



Bullying Should Not Be a Teenage Rite of Passage

Five Ways We Can End Discrimination and Harassment Against Gay and Transgender Youth in Schools

Jerome Hunt February 2011

Introduction

The rising number of teen suicides reported in the media is bringing national attention to issues of bullying, particularly bullying that is targeted toward individuals who are or are perceived to be gay or transgender. Bullying in schools is viewed by many Americans as a rite of passage for all young adults, but for many gay and transgender* teens it is a serious problem that increases their chance of dropping out of school, becoming homeless, using drugs, or attempting suicide. Schools are supposed to be safe zones, where students can learn and grow. But for too many gay and transgender youth, school is a place to be feared because of bullies and an overall hostile climate.

The [2009 National School Climate Survey](#) by the Gay Lesbian and Straight Education Network, or GLSEN, a national education organization focused on ensuring safe schools for all students, provides some discouraging data when it comes to bullying targeted at gay and transgender youth. Of the gay and transgender middle and high school students surveyed, 9 out of 10 have experienced harassment at school in the past year. Nearly a third of these have skipped at least one day of school due to concerns about their safety in the previous month. An alarming 61 percent of students have felt unsafe at school because of their sexual orientation, while 39 percent have felt unsafe because of their gender expression.

Data from the [Williams Institute](#), a legal and policy think tank at UCLA School of Law, presents even more discouraging news about bullying that targets gay and transgender youth. An overwhelming 85 percent of gay and transgender students report being harassed because of their sexual or gender identity, with 20 percent reporting they were physically attacked. More importantly, gay students are three to four times more likely than their straight counterparts to commit suicide. Exacerbating the hostile climate students face, the people who are supposed to protect them from this behavior—the administrators and teachers—often do nothing in response to the harassment or physical attacks.

*In this report, the term "gay" is used as an umbrella term for people who identify as lesbian, gay, bisexual, or transgender.

This issue brief examines what, if anything, state and local school boards, state legislatures, and the federal government are doing about this insidious problem. We then propose five ways that the U.S. Congress could act to end this persistent form of discrimination in the classrooms and hallways of our nation's schools.

State and local response to bullying

Bullying is on the radar of many school boards, state legislatures, and the federal government. But due to the lack of federal laws that prohibit the bullying of gay and transgender youth, states have been left to develop antibullying laws and regulations on their own. This means there are a diverse number of antibullying approaches across the country. Currently 45 states have some form of legislation in place that provides protection for students from bullying. (see table on page 3)

As the table illustrates, an overwhelming number of states do have measures in place, but the consistency and reach of the rules is mixed at best. First of all, four states—Michigan, Montana, North Dakota, and South Dakota—have no antibullying laws or regulations at this time. And of the 45 states that do have antibullying protections, 22 do not enumerate specific personal characteristics that are covered, such as race, religion, sexual orientation. Those 22 states are Alabama, Alaska, Arkansas, Arizona, Delaware, Florida, Georgia, Kansas, Kentucky, Louisiana, Missouri, Mississippi, Nevada, Ohio, Oklahoma, Rhode Island, South Carolina, Tennessee, Texas, Virginia, West Virginia, and Wyoming.

In most of these states, local school boards have the authority to enumerate specific coverage of categories. But they are under no mandate to include explicit coverage for gay and transgender students, which means that most young people in these states will go without protections.

While these states lack categories of enumeration, two states (Florida and Georgia) specifically try to make sure students who are bullied or do the bullying have access to appropriate support services. In Florida, for example, a school must refer victims and perpetrators of bullying or harassment to counseling. Georgia schools must offer antibullying responses that are age-appropriate (disciplinary action for older students, counseling for younger students).

A number of states now provide protection against a growing type of bullying—cyber or electronic bullying, which experts define as “an aggressive, intentional act carried out by a group or individual, using electronic forms of contact, repeatedly and over time against a victim who cannot easily defend him or herself.” Cyber bullying can take many forms including the following:

A mixed bag of antibullying measures

A review of laws and regulations related to school bullying

State	Employee training program	LGBT specific legislation/regulation	Policy developed by states department of education	Policy developed by school board or school officials	Require or encourage reporting bullying incidents to administrators, principal, or designee	Equate bullying with harassment and intimidation
Alaska	X			X	X	X
Alabama			X		X	X
Arkansas	X			X	X	
Arizona				X	X	X
California			X			
Colorado				X	X	
Connecticut				X	X	X
Delaware				X	X	
District of Columbia*^						
Florida				X	X	X
Georgia	X		X	X	X	
Hawaii**						
Iowa	X	X		X	X	
Idaho				X	X	X
Illinois	X	X		X	X	
Indiana	X		X		X	X
Kansas	X			X		
Kentucky			X	X	X	X
Louisiana				X	X	X
Massachusetts	X		X	X	X	
Maryland	X	X	X	X	X	X
Maine	X	X		X		X
Michigan**						
Minnesota				X		X
Missouri	X			X	X	X
Mississippi**						
Montana**						
North Carolina	X	X		X	X	X
North Dakota**						
Nebraska					X	X
New Hampshire	X			X	X	
New Jersey		X			X	
New Mexico		X		X	X	X
Nevada	X		X	X	X	X
New York	X	X		X	X	X
Ohio	X				X	X
Oklahoma	X			X		X
Oregon			X	X	X	X
Pennsylvania					X	
Rhode Island	X		X	X	X	X
South Carolina	X		X	X	X	X
South Dakota**						
Tennessee				X	X	X
Texas				X		X
Utah	X		X	X		
Virginia	X					
Vermont	X	X		X	X	X
Washington	X	X		X	X	X
Wisconsin						
West Virginia	X		X	X	X	X
Wyoming	X		X	X	X	X

Source: Based on CAP review of state statutes and regulations (as of January 2011).

* For the purpose of this study the District of Columbia (Washington, DC) shall be referred to as a state.

^ Proposed legislation would include faculty training program, LGBT specific protections, and would apply to schools, libraries, and recreation facilities.

** Denotes states that do not have any laws or regulations against bullying.

- Sending hateful or threatening messages via instant messaging or text messaging
- Creating blogs used to damage a person’s reputation or invade privacy
- Sending mass e-mails or picture messages that contain nude or degrading pictures of an individual

Beyond the laws cited above, several states have regulations or ethical codes of conduct for teachers that address student discrimination, harassment, and/or bullying. These regulations and ethical codes are in place in the District of Columbia, Hawaii, New Mexico, Pennsylvania, and Utah. The District of Columbia has a regulation in place that prevents discrimination on the basis of actual or perceived sexual orientation and gender identity, but if a bill currently under consideration (the Harassment and Intimidation and Prevention Act of 2010) is enacted, then public and charter schools, public libraries, the University of the District of Columbia, and the Department of Parks and Recreation would all have to adopt antibullying policies. More importantly, the bill would propose faculty training programs that place emphasis on gender, sexual-orientation, and gender expression/identity harassment and bullying.

In Hawaii the Department of Education has an administrative rule that covers harassment in which sexual orientation is listed among the enumerated categories. Interestingly, Hawaii also has an antiharassment, antibullying, and antidiscrimination policy against students by employees—a policy that prohibits discrimination (including harassment) by an employee against certain protected classes of students (race, color, sex, national origin, physical or mental disability, and religion). This policy also prohibits any form of harassment and/or bullying against additional classes of students, including gender identity and expression and sexual orientation. While these measures are a start, they stop short of providing comprehensive protection that is needed to protect all gay and transgender youth from bullying.

Another three states—Connecticut, Massachusetts, and Wisconsin—have laws that protect against discrimination, harassment, and bullying on the basis of sexual orientation. In addition to protecting on the basis of sexual orientation, Connecticut’s policies include provisions on reporting, investigation, notification, and intervention. Massachusetts’s antibullying law requires that students take classes that address bullying as well as protect students from cyber bullying. And in Wisconsin, antibullying legislation calls for “a list of disciplinary alternatives for pupils that engage in bullying or who retaliate against a pupil who reports an incident of bullying.”

Gay and transgender antibullying measures

Very effective

Laws, with enumerated categories, including sexual orientation and gender identity (14)

- California
- Colorado
- Illinois
- Iowa
- Maine
- Maryland
- Minnesota
- New Hampshire
- New Jersey
- New York
- North Carolina
- Vermont
- Washington
- Oregon

Laws, with enumerated categories, including sexual orientation (3)

- Connecticut
- Massachusetts
- Wisconsin

Laws, but without enumerated categories (22)

- Alabama
- Alaska
- Arkansas
- Arizona
- Delaware
- Florida
- Georgia
- Kansas
- Kentucky
- Louisiana
- Missouri
- Mississippi
- Nevada
- Ohio
- Oklahoma
- Rhode Island
- South Carolina
- Tennessee
- Texas
- Virginia
- West Virginia
- Wyoming

Regulations or code of ethics

- District of Columbia
- Hawaii
- New Mexico
- Pennsylvania
- Utah

No law or regulation (4)

- Michigan
- Montana
- North Dakota
- South Dakota

Not effective

These alternatives in Wisconsin can range from suspension, expulsion, and/or referral to law enforcement depending on the severity of the situation. But because antibullying policies are left up to individual school boards, a policy could be adopted that includes counseling as a disciplinary alternative.

While these three states provide stronger protections than those whose laws do not enumerate categories of protection or simply have regulations, they do not protect transgender or gender nonconforming students. Presently, only 14 states have antibullying laws that do offer bullying protections on the basis of gender identity and sexual orientation—California, Colorado, Illinois, Iowa, Maine, Maryland, Minnesota, New Hampshire, New Jersey, New York, North Carolina, Vermont, Washington, and Oregon. Almost half of these states (Iowa, Minnesota, North Carolina, New Hampshire, Washington, and New Jersey) include policies that protect against cyber or electronic bullying.

This past January, New Jersey set a new standard by passing what is being called the nation's toughest antibullying law. New Jersey's new law includes an Anti-Bullying Bill of Rights, which eliminates some of the loopholes and vagueness that plague other states' antibullying laws. For example, New Jersey mandates specific antibullying procedures for schools statewide, and eliminating the ability of school boards to craft their own procedures that may not be fully gay and transgender inclusive. Some other highlights of the new New Jersey law include:

- Firm and clear state-wide deadlines for reporting and investigating incidents of bullying
- Strengthened suicide-prevention training for teachers
- Notification of parents of all students involved in a bullying incident along with the offer of counseling and intervention services
- The establishment of antibullying teams at each school, led by a designated antibullying specialist

Progress, however uneven, is being made at the state and local level, but leaving antibullying legislation up to the states creates a complex network of antibullying policies across the country. And the youth who are supposed to benefit from these protections are often left as confused as the parents, teachers, and administrators who struggle with interpreting and enforcing these policies. Until a national law is established and uniformly implemented, many of the nation's gay and transgender youth will continue to face hostile and even physically and emotionally harmful classrooms and hallways. Before detailing that set of solutions, though, let's first examine the federal response to date.

The federal response

This past October the U.S. Department of Education issued guidance to schools, colleges, and universities outlining their “legal obligations to protect students from sexual and gender-based harassment, student-on-student racial and national origin harassment, and disability harassment.”

The guidance, which was in the form on a “Dear Colleague” letter from Russlynn H. Ali, assistant secretary for civil rights at the Department of Education, stated that current laws enforced by the department do not protect against harassment based on religion or sexual orientation. Rather, they protect “against harassment of members of religious groups based on shared ethnic characteristics as well as gender and sexual harassment of gay, lesbian, bi-sexual, and transgender individuals.” The letter also outlined the responsibilities of educational institutions if harassment has occurred.

This guidance comes on the heels of the Department of Education’s Office of Safe and Drug Free Schools hosting the Federal Partners in Bullying Prevention Summit. The goal of this summit was to convene experts to better understand the impact of bullying and discuss what programs and policies would be best to combat the problem. Prior to the conference the Human Rights Campaign, a civil rights organization working to achieve lesbian, gay, bisexual, and transgender equality, and a coalition of civil rights, religious, education, professional, and civic organizations sent a letter to Attorney General Eric Holder, Secretary of Education Arne Duncan, and Secretary of Health and Human Services Kathleen Sebelius expressing support for new federal initiatives to prevent and address bullying in the nation’s schools, as well as a number of policy and program recommendations to be considered during the summit.

Among the nine recommendations made by the coalition were calls for the federal government to fund innovative programs and initiatives to prevent and respond to bullying, cyber bullying, and harassment in schools. Furthermore, it called on the federal government to require every state and local educational institution to adopt a gay and transgender inclusive antibullying and harassment policy.

Additionally, two pieces of legislation—The Safe Schools Improvement Act and the Student Nondiscrimination Act—were proposed in the last session of Congress that sought to curtail discrimination and antigay and antitransgender bullying in public schools across the nation. The Student Nondiscrimination Act would prohibit discrimination on the basis of gender identity and sexual orientation against any student in a public school that receives federal funding, and would allow for an individual to take legal action and be awarded compensatory damages and reimbursement of court costs if judgment is found in their favor under the bill’s provisions. The Safe Schools Improvement Act would require kindergarten-through-12th grade public schools that

receive federal funding to implement policies prohibiting harassment and bullying based on gender identity and sexual orientation. The bill would also require states to report harassment and bullying data to the Department of Education.

In the last session of Congress, the Student Nondiscrimination Act was referred to the House Subcommittee on Higher Education, Lifelong Learning, and Competitiveness and the Senate Committee on Health, Education, Labor, and Pensions. But the bill did not make it out of committee for a floor vote in either chamber before the session was over. Sen. Al Franken (D-MN) hopes to reintroduce the bill sometime this year. The Safe Schools Improvement Act during the last Congress was referred to the House Subcommittee on Early Childhood, Elementary, and Secondary Education and the Senate Committee on Health, Education, Labor, and Pensions. This bill also never made it out of committee for a floor vote in either chamber. Its status in the 112th Congress is uncertain.

Conclusion: Comprehensive legislation needed

Clearly, more needs to be done to ensure that gay and transgender youth are uniformly protected from bullying. Because bullying that targets gay and transgender youth is a national problem, it needs a national solution in the form of a strong law that is evenly applied to the entire country. The wide range of approaches to antibullying laws across the country are simply not sufficient. This is why the Center for American Progress calls on Congress to act quickly and pass a law that includes the following components:

- Clear prohibition against bullying, harassment, intimidation, and discrimination
- The inclusion of sexual orientation and gender identity as specifically protected categories
- Preventative training for staff, teachers, and students on bullying, harassment, intimidation, and discrimination
- Mandated counseling for bullies and students who are bullied, as well as their families, after bullying has occurred
- Required reporting of incidents to a school official and annual reporting of incidents to a state agency that will track incidents and effectiveness of the law

Outside of a small number of states, gay and transgender youth are left vulnerable to hostile school environments, which have a long-term impact on their health and well-being. As recent media coverage has shown, youth all over this country are vulnerable to bullying. It is a national problem that needs a national solution. Congress should quickly take up and pass legislation that clearly protects gay and transgender students from discrimination, harassment, and bullying, and offers bullies and those who are bullied, as well as their families, the counseling and support that is needed to finally end this destructive and pernicious problem.

Jerome Hunt is a Research Associate for LGBT Progress at the Center for American Progress.