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# Student Bullying: Overview of Research, Federal Initiatives, and Legal Issues

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# Student Bullying: Overview of Research, Federal Initiatives, and Legal Issues

## **Abstract**

Many Members of Congress have become increasingly concerned about what can be done to address student bullying. This concern has arisen in response to high-profile bullying incidents that have occurred in recent years, and due to a growing body of research on the negative consequences of school bullying. Congress is interested in ensuring that schools are safe, secure places for students, so that they can receive the full benefits of their education. Several bills that address school bullying have already been introduced in the 113th Congress, although none has been enacted as of the date of this report.

Some of the research on anti-bullying programs has found mixed success, particularly in the United States. However, a meta-analysis of 44 evaluations identified particular characteristics of school-based bullying programs that may help reduce bullying. This study found the intensity and duration of a program, as well as the number of program elements, to be linked with effectiveness. Other factors found to be important to effectiveness were parent training, parent meetings, firm disciplinary methods, classroom rules, classroom management, and improved playground supervision.

Currently, there is no federal statute that explicitly prohibits student bullying or cyber-bullying. Under some circumstances, however, bullying may be prohibited by certain federal civil rights laws. In addition, bullying may, in some instances, constitute a violation of state criminal or tort law.

There are several federal initiatives that are specifically focused on student bullying, including interagency initiatives. In addition, there are a variety of federal initiatives that are not solely or primarily focused on student bullying, but permit some funds to be used for this purpose. Representatives from the U.S. Departments of Agriculture, Defense, Education, Health and Human Services, the Interior, and Justice, as well as the Federal Trade Commission and the White House Initiative on Asian Americans and Pacific Islanders, have formed a Federal Partners in Bullying Prevention Steering Committee. The Federal Partners work to coordinate policy, research, and communications on bullying topics. The Federal Partners have created a website, <http://www.stopbullying.gov>, which provides extensive resources on bullying, including information on how schools can address bullying.

Although there is currently no federal anti-bullying statute, there has been a surge in state legislation in recent years. A Department of Education (ED) study found that between 1999 and 2010, 120 bills and amendments to existing bills were introduced by states. Currently, 49 states have passed anti-bullying legislation. The majority of these laws direct school districts to adopt anti-bullying policies. However, the requirements placed on schools by these laws are quite varied. In addition, many of these laws do not contain all the key components of anti-bullying legislation that the U.S. Department of Education identified as important in a document it distributed to school districts.

## **Keywords**

bullying, Congress, students, legislation

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**Comments**

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# **Student Bullying: Overview of Research, Federal Initiatives, and Legal Issues**

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## Summary

Many Members of Congress have become increasingly concerned about what can be done to address student bullying. This concern has arisen in response to high-profile bullying incidents that have occurred in recent years, and due to a growing body of research on the negative consequences of school bullying. Congress is interested in ensuring that schools are safe, secure places for students, so that they can receive the full benefits of their education. Several bills that address school bullying have already been introduced in the 113<sup>th</sup> Congress, although none has been enacted as of the date of this report.

Some of the research on anti-bullying programs has found mixed success, particularly in the United States. However, a meta-analysis of 44 evaluations identified particular characteristics of school-based bullying programs that may help reduce bullying. This study found the intensity and duration of a program, as well as the number of program elements, to be linked with effectiveness. Other factors found to be important to effectiveness were parent training, parent meetings, firm disciplinary methods, classroom rules, classroom management, and improved playground supervision.

Currently, there is no federal statute that explicitly prohibits student bullying or cyber-bullying. Under some circumstances, however, bullying may be prohibited by certain federal civil rights laws. In addition, bullying may, in some instances, constitute a violation of state criminal or tort law.

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## Introduction

### Significance for Congress

Many Members of Congress have become increasingly concerned about what can be done to address student bullying. Congressional interest is in response to high-profile incidents of bullying and their negative consequences, as well as to an increasing body of research documenting the detrimental effects of school bullying.<sup>1</sup> This has spurred interest in ensuring that schools are safe, secure places for students, so that they can receive the full benefits of their education. Several bills that address school bullying have been introduced in the 113<sup>th</sup> Congress, although none as of the date of this report have been enacted. However, currently 49 states have anti-bullying laws, although there is considerable variation in the content of these laws.<sup>2</sup>

### Report Roadmap

This report begins with working definitions of bullying and cyber-bullying that were developed by a federal interagency working group. It provides a brief overview of research on the prevalence and impact of bullying, and it reviews research on what can be done to reduce student bullying. It discusses the responsibility of schools regarding bullying behavior; and it reviews the status of state laws that have been adopted to address student bullying. In addition, it discusses federal interagency initiatives intended to prevent bullying, and includes an appendix that summarizes many additional federal initiatives that permit some funding to be used for anti-bullying efforts. Finally, it discusses the legal issues and recent case law that define the parameters schools must consider in developing anti-bullying policies.

### Definitions of Bullying and Cyber-bullying

The Centers for Disease Control and Prevention (CDC) is leading an effort to develop a consensus definition of bullying that can be used throughout the school bullying research field.<sup>3</sup> A consensus definition is key to obtaining consistent and comparable data on bullying. According to CDC health scientist Alana Vivolo-Kantor: “The lack of a uniform definition hinders our ability to understand the true magnitude, scope, and impact of bullying and track trends over time. Consistent terminology with standardized definitions is necessary to improve public health surveillance of bullying and inform efforts to address bullying.”<sup>4</sup> For the present, a federal

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<sup>1</sup> See discussion of Student Bullying Research.

<sup>2</sup> The U.S. Department of Education has issued a report analyzing state bullying laws and policies that is available online: <http://www2.ed.gov/rschstat/eval/bullying/state-bullying-laws/state-bullying-laws.pdf>.

<sup>3</sup> A uniform definition will be addressed in a forthcoming document titled: *Bullying Surveillance Among Youth: Uniform Definitions and Recommended Data Elements*, Version 1.0. Centers for Disease Control and Prevention, Public Health Law News: Office for State, Tribal, Local, and Territorial Support, October 2012.

<sup>4</sup> Vivolo-Kantor also points out that “important factors need to be considered when drafting this definition. First and foremost, we felt it was important to develop a definition that leads to accurate measurement of bullying and that can be easily understood by the field. Second, we needed to make the definition relevant for schools but also for youth. Lastly, we needed to acknowledge that this definition was developed for surveillance purposes. Additional work is needed to translate the definition for use in other contexts, such as state or school bullying policies.”

working group has published working definitions of bullying and cyber-bullying (see text box below).

### **Bullying: Working Definition<sup>5</sup>**

“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. Both kids who are bullied and who bully others may have serious, lasting problems. In order to be considered bullying, the behavior must be aggressive and include:

- A Real or Perceived 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.<sup>6</sup>
- Bullying includes actions such as making threats, spreading rumors, attacking someone physically or verbally, and excluding someone from a group on purpose.

**Cyber-bullying** is bullying that takes place using electronic technology. Electronic technology includes devices and equipment such as cell phones, computers, and tablets as well as communication tools including social media sites, text messages, chat, and websites. Examples of cyber-bullying include mean text messages or emails, rumors sent by email or posted on social networking sites, and embarrassing pictures, videos, websites, or fake profiles.<sup>7</sup>

Cyber-bullying is a relatively new form of bullying that has become a concern due to the increasing use of technology by students as a method of communicating with peers. Cyber-bullying differs from traditional bullying because it can happen at any time of day or night, and messages can be immediately viewed by many others. In addition, cyber-bullying messages can be posted anonymously, and the victim may not know who the perpetrator is.

## **Estimates of the Prevalence, Predictive Factors for, and Consequences of Bullying**

Although this report focuses on bullying of students in grades K-12, it is worth noting that elementary and secondary students are not the only potential victims of bullying. Bullying also occurs at institutions of higher education (IHEs)<sup>8</sup> and at workplaces, as well as other locations.

Students may be exposed to bullying at school for many reasons. Research indicates that although no single factor can explain bullying behavior, certain individuals are more vulnerable to being bullied, for example, those who have low self-esteem and are unpopular, friendless, or rejected.<sup>9</sup> In addition, studies indicate that some students, including those with disabilities and those who are GLBT, are disproportionately subjected to bullying behavior.<sup>10</sup> However, because bullying

<sup>5</sup> <http://www.stopbullying.gov>.

<sup>6</sup> <http://www.stopbullying.gov/what-is-bullying/definition/index.html#types>. In addition the website states that “It is not bullying when two kids with no perceived power imbalance fight, have an argument, or disagree. Conflict resolution or peer mediation may be appropriate for these situations.”

<sup>7</sup> <http://www.stopbullying.gov/cyber-bullying/index.html>.

<sup>8</sup> According to <http://www.stopbullying.gov>: “Although media reports often call unwanted, aggressive behavior among young adults ‘bullying,’ this is not exactly accurate. Many state and federal laws address bullying-like behaviors in this age group under very serious terms, such as hazing, harassment, and stalking. Additionally, most young adults are uncomfortable with the term bullying—they associate it with school-aged children.”

<sup>9</sup> David P. Farrington and Maria M. Ttofi, “How to Reduce School Bullying,” *Victims and Offenders*, vol. 4 (2009), pp. 321-326.

<sup>10</sup> Although there are no federal data surveys on bullying of students with disabilities; and gay, lesbian, bisexual and transsexual (GLBT) students (or those perceived to be GLBT), some research studies indicate that these students are (continued...)



can happen to any student, some experts recommend that a school policy that enumerates groups protected by its anti-bullying policy also make clear that the requirements of the policy are not limited to those enumerated groups.<sup>11</sup>

The number of research studies on student bullying has significantly increased in recent years. However, most studies on the prevalence and/or impact of bullying are not directly comparable for several reasons:

- the definition of bullying is not consistent across studies;<sup>12</sup>
- the age range of surveyed students varies;
- the time period for the analysis varies (e.g., bullying behavior in the last two months versus bullying behavior over a school year or lifetime exposure);
- the survey methodology varies; and<sup>13</sup>
- some studies provide an overall prevalence rate for bullying, while other studies separate bullying by type (e.g., physical, emotional, or electronic).

In addition, when negative outcomes are found to be associated with bullying, it is difficult to discern the extent to which the bullying behavior is responsible. One study on bullying states that

it is not entirely clear whether the connections between bullying, victimization, and psychosocial difficulties reflect causes, consequences, or merely concomitant correlates of bullying and/or victimization.<sup>14</sup>

## Prevalence of Bullying

A Government Accountability Office (GAO) study examined four federal agency sponsored nationally representative surveys that include questions on student bullying: the National Youth Risk Behavior Survey (2011, YRBSS);<sup>15</sup> the School Crime Supplement to the National Crime

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(...continued)

frequent targets of bullying. See <http://www.stopbullying.gov/at-risk/groups/lgbt/#additional>, and <http://www.stopbullying.gov/at-risk/groups/special-needs/BullyingTipSheet.pdf>. Recent guidance from ED addresses the bullying of students with disabilities in detail. See [http://www.ed.gov/blog/2013/08/keeping-students-with-disabilities-safe-from-bullying/?utm\\_medium=email&utm\\_source=govdelivery](http://www.ed.gov/blog/2013/08/keeping-students-with-disabilities-safe-from-bullying/?utm_medium=email&utm_source=govdelivery).

<sup>11</sup> See [http://www.huffingtonpost.com/deborah-temkin/the-three-words-missing-f\\_b\\_3480347.html](http://www.huffingtonpost.com/deborah-temkin/the-three-words-missing-f_b_3480347.html). In addition, research has indicated that bullying occurs not only to vulnerable youth, but also can occur when more popular youth bully lower ranking individuals within their peer group as a means to attain higher social status. Robert Faris and Diane Felmlee, "Status Struggles: Network Centrality and Gender Segregation in Same- and Cross-Gender Aggression," *American Sociological Review*, vol. 76, no. 1 (February 2011), pp. 48-67.

<sup>12</sup> Studies also employ different terminology for "bullying" including bullying, peer victimization, peer abuse and relational aggression, among others.

<sup>13</sup> Among other differences, most are based solely on self-reports. However, some studies are based on other sources of data, e.g., teacher ratings, direct observation, peer-nominations.

<sup>14</sup> Susan Swearer, et al., *What Can Be Done About School Bullying? Linking Research to Educational Practice*, *Educational Researcher*, Vol. 39, No 1, (Jan/Feb 2010), p. 38.

<sup>15</sup> Since the issuance of the GAO report, YRBSS has been updated with data for the period of September 2010-December 2011. These updated data are used here. *Youth Risk Behavior Surveillance—United States, 2011*, U.S. Department of Health and Human Services, Centers for Disease Control and Prevention.

Victimization Survey (2012, SCS/NCVS);<sup>16</sup> Health Behavior in School-aged Children (2005/2006, HBSC);<sup>17</sup> and the National Survey of Children’s Exposure to Violence (2008, NatSCEV).<sup>18</sup> Due to differences across the surveys in definitions, the age of students surveyed, and the time frame of the studies, among other things, each survey obtained different estimates for the prevalence of bullying and cyber-bullying (or electronic bullying). Three of the surveys included an overall measure of the prevalence of bullying behavior. The overall prevalence of bullying varied across the three surveys—from a low of 20.1% to a high of 27.8%. YRBSS estimated that 20.1% of surveyed youth reported being bullied; HBSC estimated that 27% of surveyed youth reported being bullied; and SCS/NCVS estimated that 27.8% of surveyed youth reported being bullied. In addition, all of the surveys included some measure of electronic bullying. The overall prevalence of electronic bullying varied across the four surveys—from a low of 1.8% to a high of 16.2%. NatSCEV estimated that 1.8% of surveyed youth reported Internet harassment; HBSC estimated that 8.1% of surveyed youth reported having been bullied using a computer or e-mail messages or pictures, and 5.7% reported having been bullied using a cell phone; SCS/NCVS estimated that 9% of surveyed youth reported being cyber-bullied; and YRBSS estimated that 16.2% of surveyed youth reported being electronically bullied. The surveys did not obtain consistent results on whether bullying was greater for one sex, race, or ethnic group. The surveys also varied in the extent to which they collected data on additional demographic characteristics on youth who were bullied.<sup>19</sup>

## Student Bullying Research on the Precursors for, and Impacts of, Bullying

Many researchers who focus on student bullying believe that a variety of factors interact to influence bullying behavior, including “families, schools, peer groups, teacher-student relationships, neighborhoods, and cultural expectations.”<sup>20</sup> The interaction of these factors can have a positive influence on reducing bullying—if a positive school environment with involved, supportive adults and teachers is created, a positive peer culture is established, and school connectedness is reinforced. Researchers also note that bullying generally occurs with the physical or virtual presence of an audience of peers. These bystanders can play an important role in reinforcing bullying behavior through laughter or other encouragement, or in curbing it by speaking out against the behavior.

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<sup>16</sup> Since the issuance of the GAO report, SCS/NCVS has been updated with bullying data for 2011. These updated data are used here. Robers, S., Kemp, J., and Truman, J. (2013). *Indicators of School Crime and Safety: 2012* (NCES 2013-036/ NCJ 241446). National Center for Education Statistics, U.S. Department of Education, and Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice. Washington, DC.

<sup>17</sup> <http://www.hbsc.org/about/index.html>.

<sup>18</sup> U.S. Government Accountability Office, *School Bullying: Extent of Legal Protections for Vulnerable groups Needs to Be More Fully Assessed*, GA0-12-349, May 2012, pp. 40-41, <http://www.gao.gov/assets/600/591202.pdf>. Two additional surveys that do not obtain survey data through student interviews are not included in this discussion, but are included in **Appendix A**. They are the Survey of School Crime and Safety (SSOCS), and the Civil Rights Data Collection (CRDC).

<sup>19</sup> The School Crime Supplement to the National Crime Victimization Survey did, however, collect data on whether a student was the target of a “hate-related word” based on their race, ethnicity, religion, disability, gender, or sexual orientation.

<sup>20</sup> This approach to analyzing behavior is referred to as a social-ecological framework. It incorporates the interconnected personal, social, environmental, and societal factors that influence behavior. Susan Swearer, et al., *What Can Be Done About School Bullying? Linking Research to Educational Practice, Educational Researcher*, Vol. 39, No. 1, (Jan/Feb 2010), p. 43.

A 2010 meta-analysis of 153 studies evaluating predictors of being a bully, a victim, or bully-victim found some predictors were shared by both bullies and victims of bullying, including family environment, school climate, community factors, and poor social problem-solving skills. However, the authors found some factors to be more associated with one group than another. For example, bullies were more likely to have externalizing behaviors,<sup>21</sup> poor academic performance, and negative thoughts or beliefs about others, and to be negatively influenced by their peers. Victims were more likely to have internalizing behaviors and negative thoughts about themselves, and to be rejected and isolated. Although both had deficits in social competence, bullies were generally more socially competent than victims.<sup>22</sup>

In addition, some students engage in bullying behavior and are also a victim of bullying, either simultaneously, or by switching roles over time. These so called “bully-victims” were found to be the most at risk—containing risk factors associated with both of the other two groups:

That is, bully victims appeared to resemble victims by being rejected and isolated by their peers and to resemble bullies by being negatively influenced by the peers with whom they do interact.<sup>23</sup>

As discussed above, both victims of bullying and those who engage in bullying behavior can experience psychological difficulties and social relationship problems. Additionally, a GAO literature review of seven meta-analyses on the impact of bullying on victims indicates that bullying may result in psychological, physical, academic, and behavioral issues.<sup>24</sup>

Recent high profile suicides following incidents of bullying have heightened concerns about bullying behavior. The American Foundation for Suicide Prevention (AFSP) states that “Elevated rates of depression, suicidal ideation and suicide attempts have been found in youth who are

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<sup>21</sup>“Externalizing behavior problems—behaviors characterized by an undercontrol of emotions—include difficulties with interpersonal relationships and rule breaking as well as displays of irritability and belligerence ... conversely, internalizing behavior problems—defined as an overcontrol of emotions—include social withdrawal, demand for attention, feelings of worthlessness or inferiority, and dependency.” Guttmanova, et al., “Internalizing and Externalizing Behavior Problem Scores: Cross-Ethnic and Longitudinal Measurement Invariance of the Behavior Problem Index,” 2007 Sage Publications.

<sup>22</sup> Clayton R. Cook et al., “Predictors of Bullying and Victimization in Childhood and Adolescence: A Meta-analytic Investigation,” *School Psychology Quarterly*, vol. 25, no. 2 (2010), p. 78.

<sup>23</sup> Clayton R. Cook et al., “Predictors of Bullying and Victimization in Childhood and Adolescence: A Meta-analytic Investigation,” *School Psychology Quarterly*, vol. 25, no. 2 (2010), p. 78. Another meta-analysis of student bullying programs identified the following characteristics of bullies and victims of bullies: “Bullies tend to have poorer academic skills and grades than the majority of their classmates, often are lacking in the characteristic of empathy, and may have cognitive distortions and social perception biases related to perceived threats in their environment and with respect to how aggression is viewed as an effective way to solve problems. Bullies also tend to be at heightened risk for substance abuse and later criminal behavior, and are likely to become increasingly unpopular with peers as they get older, and tend to come from homes where there is poor parental role modeling in the form of coercive and aggressive means of problem solving and a lack of consistent and effective discipline. Bullying victims, on the other hand ... tend to be physically smaller or weaker in some way than perpetrators, and are often anxious, fearful, insecure, depressed, and have poor self-esteem. A high percentage of victims tend to engage in school avoidance behaviors, and many repeated victims of bullying at school end up dropping out of the school system. Victims are also more likely than perpetrators to bring weapons to school, for the purpose of revenge.” Kenneth W. Merrell et al., “How Effective Are School Bullying Intervention Programs? A Meta-Analysis of Intervention Research,” *School Psychology Quarterly*, vol. 23, no. 1 (2008), p. 27.

<sup>24</sup> U.S. Government Accountability Office, *SCHOOL BULLYING: Extent of Legal Protections for Vulnerable groups Needs to Be More Fully Assessed*, GA0-12-349, May 2012, pp. 8-10, <http://www.gao.gov/assets/600/591202.pdf>.

bullied and also in those who bully others.”<sup>25</sup> However, AFSP indicates that no single factor is responsible for suicide. The factors that are correlated with suicide are multidimensional—for example, mental and developmental disorders, early life adverse events, and personality traits, among others. In addition, AFSP notes that “Suicidal ideation and suicide attempts occur in a small percentage of youth involved in bullying.”<sup>26</sup>

## Efficacy of Anti-bullying Programs

Some of the research on anti-bullying programs has found mixed success from anti-bullying programs, particularly in the United States.<sup>27</sup> However, a cross-national meta-analysis of 44 evaluations identified particular characteristics of school-based bullying programs that may help reduce bullying.<sup>28</sup> The study found that on average, school-based anti-bullying programs decreased bullying behavior by 20%-23% and victimization by bullies by 17%-20%.

This study found the intensity and duration of a program, as well as the number of program elements, to be linked with effectiveness. Other elements found important to effectiveness were parent training, parent meetings, firm disciplinary methods, classroom rules, classroom management, and improved playground supervision. The study did not find evidence that working with peers was effective.<sup>29</sup> The authors also recommended that a system of accreditation for anti-bullying programs be established to help ensure that programs being adopted by schools include the elements that have been found to be effective.<sup>30</sup>

Another study pointed out the importance of addressing peer norms in anti-bullying programs. In peer groups where bullying is the norm, the authors of the study argue that “Until these peer norms are modified, it is likely that bullying behaviors will remain intractable in our schools.”<sup>31</sup>

Resources for states and schools on effective anti-bullying programs are becoming more widely available. There has been an increased focus in recent years on the importance of school climate to preventing bullying and improving a variety of other school indicators. The National School Climate Center has published a resource that addresses the implementation of positive school

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<sup>25</sup> American Foundation for Suicide Prevention, *Anti-bullying and Anti-Cyber-bullying Legislation*, Public Policy Issue Brief, Washington, DC, 2011.

<sup>26</sup> Nicole Cardarelli, “Bullying and Suicide: Unraveling the Link,” American Foundation for Suicide Prevention—presentation at the 2012 Federal Partners in Bullying Prevention Summit, August 6-7, 2012. A video of the Summit panel on bullying and suicide is available here: <http://c-spanvideo.org/program/SummitSu>.

<sup>27</sup> For a survey of this research see Susan Swearer, et al., *What Can Be Done About School Bullying? Linking Research to Educational Practice, Educational Researcher*, Vol. 39, No 1, Jan/Feb (2010).

<sup>28</sup> This study examined the effects of anti-bullying programs on bullying behavior, and on victimization by bullies. The authors only included evaluations that compared results of anti-bullying programs on an experimental group of students to a control group. D.P. Farrington and M.M. Ttofi, *School-based programs to reduce bullying and victimization*, Campbell Systematic Reviews No. 6 (2009).

<sup>29</sup> In fact, the authors found that working with peers was associated with an increase in victimization. D.P. Farrington and M.M. Ttofi, *School-based programs to reduce bullying and victimization*, Campbell Systematic Reviews No. 6 (2009).

<sup>30</sup> David Farrington and Maria Ttofi, “How to Reduce School Bullying,” *Victims and Offenders*, vol. 4 (2009), pp. 321-326.

<sup>31</sup> Susan Swearer, et al., *What Can Be Done About School Bullying? Linking Research to Educational Practice, Educational Researcher*, Vol. 39, No 1, Jan/Feb (2010).

climate practices as they relate to a variety of issues important for schools, including school bullying.<sup>32</sup> In August 2008, ED published a document to assist schools in evaluating anti-bullying policies and practices titled *Effective Evidence-based Practices for Preventing and Addressing Bullying*.<sup>33</sup> In addition, several federal agencies maintain websites that include extensive information on anti-bullying programs that have proved effective or are promising.<sup>34</sup>

## State Bullying Legislation

As of the date of this report, 49 states have at least one anti-bullying law, although the content of these laws varies considerably. The majority of these laws direct school districts to adopt anti-bullying policies. However, the requirements placed on schools by these laws are quite varied.

In 2010, ED issued an in-depth report focused on state bullying laws.<sup>35</sup> The report noted the surge in state legislation addressing bullying in recent years, with 120 bills or amendments to existing legislation introduced between 1999 and 2010. According to the report, the landscape of state legislation has been changing as new bills (or amendments to existing laws) that address student bullying have been introduced that reflect:

the rapidly evolving political and policy environment surrounding bullying in schools, where lawmakers are continually refining legislative expectations for schools in response to the new problem dimensions (e.g., the growth of cyber-bullying), and to emerging research concerning effective policy strategies for combating student bullying.<sup>36</sup>

The report's evaluation of the content and expansiveness of these laws highlighted the tremendous variation in these laws. The report was based on the 46 states that had bullying laws in place prior to the study. According to the report all but three of these states included definitions of what behaviors were prohibited. All but one of the 46 states required school districts in the state to adopt bullying policies. Forty-one of these states had developed model bullying policies, and 36 states included a prohibition on cyber-bullying or bullying using electronic media. In addition, 13 states included a provision stating that schools could address bullying that occurs outside of school grounds if it creates a hostile school environment.

The report delineated 11 key components of a comprehensive state anti-bullying statute.<sup>37</sup> The topics addressed by these 11 key components include the following:

- Purpose Statement
- Statement of Scope
- Specification of Prohibited Conduct
- Enumeration of Specific Characteristics

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<sup>32</sup> <http://www.schoolclimate.org/publications/documents/SchoolClimatePracticeBriefs-2013.pdf>.

<sup>33</sup> <http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/bullyingdcl-enclosure-8-20-13.pdf>.

<sup>34</sup> <http://nrepp.samhsa.gov/>, <http://www.findyouthinfo.gov/youth-topics/preventing-youth-violence>, <http://www.ojjdp.gov/mpg/>, <http://www.colorado.edu/cspv/blueprints/modelprograms.html>.

<sup>35</sup> <http://www2.ed.gov/rschstat/eval/bullying/state-bullying-laws/state-bullying-laws.pdf>.

<sup>36</sup> <http://www2.ed.gov/rschstat/eval/bullying/state-bullying-laws/state-bullying-laws.pdf> p. 16.

<sup>37</sup> <http://www.stopbullying.gov/laws/key-components/index.html>.

- Development and Implementation of Local Policies
- Review of Local Policies
- Communication Plan
- Training and Prevention Education
- Transparency and Monitoring
- Statement of Rights to Other Legal Recourse<sup>38</sup>

The report classified each state's legislation into one of three categories for each key component on a continuum from least to most expansive and scored them from 0-2. Key components in more expansive state laws were usually more inclusive and more prescriptive, used less discretionary language, or established stronger measures of accountability. There was considerable variation across states in the number of the 11 key components included in state law, and in the level of detail and scope in the components that were included.<sup>39</sup> The report indicates that it did not include an analysis of how effectively school districts and individual schools are implementing these anti-bullying policies. A second phase of the study will address implementation in a sample of school districts and schools:

While this report focuses on documenting and profiling policy across the states, these policies may not benefit schools or students unless they can be successfully implemented. For example, legislation that defines prohibited bullying behaviors, and specifies graduated and substantial sanctions, will often require extensive implementation procedures for the implementing of the sanction (e.g., expulsion). Whether these necessary actions are feasible within resource constraints cannot be determined through a policy review alone.<sup>40</sup>

## **School Responsibilities Regarding Bullying**

Schools must balance a variety of factors in developing policies to address bullying. Among other things, they must meet state, federal, and local regulations and statutory requirements.<sup>41</sup> Although resources on factors to consider in developing a comprehensive school anti-bullying policy are becoming more widely available,<sup>42</sup> developing and implementing comprehensive and effective bullying policies can be challenging for schools. As more schools adopt anti-bullying policies, a variety of potential policy issues have arisen—including the wide variation in the coverage provided by these policies, the potential difficulty in ensuring civil rights laws are not violated while simultaneously ensuring that constitutional protections on free speech are not impinged

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<sup>38</sup> For a detailed discussion of these key components see <http://www.stopbullying.gov/laws/key-components/>.

<sup>39</sup> One key component comprises six subcomponents regarding school district policies. U.S. Department of Education, Office of Planning, Evaluation and Policy Development, Policy and Program Studies Service, *Analysis of State Bullying Laws and Policies*, Washington, DC, 2011. <http://www2.ed.gov/rschstat/eval/bullying/state-bullying-laws/state-bullying-laws.pdf>.

<sup>40</sup> U.S. Department of Education, Office of Planning, Evaluation and Policy Development, Policy and Program Studies Service, *Analysis of State Bullying Laws and Policies*, Washington, DC, 2011, p. xvi.

<sup>41</sup> For a detailed discussion of the legal precedents on the obligations and limitations schools confront when developing anti-bullying policies, see the discussion on Legal Issues.

<sup>42</sup> See <http://www.stopbullying.gov/prevention/at-school/index.html>.



upon, and the particular difficulties of developing policies to address the rising phenomenon of cyber-bullying.

## **Focus on Cyber-bullying**

Although cyber-bullying frequently occurs off school grounds, it can have negative effects that are felt at school. Developing policies that address cyber-bullying can be a particular challenge for schools. School districts must deal with evolving case law on issues related to cyber-bullying that may cause uncertainty regarding a school's legal responsibility or potential culpability. For example, in some instances courts have prohibited disciplining a student for out of school speech. (See discussion of the Tinker standard under "Legal Issues.")

Cyber-bullying experts Sameer Hinduja and Justin Patchin recommend that schools ensure that their current policies on harassment and bullying permit disciplining students for cyber-bullying: They note that "If their policy covers it, cyber-bullying incidents that occur at school—or that originate off campus but ultimately result in a substantial disruption of the learning environment—are well within a school's legal authority to intervene."<sup>43</sup> The authors further note that

Even though the vast majority of these incidents can be handled informally (calling parents, counseling the bully and target, expressing condemnation of the behavior), there may be occasions where formal response from the school is warranted. This is particularly the case in incidents involving serious threats toward another student, if the target no longer feels comfortable coming to school, or if cyber-bullying behaviors continue after informal attempts to stop it have failed. In these cases, the authors suggest that detention, suspension, changes of placement, or even expulsion may be necessary. If these extreme measures are required, it is important that educators are able to clearly demonstrate the link to school and present evidence that supports their action.<sup>44</sup>

## **ED Dear Colleague Letter: School Responsibilities Regarding Bullying that Rises to the Level of Discriminatory Harassment**

In December of 2010, the U.S. Department of Education issued a Dear Colleague Letter (DCL) that provided guidance on schools' responsibilities regarding bullying, in particular how some forms of bullying could rise to the level of discriminatory harassment, and as a consequence, might violate civil rights statutes. Several civil rights statutes explicitly protect against harassment based on race, color, national origin, sex, and disability. (See discussion of "Legal Issues.") Several of these laws are enforced by ED's Office for Civil Rights (OCR).<sup>45</sup> If a school

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<sup>43</sup> Sameer Hinduja and Justin W. Patchin, "Cyber-bullying: Identification, Prevention, and Response," *The Cyber-bullying Research Center*, 2010, p. 3.

<sup>44</sup> Sameer Hinduja and Justin W. Patchin, "Cyber-bullying: Identification, Prevention, and Response," *The Cyber-bullying Research Center*, 2010, p. 4.

<sup>45</sup> Four civil rights laws enforced by ED's Office for Civil Rights are: Title VI of the Civil Rights Act of 1964 (prohibits discrimination on the basis of race, color, or national origin); Title II of the American with Disabilities Act of 1990; Section 504 of the Rehabilitation Act of 1973 (prohibits discrimination on the basis of disability); and Title IX of the Education Amendments of 1972 (prohibits discrimination on the basis of sex). The Department of Justice enforces Title IV of the Civil Right Act of 1964, which prohibits discrimination on the basis of race, color, sex, religion, or national origin.

or Institution of Higher Education fails to adequately address harassment of a student that falls under one of these protected categories, it has not met its statutory obligations to protect the student according to the DCL:

Harassment creates a hostile environment when the conduct is sufficiently severe, pervasive, or persistent so as to interfere with or limit a student's ability to participate in or benefit from the services, activities, or opportunities offered by a school. When such harassment is based on race, color, national origin, sex, or disability, it violates the civil rights laws that OCR enforces.... A school is responsible for addressing harassment incidents about which it knows or reasonably should have known.<sup>46</sup>

Furthermore, according to the DCL, addressing the discriminatory harassment through a school's anti-bullying policy is not sufficient:

If an investigation reveals that discriminatory harassment has occurred, a school must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring. These duties are a school's responsibility even if the misconduct also is covered by an anti-bullying policy, and regardless of whether a student has complained, asked the school to take action, or identified the harassment as a form of discrimination.<sup>47</sup>

## **Harassment Based on Disability**

It is important to note that students with disabilities who are victims of bullying may be able to file a complaint under Section 504 of the Rehabilitation Act (Section 504), Title II of the American with Disabilities Act (Title II), and the Individuals with Disabilities Education Act (IDEA) in addition to pursuing redress through state anti-bullying laws, state civil rights legislation, other state laws, or in some circumstances through other federal civil rights legislation. This issue is addressed in an ED Dear Colleague letter issued on July 25, 2000. According to ED, state and school districts are required by Section 504, Title II, and IDEA to:

ensure that a free appropriate public education (FAPE) is made available to eligible students with disabilities. Disability harassment may result in a denial of FAPE under these statutes. Parents may initiate administrative due process procedures under IDEA, Section 504, or Title II to address a denial of FAPE.... In addition, an individual or organization may file a complaint alleging a violation of IDEA under separate procedures with the state educational agency.<sup>48</sup>

A recent ED DCL provided more detailed guidance on the responsibility of schools to address bullying of students with disabilities:

Whether or not the bullying is related to the student's disability, any bullying of a student with a disability that results in the student not receiving meaningful educational benefit constitutes a denial of FAPE under IDEA and must be remedied.<sup>49</sup>

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<sup>46</sup> United States Department of Education, Office for Civil Rights, *Dear Colleague Letter*, October 26, 2010.

<sup>47</sup> United States Department of Education, Office for Civil Rights, *Dear Colleague Letter*, October 26, 2010.

<sup>48</sup> <http://www2.ed.gov/about/offices/list/ocr/docs/disabharassltr.html>.

<sup>49</sup> <http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/bullyingdcl-8-20-13.pdf>.



The DCL also made clear that care must be taken in considering changing the placement of a student with a disability who is being bullied (i.e., the school must ensure that the student remains in the least restrictive educational environment in order to provide the student a FAPE).

## Response to Dear Colleague Letter

Some groups have raised concerns about the guidance ED provided in its December 2010 Dear Colleague Letter. The National School Boards Association (NSBA) submitted a letter to ED stating that the guidance would place too broad an obligation on schools. According to the NSBA's letter:

our fear is that absent clarification, the Department's expansive reading of the law as stated in the DCL will invite misguided litigation that needlessly drains precious school resources and creates adversarial climates that distract schools from their educational mission.<sup>50</sup>

In addition, the American Jewish Committee and the Religious Freedom Education Project/First Amendment Center issued proposed guidelines for school administrators intended to address bullying while also protecting students' freedom of speech and expression. Fifteen additional organizations signed on to these guidelines. The guidelines note that schools must balance safety concerns and free expression. They argue that unless student speech causes a substantial disruption at school it should not be censored.<sup>51</sup>

In response to these proposed guidelines the Anti-Defamation League (ADL) submitted a letter to ED calling them "ill-conceived, unnecessary, deeply flawed, and counterproductive to confronting the growing and serious problem of bullying and cyber-bullying."<sup>52</sup> Furthermore, the ADL letter notes that

Bullying situations very rarely erupt as conflicts over political or religious speech.... Instead, they much more often involve the intentional targeting of an individual with less physical or social standing for physical or verbal abuse. Targeted students are in a very different power position than those who are doing the bullying. The aggressor's objective is not to convince his/her target of the rightness of a policy position—it is, rather, to cause physical or emotional harm.<sup>53</sup>

## Federal Agency Efforts on Bullying

There are currently several federal initiatives that address student bullying. However, many of these initiatives are not solely or primarily focused on student bullying, but permit some funds to be used for this purpose. This section of the report summarizes interagency efforts to address student bullying. In addition, this report includes an **Appendix** that briefly summarizes selected federal bullying initiatives that may allow funding to be used to address school bullying. The **Appendix** focuses on some of the initiatives that have been undertaken by the three federal

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<sup>50</sup> <http://www.nsba.org/SchoolLaw/Issues/NSBA-letter-to-Ed-12-07-10.pdf>.

<sup>51</sup> <http://www.firstamendmentcenter.org/madison/wp-content/uploads/2012/05/FAC-Harassment-Free-Expression-BROCHURE.pdf>.

<sup>52</sup> <http://www.adl.org/education/Letter-adl-secretary-duncan.asp>.

<sup>53</sup> <http://www.adl.org/education/Letter-adl-secretary-duncan.asp>.

agencies that are most involved in addressing this issue: The U.S. Department of Education (ED), the U.S. Department of Health and Human Services (HHS), and the U.S. Department of Justice (DOJ). Note that bullying is often a small, optional part of the initiatives included in the **Appendix**. The initiatives that are included should not be viewed as an exhaustive list of federal initiatives that may address school bullying.

## **Interagency Initiatives**

Representatives from the U.S. Departments of Agriculture, Defense, Education, Health and Human Services, the Interior, and Justice; the Federal Trade Commission; and the White House Initiative on Asian Americans and Pacific Islanders have formed a Federal Partners in Bullying Prevention Steering Committee. The Federal Partners work to coordinate policy, research, and communications on bullying topics. The Federal Partners have created a website, <http://www.stopbullying.gov>, which provides extensive resources on bullying, including information on how schools can address bullying.<sup>54</sup> In addition, with leadership from the U.S. Department of Education (ED), the Federal Partners have sponsored three anti-bullying summits attended by education practitioners, policymakers, researchers, and federal officials.<sup>55</sup> With ED and HHS, the CDC is currently leading an effort to develop a consensus definition of bullying that is intended to provide a consistent definition that will enhance comparability of data across studies and consequently lead to better measurement and tracking of bullying, as well as to improved prevention and responses to bullying.<sup>56</sup>

Three agencies currently collaborate on a program called Safe Schools/Healthy Students (SS/HS). SS/HS is funded jointly by ED and HHS's Substance Abuse and Mental Health Services Administration (SAMHSA). The program is administered by ED, SAMHSA, and DOJ. Although SS/HS is not primarily an anti-bullying program, grantees may use program funds to include an anti-bullying component as part of their overall comprehensive plan of activities, programs, and services focusing on healthy childhood development and the prevention of violence and alcohol and drug abuse. SS/HS grants are awarded competitively to local educational agencies (LEAs). LEAs that receive a grant are required to establish partnerships with local law enforcement, public mental health, and juvenile justice agencies/entities.<sup>57</sup>

Additionally, six agencies collaborated (U.S. Department of Education, U.S. Department of Health and Human Services, U.S. Department of Homeland Security, U.S. Department of Justice, Federal Bureau of Investigation, and the Federal Emergency Management Agency) to develop and publish comprehensive guides for developing high-quality emergency operations plans. Three separate guides were published; each was targeted to a different audience—elementary and secondary schools, institutions of higher education, and houses of worship.<sup>58</sup>

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<sup>54</sup> HHS's Health Resources and Services Administration supports the management of this website, <http://www.stopbullying.gov/live/index.html>.

<sup>55</sup> The most recent summit was held on August 6-7, 2012.

<sup>56</sup> <http://www.cdc.gov/phlp/news/2012/2012-10-18.html#feature1>.

<sup>57</sup> <http://www.sshs.samhsa.gov/initiative/about.aspx>.

<sup>58</sup> <http://rems.ed.gov/EOPGuides>.

## Legal Issues

Currently, there are no federal statutes that explicitly prohibit student bullying or cyber-bullying. Under some circumstances, however, bullying in schools may be prohibited by certain federal civil rights laws. In contrast, many states have laws that explicitly prohibit bullying. In addition, bullying may, in some instances, constitute a violation of state criminal or tort law. The federal and state laws that govern traditional forms of bullying are described below, followed by a separate section that discusses federal and state laws that may pertain to cyber-bullying.

### Federal Law

Under certain circumstances, federal civil rights statutes may be used to combat bullying in schools. The applicable federal civil rights statutes that prohibit discrimination in schools include Title VI of the Civil Rights Act of 1964 (CRA), which prohibits discrimination on the basis of race, color, or national origin in federal funded programs or activities;<sup>59</sup> Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in federally funded education programs or activities;<sup>60</sup> Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in federally funded programs or activities;<sup>61</sup> Title II of the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disability by state or local governments;<sup>62</sup> Title IV of the CRA, which bars discrimination in public schools on the basis of race, color, sex, religion, or national origin;<sup>63</sup> and the Equal Educational Opportunities Act, which prohibits states from denying equal educational opportunities based on race, color, sex, or national origin.<sup>64</sup> The latter two statutes were largely designed to combat segregation in public schools.

Discriminatory conduct under these statutes includes peer harassment if such harassment is sufficiently serious that it creates a hostile environment and if such harassment is encouraged, tolerated, not adequately addressed, or ignored by school employees. If the bullying conduct in question involved discrimination or harassment on the basis of race, color, national origin, sex, or disability under the above statutes, then it is prohibited by federal law. However, bullying that does not constitute discrimination on these grounds is not covered.

In 2010, ED issued guidance that discusses when student bullying or harassment may violate federal education anti-discrimination laws and that clarifies a school's obligation to combat such bullying or harassment.<sup>65</sup> The guidance includes a discussion of when bullying or harassment that targets lesbian, gay, bisexual, or transgender students may be a form of sex discrimination that violates Title IX, as well as a section that describes when bullying or harassment of students who share a particular religion may constitute national origin discrimination in violation of Title VI.

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<sup>59</sup> 42 U.S.C. §§2000d et seq.

<sup>60</sup> 20 U.S.C. §§1681 et seq.

<sup>61</sup> 29 U.S.C. §794.

<sup>62</sup> 42 U.S.C. §§12131 et seq.

<sup>63</sup> 42 U.S.C. §§2000c et seq.

<sup>64</sup> 20 U.S.C. §1703.

<sup>65</sup> United States Department of Education, *Office for Civil Rights*, Dear Colleague Letter, October 26, 2010, <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.html>.

Although none of these civil rights statutes explicitly prohibits discrimination on the basis of sexual orientation or gender identity, there may, as ED's guidance notes, be instances in which such discrimination may also be a form of sex discrimination that violates Title IX.<sup>66</sup> In the employment context, the Supreme Court has recognized that sex discrimination may encompass same-sex sexual harassment, meaning that sex discrimination is prohibited even if the harasser and victim are members of the same sex.<sup>67</sup> The Court has also ruled that gender stereotyping is a form of discrimination on the basis of sex.<sup>68</sup> Therefore, if a student who is gay or transgender is being harassed because of a failure to conform to gender stereotypes, such harassment is prohibited by Title IX. It is important to note, however, that Title IX prohibits sexual orientation or gender identity discrimination only when it constitutes a form of sex discrimination.<sup>69</sup> Thus, the statute does not prohibit all forms of sexual orientation or gender identity discrimination or harassment of students.<sup>70</sup>

Likewise, although none of the civil rights statutes described above explicitly prohibits discrimination on the basis of religion, there may be instances in which such discrimination may also be a form of national origin discrimination that violates Title VI. According to ED, "harassment against students who are members of any religious group triggers a school's Title VI responsibilities when the harassment is based on the group's actual or perceived shared ancestry or ethnic characteristics, rather than solely on its members' religious practices."<sup>71</sup> Thus, for example, Jewish, Muslim, or Sikh students who share a religious identity may be victims of national origin discrimination if they are being bullied or harassed due to actual or perceived ancestry or ethnicity.

## State Law

State laws also offer some protection to victims of bullying. Indeed, some states have statutes that explicitly prohibit bullying,<sup>72</sup> while all states have general criminal and tort laws that may, under certain circumstances, provide remedies to victims of bullying. For example, certain forms of bullying are likely to violate a state's general laws against criminal assault and battery or other infractions such as disorderly conduct. Thus, bullies may incur penalties in states without explicit anti-bullying statutes and may even incur stiffer penalties under assault and battery statutes in states that also have anti-bullying laws.

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<sup>66</sup> See, for example, *Ray v. Antioch Unified Sch. Dist.*, 107 F. Supp. 2d 1165 (N.D. Cal. 2000); *Doe v. Perry Cmty. Sch. Dist.*, 316 F. Supp. 2d 809 (S.D. Iowa 2004).

<sup>67</sup> *Oncale v. Sundowner Offshore Servs.*, 523 U.S. 75 (1998).

<sup>68</sup> *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989).

<sup>69</sup> For more information on how the courts have handled claims in the employment context that sexual orientation or gender identity discrimination constitutes unlawful sex discrimination, see CRS Report R40934, *Sexual Orientation and Gender Identity Discrimination in Employment: A Legal Analysis of the Employment Non-Discrimination Act (ENDA)*, by Jody Feder and Cynthia Brougher.

<sup>70</sup> For more information on sexual harassment in schools, see ED's policy guidance on the issue. U.S. Department of Education, *Office for Civil Rights*, Revised Sexual Harassment Guidance: Harassment of Students By School Employees, Other Students, or Third Parties, January 2001. <http://www2.ed.gov/about/offices/list/ocr/docs/shguide.html#Guidance>. See also, United States Department of Education, *Office for Civil Rights*, Dear Colleague Letter, April 4, 2011, <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html>.

<sup>71</sup> United States Department of Education, *Office for Civil Rights*, Dear Colleague Letter, October 26, 2010, <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.html>.

<sup>72</sup> The Department of Health and Human Services maintains a website that seeks to combat bullying. The website also tracks state anti-bullying laws at <http://www.stopbullying.gov/laws/index.html>.

Furthermore, tort law remedies, which allow bullying victims to sue on their own behalf, are available in all states. Tort law, which is created by both court decisions and statutory enactments, is generally intended to provide a mechanism by which individuals who have been injured can sue to recover damages. Tort law also serves as a deterrent to prevent similar injurious activities in the future. With regard to bullying, typical tort actions include intentional tort claims or negligent tort claims.

Lawsuits based on an intentional tort theory typically involve claims that fall into two categories: assault and/or battery. In general, assault claims involve fear of harmful or offensive touching, while battery claims involve actual harmful or offensive touching. Lawsuits based on a negligent tort theory generally involve claims against schools for failure to reasonably supervise students or employees or for failure to anticipate the wrongful conduct of such third parties. In order to succeed in such claims, plaintiffs must establish that the school owed them a duty of supervision, that the school breached that duty, that the breach was a foreseeable cause of an injury, and that an actual injury resulted.

Finally, it is important to note that many school districts and individual schools have anti-bullying policies that may be applicable.

## Cyber-bullying

Cyber-bullying, which generally refers to harassment occurring among school-aged children through the use of the Internet, may or may not overlap with bullying that occurs in schools. Depending on the circumstances, some or all of the federal and state laws discussed above may apply to cyber-bullying. In addition, several states have passed legislation to prohibit cyber-bullying. In many cases, such legislation requires or authorizes school districts to adopt cyber-bullying policies.<sup>73</sup>

It is important to note that the types of laws that may be invoked to combat cyber-bullying will vary depending on the circumstances of the particular case and thus may not be limited to the statutes cited above.<sup>74</sup> For more information on legal protections for victims of cyber-bullying,

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<sup>73</sup> For example, in Arkansas, cyber-bullying was added to the schools' anti-bullying policies and included in provisions for school officials to punish students for some off-campus activities "if the electronic act is directed specifically at students or school personnel and is maliciously intended for the purpose of disrupting school and has a high likelihood of succeeding in that purpose." However, it should be noted that some of these policies are limited in their application. For example, in Washington, the school district harassment prevention policies are applicable only to actions that take place "while on school grounds and during the day." In other words, some of these policies would not cover bullies from other districts or other states. Furthermore, adults who "harass" or "cyberbully" minors would not be covered in most instances. In addition, some courts have concluded that a school district may not punish a student for out-of-school speech. See, for example, *Killion v. Franklin Regional School Dist.*, 136 F. Supp.2d 446 (W.D.Pa. 2001)(holding that school could not punish student for list disparaging the athletic director); *Flaherty v. Keystone Oaks School Dist.*, 247 F. Supp.2d 693 (W.D.Pa. 2003)(holding that the school could not punish a student for "trash talk" about a volleyball game); *Latour v. Riverside Beaver School Dist.*, No. 05-1076, 2005 WL 2106562 (W.D.Pa. August 24, 2005)(enjoining school from punishing a student for rap song lyrics).

<sup>74</sup> 18 U.S.C. §1030(a)(2)(C) and (c)(2)(B)(2). For example, a Missouri woman was charged with violating the federal Computer Fraud and Abuse Act for her alleged role in a MySpace hoax against a minor. The act makes it a felony punishable by up to five years of imprisonment if one "intentionally accesses a computer without authorization ..., and thereby obtains ... information from any protected computer<sup>74</sup> if the conduct involved an interstate ... communication" and "the offense was committed in furtherance of any ... tortious act [in this case intentional infliction of emotional distress] in violation of the ... laws ... of any State." Prosecutors alleged that the defendant violated MySpace's terms of use by using a fictitious name, thereby giving her no authority to access MySpace. However, the judge granted the (continued...)

see CRS Report RL34651, *Protection of Children Online: Federal and State Laws Addressing Cyberstalking, Cyberharassment, and Cyberbullying*, by Alison M. Smith.

## Constitutional Considerations

As noted above, there may be constitutional principles that limit the authority of federal, state, or local governments or schools from enacting anti-bullying laws and policies. These constitutional considerations primarily involve the First and Fourteenth Amendments.

### First Amendment: Freedom of Speech

The First Amendment declares that “Congress shall make no law ... abridging the freedom of speech.” The Fourteenth Amendment’s due process clause imposes the same restriction upon the states,<sup>75</sup> many of whose constitutions have a comparable limitation on state legislative action.<sup>76</sup> Although the First Amendment guarantees free speech, the right is not absolute. Governments impose limitations on many types of speech, and courts frequently distinguish between constitutionally protected speech and other less socially valuable categories of speech. One such example of unprotected speech is speech that constitutes a true threat.<sup>77</sup> The Supreme Court has decided several “true threat” cases that provide the constitutional parameters that states or localities must meet when seeking to establish anti-bullying laws or policies.

In *Watts v. United States*,<sup>78</sup> the Court held that only “true threats” are outside the scope of the First Amendment. In *Watts*, the defendant attended a political rally and made the statement, “I have already received my draft classification ... I am not going. If they ever make me carry a rifle the first man I want to get in my sights is [President] L.B.J.”<sup>79</sup> The defendant was arrested and charged with violating 18 U.S.C. Section 871(a) for “knowingly and willfully ... [making a] threat to take the life of or to inflict bodily harm upon the President of the United States.” The Court held that, although the federal statute was not unconstitutionally overbroad, the defendant’s statement was protected because it was not a “true threat.” The Court found that the content of Watts’s statement, the context in which the statement was made, and the audience’s reaction<sup>80</sup> to the statement were all supportive of Watts’s claim that he engaged in protected “political hyperbole.”<sup>81</sup> The Court recognized that “true threats” should not be afforded First Amendment protection, and stated, “What is a threat must be distinguished from what is constitutionally protected speech.”<sup>82</sup>

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(...continued)

defendant’s motion for a judgment of acquittal. In granting the defendant’s motion, the judge found that the absence of “minimal guidelines to govern law enforcement” as well as notice deficiencies made a misdemeanor violation of the CFAA based upon a “conscious violation of a website’s terms of service” void for vagueness. *United States v. Drew*, 259 F.R.O. 449 (C.D.Cal. 2009).

<sup>75</sup> 44 *Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 489 (1996); *Gitlow v. New York*, 268 U.S. 652, 666 (1925).

<sup>76</sup> See, for example, LA. CONST. ART. I §7; MD. DECL. RTS. ART. 40.

<sup>77</sup> *Watts v. United States*, 394 U.S. 705, 707 (1969).

<sup>78</sup> 394 U.S. 705, 705 (1969).

<sup>79</sup> *Id.* at 706.

<sup>80</sup> *Id.* at 708 (describing the audience’s reaction as that of laughter).

<sup>81</sup> *Id.*

<sup>82</sup> *Id.* at 707.



*Watts* did not establish a bright-line test for distinguishing a true threat from protected speech. As such, lower courts have created varying tests for determining whether speech rises to the level of a true threat.<sup>83</sup> The main point of contention among the appellate courts is whether the focus of a “true threat” test should be on the speaker or the listener. Some courts evaluate the existence of a threat by determining whether the speaker should reasonably have foreseen his words to be threatening,<sup>84</sup> while others rest the determination on whether a reasonable recipient would be threatened by the statement.<sup>85</sup>

Based on these principles, it is possible that anti-bullying laws or policies could be deemed constitutionally deficient if the prohibited behavior does not rise to the level of a “true threat” under most circumstances. This analysis, however, may differ depending on whether the challenged language is contained in a state statute or school policy.

In the school context, school officials who use anti-bullying policies to take disciplinary action against students may face legal challenges based on the First Amendment. While students generally retain the protections of the First Amendment, these protections may not always mirror the constitutional protections afforded in other contexts.<sup>86</sup> For example, in *Tinker v. Des Moines Independent Community School District*,<sup>87</sup> the Court held that student expression may be regulated only if it would substantially disrupt school operations or interfere with the rights of others.<sup>88</sup>

In *Tinker*, students wore black armbands to school to protest the United States’ involvement in Vietnam, despite knowledge that such action was in violation of school policy. The students were asked to remove the armbands, and upon their refusal were suspended until they came to school without the armbands. The Court held that the wearing of armbands for the purpose of expressing different viewpoints is the type of symbolic act within the protection of the First Amendment. Specifically, the Court ruled that “First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of expression at the schoolhouse gate.”<sup>89</sup>

The Court subsequently refined the *Tinker* rationale as it applies to verbal expression or “pure speech.” In *Bethel School District 403 v. Fraser*,<sup>90</sup> the Court ruled that school officials had the authority to discipline a student for violating school rules by delivering a lewd speech at a school assembly. Shifting its focus from the students’ rights articulated in *Tinker*, the Court instead emphasized the school’s duty to inculcate habits and manners of civility and teach students the

<sup>83</sup> See, for example, *United States v. Alkhabaz*, 104 F.3d 1492 (6<sup>th</sup> Cir. 1997).

<sup>84</sup> See, for example, *United States v. Fulmer*, 108 F.3d 1486 (1<sup>st</sup> Cir. 1997).

<sup>85</sup> See, for example, *United States v. Maisonet*, 484 F.2d 1356, 1357 (4<sup>th</sup> Cir. 1973).

<sup>86</sup> See, *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969); *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675 (1986)(upholding suspension of a high school student for a student government nomination speech including the use of obscene, profane language and gestures); *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260 (1988)(upholding a principal’s authority to delete material from a high school paper); and *Morse v. Frederick*, 551 U.S. 393 (2007)(holding that a principal did not violate a student’s right to free speech by confiscating a banner she reasonably viewed as promoting illegal drug use).

<sup>87</sup> 393 U.S. 503 (1969).

<sup>88</sup> *Id.* at 507.

<sup>89</sup> *Id.* at 506.

<sup>90</sup> 478 U.S. 675 (1986).

boundaries of socially appropriate behavior.<sup>91</sup> In addition, the Court noted the importance of protecting minors from vulgar, lewd, or indecent language.<sup>92</sup> As such, the Court concluded that the nomination speech had a disruptive effect on the education process, and that it was up to school officials to determine what manner of speech in the classroom or in school assembly is appropriate.<sup>93</sup>

While it is undisputed that the First Amendment does not protect “offensive” speech while on school grounds, courts are less clear when the speech occurs off school premises. For example, in *J.S. v. Bethlehem Area School District*,<sup>94</sup> an 8<sup>th</sup> grader created a website that contained derogatory remarks regarding a math teacher and a principal. Most of the website was devoted to ridiculing the math teacher, comparing her to Adolph Hitler and making fun of her physical appearance. In addition, the site contained a solicitation for contributions to pay for a “hit man.”<sup>95</sup> School officials subsequently expelled the student, citing the extreme emotional distress suffered by the math teacher and the disruption the website caused at the school. The student argued that his website was protected speech.

In reviewing the case, the Pennsylvania Supreme Court decided two issues: (1) whether the student’s speech constituted a true threat; and (2) whether the *Tinker* and *Fraser* standards permit a school district to discipline a student for off-campus speech. In addressing the “true threat” issue, the court determined that, although the website was in extremely poor taste, it was not a “true threat.” Specifically, the court stated that “[w]e believe that the [w]ebsite, taken as a whole, was a sophomoric, crude, highly offensive and perhaps misguided attempt at humor or parody. However, it did not reflect a serious expression of intent to inflict harm,” as the site focused primarily on the teacher’s physical appearance, utilizing cartoons, hand drawings, and a reference to Adolph Hitler.<sup>96</sup>

The court then addressed whether First Amendment jurisprudence permitted the school to discipline a student for off-campus speech. It dismissed the argument that the website was off-campus speech beyond the school’s jurisdiction. Specifically, the court stated that “[w]e find there is a sufficient nexus between the [w]ebsite and the school campus to consider the speech as occurring on-campus.”<sup>97</sup> The court made this determination because the student had accessed the site at school, showed it to a fellow student, and informed other students about the site.<sup>98</sup> The court then reasoned that school officials could punish the student under the *Tinker* or *Fraser* standard<sup>99</sup>—under the *Fraser* standard because the speech on the website was vulgar and highly

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<sup>91</sup> Id. at 681.

<sup>92</sup> Id.

<sup>93</sup> Id. at 683.

<sup>94</sup> 807 A.2d 847 (Pa. 2002).

<sup>95</sup> Id. at 851.

<sup>96</sup> Id. at 859.

<sup>97</sup> Id. at 865.

<sup>98</sup> Id. (stating that “where speech that is aimed at a specific school and/or its personnel is brought onto the school campus or accessed at school by its originator, the speech will be considered on-campus speech.”).

<sup>99</sup> Id. at 868-869.



offensive,<sup>100</sup> and under the *Tinker* standard inasmuch as the website caused a substantial disruption of school activities.<sup>101</sup>

Ultimately, court rulings in this area tend to depend on the circumstances that arise in a given case, with courts sometimes upholding a school's disciplinary actions<sup>102</sup> and other times ruling in favor of a student's right to free speech.<sup>103</sup>

## Fourteenth Amendment: Due Process

Another constitutional constraint that legislators and school administrators may face when drafting legislation or school policies aimed at curtailing bullying is the Fourteenth Amendment. The Fourteenth Amendment's due process clause provides that "[n]o State shall ... deprive any person of life, liberty, or property, without due process of law...." Under the due process clause, criminal statutes that lack sufficient definiteness or specificity may be held "void for vagueness." A governmental regulation or statute may be declared void if it fails to give a person adequate warning that his or her conduct is prohibited or if it fails to set out adequate standards to prevent arbitrary and/or discriminatory enforcement.<sup>104</sup>

Indeed, a statute may be so vague or threatening to constitutionally protected activity that it can be pronounced unconstitutional on its face. For example, in *Papachristou v. City of Jacksonville*,<sup>105</sup> a unanimous Court struck down as facially invalid a vagrancy ordinance that punished:

dissolute persons who go about begging, ... common night walkers, ... common railers and brawlers, persons wandering or strolling around from place to place without any lawful purpose or object, habitual loafers, ... persons neglecting all lawful business and habitually spending their time by frequenting houses of ill fame, gaming houses, or places where alcoholic beverages are sold or served, persons able to work but habitually living upon the earnings of their wives or minor children.<sup>106</sup>

The Court found the statute facially invalid, as it failed to provide fair notice or require specific intent to commit an unlawful act. The Court concluded that the statute permitted arbitrary and

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<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> See, for example, *Wisniewski v. Bd. of Ed* 494 F.3d 34 (2<sup>nd</sup> Cir. 2007), *cert. denied*, 552 U.S. 1296 (2008).

<sup>103</sup> See, for example, *Layshock v. Hermitage Sch. Dist.*, 650 F.3d 205 (3d Cir. 2011), *cert. denied*, Blue Mt. Sch. Dist. v. J.S., 132 S. Ct. 1097 (2012); *Emmett v. Kent Sch. Dist. No. 415*, 92 F. Supp.2d 1088 (W.D. Wash. 2000); *Beussink v. Woodland R-IV Sch. Dist.*, 30 F. Supp.2d 1175 (E.D. Missouri 1998).

<sup>104</sup> See, for example, *Chicago v. Morales*, 527 U.S. 41 (1999); *Kolender v. Lawson*, 461 U.S. 352 (1983). According to the Court, "[v]ague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warnings. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory applications." *Grayned v. City of Rockford*, 408 U.S. 104, 108-09 (1972).

<sup>105</sup> 405 U.S. 156 (1972).

<sup>106</sup> *Id.* at n.1.

erratic arrests and convictions, provided police officers too much discretion, and criminalized activities that are normally innocent.<sup>107</sup>

When evaluating the constitutionality of anti-bullying laws or policies, the courts may apply these due process principles. For example, in *Flaherty v. Keystone Oaks School District*,<sup>108</sup> a student filed a lawsuit after being disciplined for posting on an online message board devoted to high school volleyball. A federal district court held that the breadth of student handbook policies pertaining to discipline and technology was overreaching, thus violating students' free speech rights. In addition, the court held that the policies were unconstitutionally vague in definition and as applied.

The court found the school policies unconstitutionally overbroad for several reasons. First, the policies were not referred to or incorporated in the student handbook. In addition, the policy "authorizes discipline where a student's expression that is abusive, offending, harassing, or inappropriate, interferes with the educational program of the schools." This standard, concluded the court, did not comply with the *Tinker* requirement that discipline should be reserved for those circumstances that cause a substantial disruption to school operations.<sup>109</sup>

Finally, the court noted that even if it did not find the policy overbroad, it would find the student handbook policies unconstitutionally vague, as the terms "abuse, offend, harassment, and inappropriate" were not defined in any significant manner. In addition, the court found the policies not only vague in definition but also in application. The court noted that school personnel had varying interpretations of the policies. As such, the court concluded that the policies were vague enough to result in arbitrary enforcement. Therefore, the court concluded that the student handbook policies did not provide the student with adequate warning of proscribed conduct.

Ultimately, when drafting legislation or school policies to combat student bullying, legislators and school administrators must consider the constitutional constraints imposed by the First and Fourteenth Amendments. Specifically, such officials must ensure that statutes and school policies are narrow enough not to infringe upon protected speech and specific enough not to be found unconstitutionally vague.

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<sup>107</sup> Similarly, an ordinance making it a criminal offense for three or more persons to assemble on a sidewalk and conduct themselves in a manner annoying to passersby was found impermissibly vague and void on its face because it encroached on the freedom of assembly. *Coats v. City of Cincinnati*, 402 U.S. 611 (1971).

<sup>108</sup> 247 F. Supp.2d 698 (W.D. Pa. 2003).

<sup>109</sup> *Id.* at 704.

## Appendix.

**Table A-I. Federal Agency Initiatives that May Address School Bullying**

Title	Description	Federal Agency Administering Initiative
<i>GRANT PROGRAMS</i>		
<i>The Safe and Drug Free Schools and Community Act (SDFSCA)</i>	SDFSCA is the federal government’s primary program aimed at preventing drug abuse and violence, including student bullying, in and around public schools. <sup>a</sup>	Office of Elementary and Secondary Education, Office of Safe and Health Students, U.S. Department of Education
<i>Secure our Schools Program (SOS)</i>	SOS funds can be used for anti-bullying initiatives, among other things. Grants under this program provide funding to state, local, or tribal governments working in partnership with public schools to improve school safety. <sup>b</sup>	Office of Community Oriented Policing, U.S. Department of Justice
<i>Academic Centers of Excellence (ACE)</i>	The ACE program supports grants for National Academic Centers of Excellence in Youth Violence Prevention and Urban Partnership Academic Centers of Excellence. It funds collaborative efforts between research universities and community-based organizations to help community partners develop, implement, and evaluate comprehensive youth violence prevention efforts. <sup>c</sup>	Centers for Disease Control and Prevention, U.S. Department of Health and Human Services
<i>Juvenile Accountability Block Grant (JABG)</i>	The JABG program authorizes the Attorney General to make grants to states and units of local government to strengthen their juvenile justice systems and to foster accountability within their juvenile populations. The program focuses resources on holding juveniles accountable for their actions and building up the juvenile justice system in the states. <sup>d</sup>	Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice
<i>Garrett Lee Smith State, Tribal, and Campus Youth Suicide Prevention Programs</i>	Grants made under this program help states, tribes, and campuses develop and implement youth suicide prevention and early intervention strategies involving public-private collaborations among youth-serving institutions. <sup>e</sup>	Substance Abuse and Mental Health Services Administration, U.S. Department of Health and Human Services
<i>Native Aspirations Grants</i>	Grants under this program fund training and technical assistance to provide proactive mental health assistance to children, youth, and their families living on American Indian Tribal reservations and in Alaska Native villages. The program is designed to help decrease the risk factors that contribute to youth violence, bullying, and suicide, and to help increase the protective factors linked to healthy, safe children and families. <sup>f</sup>	Substance Abuse and Mental Health Services Administration, U.S. Department of Health and Human Services

Title	Description	Federal Agency Administering Initiative
<i>DATA COLLECTION</i>		
<i>School Crime Supplement to the National Crime Victimization Survey (SCS/NCVS)</i>	This survey is co-designed by the U.S. Department of Education and U.S. Department of Justice. It is a national survey of students ages 12-18 in public and private K-12 schools. SCS/NCVS collects information about victimization, crime, and safety at school, including bullying. It is currently administered every two years. <sup>g</sup>	Office of Justice Programs, Bureau of Justice Statistics, U.S. Department of Justice  National Center on Education Statistics, U.S. Department of Education
<i>Civil Rights Data Collection (CRDC)</i>	The most recent (SY2009-SY2010) data collection is the first time the survey has included reporting on bullying and harassment (at both the school and district level). The survey also includes data on corporal punishment; in- and out-of-school suspensions, expulsions, zero tolerance expulsions, referral to law enforcement; and school-based arrests. This survey is based on a sample of public school districts and schools. It is conducted every two years. <sup>h</sup>	Office for Civil Rights, U.S. Department of Education
<i>Youth Risk Behavior Surveillance System (YRBSS)</i>	YRBSS monitors alcohol, tobacco, and drug use, sexual behaviors that lead to unintended pregnancy and sexually transmitted diseases, behaviors that lead to unintentional injury and violence, unhealthy dietary habits, and inadequate physical activity. It includes questions on student bullying. Students in grades 9-12 are surveyed every two years during the spring school semester. <sup>i</sup>	Centers for Disease Control and Prevention, U.S. Department of Health and Human Services
<i>Health Behavior in School-Aged Children (HBSC)</i>	NICHD conducts research on bullying through the Health behavior in School-Aged Children survey. This international survey includes a nationally representative sample of U.S. students in grades 6-10, and includes questions addressing bullying behaviors (perpetration and victimization). This survey is conducted every four years. <sup>j</sup>	National Institute of Child Health and Human Development, National Institutes of Health, U.S. Department of Health and Human Services
<i>National Survey of Children's Exposure to Violence (NatSCEV)</i>	Surveys past-year and lifetime exposure to violence, including bullying, of children age 17 and younger. This phone survey is conducted periodically, based on a nationally representative sample of children. Children ages 10 and over are surveyed directly; responses for children under the age of 10 are obtained from their principal caregiver. <sup>k</sup>	Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice  Centers for Disease Control and Prevention, U.S. Department of Health and Human Services
<i>School Survey on Crime and Safety (SSOCS)</i>	SSOCS is a survey of approximately 3,500 principals in public K-12 schools. SSOCS is ED's primary source of data on crime and safety at the school level. SSOCS includes questions on the reported frequency of bullying and cyber-bullying. It is currently administered every two years. <sup>l</sup>	National Center on Education Statistics, Institute of Education Sciences, U.S. Department of Education

Title	Description	Federal Agency Administering Initiative
<b>RESOURCES ON PROMISING PRACTICES, PREVENTION, AND INTERVENTIONS</b>		
<i>Measuring Bullying Victimization, Perpetration, and Bystander Experiences</i>	Compendium of bullying measurement tools. <sup>m</sup>	Centers for Disease Control and Prevention, U.S. Department of Health and Human Services
<i>Blueprints for Healthy Youth Development</i>	Identifies evidence-based prevention and intervention programs. <sup>n</sup>	Centers for Disease Control and Prevention, U.S. Department of Health and Human Services
<i>National Registry of Evidence-based Programs and Practices</i>	SAMHSA maintains a National Registry of Evidence Based Programs and Practices that includes bullying prevention programs. <sup>o</sup>	Substance Abuse and Mental Health Services Administration, U.S. Department of Health and Human Services
<i>Model Programs Guide</i>	This guide helps users select evidenced-based prevention and intervention programs. It allows users to search for programs based on criteria that they select, e.g., program type, target setting (such as schools), problem behavior (such as bullying), special populations, as well as by gender, race/ethnicity, and age. <sup>p</sup>	Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice
<i>Community Action Planning</i>	Bullying prevention training modules and a community action toolkit to provide communities with research-based strategies to address bullying. <sup>q</sup>	Health Resources and Services Administration, U.S. Department of Health and Human Services
<b>OUTREACH</b>		
<i>Stop Bullying Now Campaign</i>	The Stop Bullying Now Campaign is targeted to children ages 9-13. It has distributed resources on bullying to all public elementary and secondary schools and many other organizations that serve youth. <sup>r</sup>	Health Resources and Services Administration, U.S. Department of Health and Human Services
<i>Striving to Reduce Youth Violence Everywhere (STRYVE)</i>	STRYVE provides training and resources to achieve the goals of the program, which are to (1) increase awareness that youth violence can and should be prevented, (2) promote the use of youth violence prevention approaches that are based upon the best available evidence, and (3) provide guidance to communities on how to prevent youth violence. <sup>s</sup>	Centers for Disease Control and Prevention, U.S. Department of Health and Human Services
<i>Defending Childhood</i>	DOJ is leading this initiative, which is focused on children's exposure to violence. The initiative is working to coordinate resources in order to prevent, reduce, and better understand this issue. It provides funds for research, evaluation, and public awareness, as well as for demonstration grants. Although this is a broad initiative focusing on a comprehensive approach to violence, victimization through bullying may be included as one of the issues addressed. <sup>t</sup>	U.S. Department of Justice

Title	Description	Federal Agency Administering Initiative
<b>REPORTS/RESEARCH ON SCHOOL BULLYING</b>		
<i>State Bullying Laws and Policies</i>	The U.S. Department of Education has published a detailed report on state bullying laws that is available online. <sup>u</sup>	Office of Planning, Evaluation and Policy Development, Policy and Program Studies Services, U.S. Department of Education
<i>Reports</i>	The CDC has published several reports on school bullying including three on electronic aggression—including one targeted to researchers and one targeted to caregivers. <sup>v</sup>	Centers for Disease Control and Prevention, U.S. Department of Health and Human Services
<i>Reports</i>	OJP has issued a series of publications on student bullying including some focused on peer victimization, and others on the impact of bullying on student behaviors, such as <i>student</i> engagement, attendance, and achievement. <sup>w</sup>	Office of Justice Programs, U.S. Department of Justice
<i>School-Based Programs to Reduce Bullying and Victimization</i>	This report reviews school-based programs to reduce bullying and victimization. <sup>x</sup>	National Criminal Justice Reference Service, Office of Justice Programs, U.S. Department of Justice
<i>Research</i>	Supports research to enhance the evidence base on bullying for use in program development at the school and district levels. Also supports research on the causes of violent and aggressive behaviors and the mechanisms underlying these behaviors. <sup>y</sup>	National Institute of Child Health and Human Development, National Institutes of Health, U.S. Department of Health and Human Services
<b>TECHINICAL ASSISTANCE</b>		
<i>Technical Assistance Center on Positive Behavioral Interventions and Supports</i>	The Center provides capacity-building information and technical assistance to schools, districts, and states who are implementing School-wide Positive Behavioral Interventions and Supports (PBIS), including PBIS for bullying prevention. PBIS is a three-tiered prevention based approach to improving school-wide disciplinary practices. According to the Center, PBIS is used in more than 9,000 schools across 40 states. <sup>z</sup>	Office of Special Education, U.S. Department of Education
<i>National Training and Technical Assistance Center</i>	The Center provides technical assistance on student bullying, among other things. In addition, it provides funding for the Safe Start Initiative, which is intended to broaden the knowledge of, and promote community investment in, evidence-based strategies for reducing the impact of children’s exposure to violence. <sup>aa</sup>	Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice

**Source:** Compiled by CRS.

- a. As authorized, the SDFSCA is divided into two major programs: State Formula Grants and National Programs. However, FY2009 was the last year that funding was provided for State Formula Grants. Overall funding for SDFSCA was considerably lower in FY2012 than it was in years when the State Grant Program also received funding. The SDFSCA program received a total of \$65 million in funding in FY2012. In contrast, for FY2009, the last year in which State Formula Grants received funding, the total funding for SDFSCA equaled \$435 million—\$295 million for State Formula Grants, and \$140 million for National

- Programs. For more information on the SDFSCA program see CRS Report RL34496, *Safe and Drug-Free Schools and Communities Act: Program Overview and Reauthorization Issues*, by Gail McCallion.
- b. <http://www.cops.usdoj.gov/default.asp?Item=2368>.
  - c. <http://www.cdc.gov/violenceprevention/ace/>.
  - d. The only core mandate of the JABG program is that states must begin to implement a system of graduated sanctions for juveniles in order to be eligible for funding. As currently comprised, the program authorizes funding for 17 accountability based purpose areas. While not all of the purpose areas address activities in the school arena, one such purpose area is “establishing and maintaining accountability-based programs that are designed to enhance school safety, which programs may include research-based bullying, cyber-bullying, and gang prevention programs.” (42 USC 3796ee(b)(13)). <http://www.ojjdp.gov/programs/ProgSummary.asp?pi=1>.
  - e. <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3107991/>.
  - f. See p. 300 of HHS FY2014 Budget Justification: [http://www.samhsa.gov/Budget/FY2014/SAMHSA\\_FY2014\\_CJ\\_FINAL.pdf](http://www.samhsa.gov/Budget/FY2014/SAMHSA_FY2014_CJ_FINAL.pdf).
  - g. Although some of the data elements collected in this survey are available by state, bullying is not. The survey asks about school related topics such as alcohol and drug availability; fighting, bullying, and hate-related behaviors; fear and avoidance behaviors; gun and weapon carrying; and gangs at school. This survey is conducted every two years. Each incident of crime against an individual is counted as a victimization. However, if a particular student reports two incidents of victimization during the previous 6 months, then this student would be counted only once in the overall prevalence (“any”) estimate. Thus the prevalence indicates the number of students affected by victimization rather than the number of victimizations that occur at school. <http://nces.ed.gov/programs/crime/surveys.asp>.
  - h. The purpose of this survey is to monitor the extent to which public elementary and secondary schools are meeting their obligation to provide equal educational opportunities to all students. Most of the data are broken down by sex, race, ELL, IDEA, and Section 504 status. The most recent survey is based on a sample that covers more than 72,000 schools in approximately 7,000 school districts, and represents about 85% of all U.S. students. <http://ocrdata.ed.gov>.
  - i. <http://www.cdc.gov/HealthyYouth/yrbs/index.htm>.
  - j. <http://www.hbsc.org/about/index.html>.
  - k. <http://www.ojjdp.gov/pubs/235394.pdf>.
  - l. SSOCS collects data from school principals on: the frequency and types of crimes occurring at school, disciplinary actions allowed and used in schools, policies and practices designed to prevent or reduce crime in schools, and characteristics of school climate related to safety. It includes information on the percentage of schools reporting incidents of hate crimes and cyber-bullying. Since 2003, it has been administered every two years. <http://nces.ed.gov/pubs2011/2011320.pdf>.
  - m. <http://www.cdc.gov/violenceprevention/pdf/bullyCompendiumbk-a.pdf>.
  - n. <http://www.colorado.edu/cspv/blueprints/>.
  - o. <http://www.nrepp.samhsa.gov/>.
  - p. <http://www.ojjdp.gov/mpg/>.
  - q. <http://www.stopbullying.gov/prevention/in-the-community/community-action-planning/index.html>.
  - r. <http://mchb.hrsa.gov/programs/bullying/>.
  - s. <http://vetoviolence.cdc.gov/stryve/>.
  - t. <http://www.justice.gov/defendingchildhood/>.
  - u. <http://www2.ed.gov/rschstat/eval/bullying/state-bullying-laws/state-bullying-laws.pdf>.
  - v. <http://www.cdc.gov/violenceprevention/youthviolence/electronicaggression/>.
  - w. [http://www.ojp.usdoj.gov/newsroom/factsheets/ojpf\\_bullying.html](http://www.ojp.usdoj.gov/newsroom/factsheets/ojpf_bullying.html).
  - x. <https://www.ncjrs.gov/pdffiles1/nij/grants/229377.pdf>.

- y. Most recently NICHD has provided funds for research projects that are exploring the content of social media for types of harassment, identifying youth who may be more vulnerable to Internet victimization and factors that may provide protection, and the development of a new online library that will feature bullying prevention programming and resources for schools and other programs that serve adolescents.  
<http://www.nichd.nih.gov/health/topics/bullying/researchinfo/Pages/activities.aspx..>
- z. <http://www.pbis.org/>.
- aa. <https://www.nttac.org/>.

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