident of bullying the staff member should respond in a practical, safe, private, and age-appropriate way.
- Use Bullying Reporting forms as an alternative way of reporting.