

PROHIBIT BULLYING AND HARASSMENT AT SCHOOL

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House Bill 4091 as passed by the House
Sponsor: Rep. Aldo Vagnozzi

House Bill 4162 as passed by the House
Sponsor: Rep. Pam Byrnes
Committee: Education

Second Analysis (4-24-07)

BRIEF SUMMARY: The bills would require school officials to work with parents and law enforcement officials to adopt and implement a policy that prohibits "harassment or bullying," as that term is defined in the Department of Education's September 12, 2006 model anti-bullying policy, and would encourage them to utilize all other provisions of that model policy. The new law would be known as "Matt's Safe School Law."

FISCAL IMPACT: Local school districts could face increased costs related to developing harassment and bullying prevention policies. Further, the Department of Education also could face additional administrative costs in developing a model prevention policy.

THE APPARENT PROBLEM:

There are more than 3,700 public schools in Michigan, serving about 1.8 million students each day. Many of the schools are large, and the thousands of students who study in them are differently prepared for, and differently disposed toward, intellectual work.

As students age, they move from small, neighborhood elementary schools where they know their teachers and the other adults who guide their intellectual and social development. However, beginning in middle school when subject-matter learning becomes the primary focus of both students' and adults' work in schools, and continuing through grade 12, the adults in schools concentrate on teaching their disciplines, and the students move from class-to-class in what some education reformers have called the 'shopping mall' high school. The students' courses of study are increasingly more demanding, serious students engage their subjects competitively, and their academic success rests on their self-direction and self-reliance. Too often, students become nearly anonymous in their middle and high schools, little-known by the teachers who teach the courses and the officials who administer the buildings.

The social interactions between young people in these large, loud, competitive, and very mobile environments can be brisk and brutish. Indeed, many report they generally are. The Journal of the American Medical Association (JAMA) notes in a recent study that 29.9 percent of students reported moderate or frequent involvement in bullying—of others (13 percent), by others (10.6 percent), or both (6.3 percent). (The findings were drawn from a representative sample of the 15,686 students in grades 6 through 10 in

public and private schools throughout the U. S. who completed the World Health Organization's *Health Behaviour in School-aged Children Survey* during the spring of 1989.) The journal's archive contains abstracts of 64 current articles concerning the prevalence of bullying, its effects, and school-based interventions to prevent bullying.

According to the Michigan Association of School Social Workers, their members witness the daily toll that bullying takes on students. Many work directly with the victims of bullying, and with the bystanders who also suffer from the terror bullying produces, due to the stress of witnessing the impact of bullying on their fellow students. They report that all of these victims have had their educations disrupted, and sometimes completely derailed by bullying. The school social workers report that the serious emotional and social consequences of bullying are not easily repaired, and can last for years. They note that emotional violence in school creates a threatening environment in which the education of all students suffers.

Bullying can take an especially violent and sometimes deadly turn. During House committee testimony, parents reported a son beaten so severely by a bully that his nose was broken; and a student who, tragically, took his own life after being beaten by fellow students who threatened daily harassment throughout his high school career. The parents reported that school officials did not respond adequately in either case.

Bullying is unacceptable behavior. To convey that position statewide, the Michigan State Board of Education, on September 12, 2006, adopted a Model Anti-Bullying Policy aimed to help school officials stop it. (See [Background Information](#).) The model policy defines "harassment or bullying" as any gesture or written, verbal, graphic, or physical act (including electronically transmitted acts—e.g., Internet, cell phone, personal digital assistant, or wireless hand held device) that is reasonably perceived as being motivated either by any actual or perceived characteristic, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity, and expression; or a mental, physical, or sensory disability or impairment; or by any other distinguishing characteristics. Such behavior is considered harassment or bullying whether it takes place on or off school property, at any school-sponsored function, or in a school vehicle. Adoption of the model policy is voluntary, and few of the state's more than 550 school districts have adopted it.

To ensure that school officials take active steps to eradicate bullying, legislation has been proposed that would require all local school boards and charter schools to adopt and implement a policy prohibiting bullying and harassment at school.

THE CONTENT OF THE BILLS:

The bills would amend the Revised School Code to require schools to adopt a policy that prohibits harassment or bullying at school. The new law would be known as "Matt's Safe School Law."

The Department of Education would develop and disseminate a model policy within 30 days after the effective date of the legislation, and schools would be encouraged to adopt it. All schools would then have six months to adopt a policy, and a copy of their policies would be submitted to the Department of Education within 30 days after their adoption. Within the following year, the department would submit a report to the Senate and House standing committees on education summarizing the implementation status of the harassment and bullying prevention policies.

The bills are tie-barred so that neither could go into effect unless both were enacted into law. A more detailed explanation of each bill follows.

Model Harassment & Bullying Prohibition Policy. House Bill 4091 would amend the Revised School Code (MCL 380.1310c) to require the Department of Education to develop and disseminate a model policy that prohibits harassment or bullying at school, within 30 days after this bill is signed into law. The bill specifies that the legislature strongly encourages the boards of school districts or charter schools to adopt the model policy, inform parents of the model policy, and to work with local law enforcement agencies and parents, as appropriate, in its implementation.

School Policy to Prohibit Harassment & Bullying. House Bill 4162 would amend the Revised School Code (MCL 380.1310b) to require local school boards and charter schools to adopt and implement a policy prohibiting bullying or harassment at school, not later than six months after the effective date of this legislation. The policy would have to include provisions concerning education, parental involvement, reporting, investigation, and intervention. Under the bill, the boards would be required to hold at least one public hearing on the proposed policy (a hearing which could be held as part of a regular board meeting).

Within 30 days after adopting the policy, the boards would be required to submit a copy of their policies to the Department of Education. Then, within the year, the department would be required to submit a report to the Senate and House standing committees on education, summarizing the implementation status of policies, statewide.

Definitions. The bill defines four terms: "at school," "harassment or bullying," "telecommunications access device," and "telecommunications service provider."

"At school" would be defined to mean in a classroom, elsewhere on school premises, on a school bus or other school-related vehicle, or at a school-sponsored activity or event whether or not held on school premises. "At school" includes conduct using a telecommunications access device or telecommunications service provider that occurs off school premises if the telecommunications access device or the telecommunications service provider is owned by or under the control of the school district or public school academy.

"Bullying or harassment" means abuse of a pupil by one or more other pupils in any form. The term includes, but is not limited to, conduct that meets any of the following:

(1) substantially interferes with educational opportunities, benefits, or programs of one or more pupils; (2) adversely affects the ability of a pupil to participate in or benefit from the school district's or public school's educational programs or activities by placing the pupil in reasonable fear of physical harm or by causing emotional distress; (3) is reasonably perceived to be motivated by animus or by an actual or perceived characteristic; or (4) meets the definition of bullying or harassment as defined in the model anti-bullying policy adopted by the state board of September 12, 2006.

"Telecommunications access device" and "telecommunications service provider" mean those terms as defined in section 219a of the Michigan Penal Code.

BACKGROUND INFORMATION:

To read the Michigan Department of Education 6-page Model Anti-Bullying Policy, visit their website at: www.michigan.gov/mde/SBE_Model_AntiBullying_Policy_Revised_9

ARGUMENTS:

For:

Proponents of this legislation argue that school-based bullying is unacceptable because it destroys the school learning environment. They note that learning requires trust. Trust must undergird all social interactions between and among both teachers and students, if they are to be able to work at the edge of their intellectual competence. Bullying makes trust impossible. It deeply troubles both its victims, and its bystanders, often in long-lasting and negative ways. What's more, the advent of cyber-bullying, included in the definition of "at school" used in this legislation, can result in constant, invasive images and texts. As Lisa L. Swem of the Thrun Law Firm has written in her article "Sticks and Stones in Cyberspace" (published in the National School Board Association newsletter, *Leadership Insider: Practical Perspectives on School Law and Policy*): "With the proliferation of interactive and digital technologies, cyberspace has become a new venue through which bullies can torment their victims. Unfortunately...technology can afford the bully a greater degree of anonymity and a wider audience."

Proponents argue that bullying can be substantially reduced if the law requires school officials to adopt and implement policies to thwart it. They note that the voluntary policy proposed by the State Board of Education in September 2006 has not been widely adopted by school districts or charter schools. They say that the School Code must now be amended to require school officials to adopt and implement such policies.

For:

Some proponents argue that while these are good bills, the original bills were stronger, having many more protections, for those who either are bullied, and those who report bullying. They say this legislation should be amended to include greater specificity.

For example, among the required components for policies developed under House Bill 4091 as originally introduced, were two that required a school policy to specify the type

of behavior expected from each student, and also the consequences and appropriate remedial action for people who violated the policy.

That bill would also have required that a policy comprise a procedure for reporting an act of harassment, intimidation, or bullying, including a provision that permitted a person to report an act anonymously; a procedure for prompt investigation of reports of violations and complaints, identifying either the principal or the principal's designee as the person responsible for the investigation; the range of ways in which a school would respond once an incident of harassment or bullying was identified; a statement that prohibited reprisal or retaliation against any person who reported an act of harassment or bullying, and the consequences and appropriate remedial action for a person who engaged in that type of reprisal or retaliation; consequences and appropriate remedial action for a person who falsely accused another of harassment, intimidation, or bullying; and a statement of how the policy was to be publicized, including notice that the policy applied to participation in school-sponsored activities.

What's more, under the original bill, a school employee who promptly reported an incident to the appropriate school official designated in the policy, and who made the report in compliance with the policy's procedures would not be liable for damages arising from any failure to remedy the reported incident.

These are important components of any bullying prevention policy, and should be included in "Matt's Safe School Law" (named for Matthew Epling, a young East Lansing student who took his life after being bullied by students).

Response:

Proponents of the bills note that some of these requirements have once again been included in the legislation. Specifically, the substitute version (H-4) of House Bill 4162 that was adopted on the House floor would require that school policies include provisions concerning education, parental involvement, reporting, investigation, and intervention.

Against:

Opponents of this legislation offer the following arguments. First, some note that the legislation is not necessary, since school districts already have available to them a Model Anti-Bullying Policy adopted by the State Board of Education in September 2006. They note that a school district can, and should, adopt an anti-bullying policy, tailored to their particular student body and circumstances. They don't need a state mandate.

Second, some opponents of the legislation note that amendments the Education Committee members failed to adopt would have improved the bills a great deal. For example, amendments were offered to require teachers to report instances of bullying, and also to require teacher preparation programs to train prospective teachers in bully-prevention programs in order to gain teacher certification. Another amendment would have provided bully-prevention training to in-service teachers, through the regional school district offices that currently provide training to improve the health and safety of students.

Third, some opponents of the legislation note that bullying against *all* students—not just those whose characteristics are listed in the legislation—should be prohibited at all times, regardless of motivation. This amendment also failed in the House Education Committee. Those who supported it argue that House Bill 4162 should be amended to delete the lists of categories, or "protected classes."

Against:

Some opponents of the legislation urge the bills be defeated because they would create a new protected class, "sexual orientation," under the civil rights laws—and thus condone the acts of students who engage in homosexual behavior. The American Family Association of Michigan notes that House Bill 4162 would ban harassment against a student based on height, weight, religion, race, color, ancestry, national origin, age, sex, sexual orientation or gender identity or expression, or by socio-economic status or a mental, physical, or sensory disability or impairment, or any other distinguishing characteristics. The association and some who oppose the bills say that "homosexual activists and their allies' real agenda is clear: secure passage of an unnecessary state mandate that requires public school officials to legitimize and protect the practice of homosexual behavior by formally recognizing such behavior as the basis of offering specially designated protection to students who engage in it."

Response:

Some proponents of the legislation point-out that any proposed statutory definition of a protected class of citizens utilizing categories such as "race" or "sexual orientation" or "socio-economic status" does not encompass the *behavior* of citizens who are so categorized. Instead, categories such as "race" or "sexual orientation" or "socio-economic status" are listed in an effort to extend to those groups of citizens the full protection of the law which has sometimes been denied them.

Reply:

As substituted on the House Floor, House Bill 4162 does not include any categories in its definition of "bullying and harassment." Instead, under the H-4 version of the bill, the term "Bullying or harassment" means abuse of a pupil by one or more other pupils in any form. The term includes, but is not limited to, conduct that meets any of the following: (1) substantially interferes with educational opportunities, benefits, or programs of one or more pupils; (2) adversely affects the ability of a pupil to participate in or benefit from the school district's or public school's educational programs or activities by placing the pupil in reasonable fear of physical harm or by causing emotional distress; (3) is reasonably perceived to be motivated by animus or by an actual or perceived characteristic; or (4) meets the definition of bullying or harassment as defined in the model anti-bullying policy adopted by the state board of September 12, 2006.

POSITIONS:

Michigan Safe Schools supports the bills. (3-13-07)

The Michigan Department of Education supports the bills. (3-13-07)

The Michigan Department of State Police supports the bills. (3-13-07)

The Citizens Alliance to Uphold Special Education supports House Bill 4262. (3-13-07)

Michigan Equality supports the bills. (3-13-07)
The Michigan Counseling Association supports the bills. (3-13-07)
The Michigan Association of School Social Workers supports the bills. (3-13-07)
The Michigan Protection and Advocacy Service, Inc. support House Bill 4162. (3-13-07)
The Michigan Chapter of the National Association of Social Work supports the bills. (3-13-07)
The Michigan Association of School Psychologists supports the bills. (3-13-07)
The Michigan Education Association supports the bills. (3-13-07)
The Triangle Foundation supports House Bill 4162. (3-13-07)
The Michigan National Organization for Women supports the bills. (3-13-07)
Fight Crime, Invest in Kids supports the bills. (3-13-07)
Van Buren Legislative Group supports the bills. (3-20-07)
The American Federation of Teachers-Michigan supports the bills. (3-20-07)
Michigan Small and Rural Schools support the bills. (3-20-07)
White Lake Middle School and High School support the bills. (3-20-07)
Michigan Head Start Association supports the bills. (3-20-07)
The American Civil Liberties Association supports the bills. (3-20-07)
The Michigan Chapter AFL-CIO supports the bills. (3-20-07)
The Washtenaw Intermediate School District supports the bills. (3-20-07)
The Michigan Association of School Boards supports the bills. (3-20-07)
The Michigan Association of School Administrators supports the bills. (3-20-07)
The Michigan Association of Secondary School Principals supports House Bill 4162. (3-20-07)

The American Family Association opposes the bills. (3-13-07)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.