

## ANTI-BULLYING POLICIES FOR SCHOOLS

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**House Bill 4580 as introduced**

**Sponsor: Rep. Pam Brynes**

**Committee: Education**

### **First Analysis (5-4-10)**

**BRIEF SUMMARY:** The bill would create a new law to be known as "Matt's Safe School Law," to require public schools to adopt a policy that prohibits harassment or bullying at school.

**FISCAL IMPACT:** Local school districts could face increased costs related to developing and implementing harassment and bullying prevention policies. While the report on the implementation status of these policies statewide that the Department of Education is charged with would not likely increase costs, it may necessitate that the Department redirect staff time away from other functions in order to fulfill the requirement.

### **THE APPARENT PROBLEM:**

There are more than 3,700 public schools in Michigan, serving about 1.6 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 students report they generally are so. 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 1998.) The journal's archive contains abstracts of 99 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 in 2007, 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. During House committee testimony in 2010, the story of another young man who took his life was in the news. (*The Detroit News 4-26-10*)

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 reports vary as to the percentage of the state's more than 550 school districts that 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 BILL:***

The bill 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."

Under the bill, all school district boards (including the boards of local districts, intermediate districts, and charter schools) would have six months from the effective date of this law to adopt and implement a policy prohibiting bullying and harassment at school.

The bill specifies that the legislature encourages a board to include in its policy 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). After adopting a policy, the board would be required to submit it to the Department of Education within 30 days.

Within a year following the deadline for the submission of local district policies, the Department of Education would submit a report to the Senate and House standing committees on education summarizing the implementation status of the harassment and bullying prevention policies.

Definitions. The bill defines four terms: "at school," "bullying or harassment," "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 it is 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; or (3) is reasonably perceived to be motivated by animus or by an actual or perceived characteristic.

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

MCL 380.1310b

### ***BACKGROUND INFORMATION:***

To read the Michigan Department of Education 6-page Model Anti-Bullying Policy, visit their website at:

[http://www.michigan.gov/documents/mde/SBE\\_Model\\_AntiBullying\\_Policy\\_Revised\\_9.8\\_172355\\_7.pdf](http://www.michigan.gov/documents/mde/SBE_Model_AntiBullying_Policy_Revised_9.8_172355_7.pdf)

Background: Actual or Perceived Characteristics. Historically, some Michigan-based opponents of anti-bullying legislation have charged that legislation similar to this bill creates "special rights" for "special groups" in state statute. Those opponents have urged

that this kind of legislation be defeated because it 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. For example, during committee testimony on an anti-bullying bill in 2007, the American Family Association of Michigan noted that House Bill 4162 would have banned 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 opposed the bills said 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."

### ***ARGUMENTS:***

#### ***For:***

Michigan is one of eight states having no statute to prohibit bullying and harassment in public schools, according to the National Conference of State Legislatures. A bill identical to this bill--Senate Bill 275--has been introduced this session in the Michigan Senate. The time has come, indeed the time has long since passed, to sign these bills into law. A recent survey of 200 high school students conducted by Oakland Schools (the ISD serving the 27 school districts in Oakland County), found that 84 percent of the students surveyed had witnessed teasing, insulting, or rumor-spreading about another student. They note that the climate of fear created by bullies can result in increased absenteeism, decreased academic performance, and heightened risk of suicide. School officials must be proactive, adopting and implementing policies to eliminate unacceptable and violent behavior like bullying.

#### ***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 adopted by all school districts and charter schools in Michigan. 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 this is a good bill, the legislation could be even stronger, having many more protections, for those who either are bullied, and those who report bullying. To these ends, this legislation could be amended to include greater specificity.

For example, there could be, among the required components for policies, a school policy to specify the type of behavior expected from each student, and also a school policy that makes explicit the consequences and appropriate remedial action for people who violated the policy. For example, the bill could specify the following: 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 requiring 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.

Finally, the bill could include a provision to protect school employees who promptly reported incidents of bullying, ensuring they 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).

***Against:***

Opponents of this legislation 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 argue 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. During committee testimony, they estimated that fully 90 percent of Michigan school districts have already adopted anti-bullying policies.

***Against:***

Some opponents of the legislation note that an amendment the House Education Committee members failed to adopt would have improved the bill a great deal, virtually

ensuring its passage in the Michigan Senate. That amendment would have removed from the definition of "bullying and harassment" the provision: "(iii) is reasonably perceived to be motivated by animus or by an actual or perceived characteristic."

These opponents of the legislation note that bullying against all students—not just that bullying that is motivated by animus or an actual or perceived characteristic—should be prohibited at all times, regardless of motivation.

***Response:***

House Bill 4580 clearly states that "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: (i) substantially interferes with educational opportunities, benefits, or programs of one or more pupils; (ii) 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; or (iii) is reasonably perceived to be motivated by animus or by an actual or perceived characteristic.

This bill is designed to prevent bullying of all students. As the document entitled "Five Myths about Matt's Safe School Law" states: "This bill does not put any "special rights" for "special groups" in state statute. It protects all Michigan children, regardless of who they are." (See ***Background Information.***)

***POSITIONS:***

The Michigan Department of Education supports the bill. (4-22-10)

The Michigan Association of School Administrators supports the bill. (4-22-10)

The Michigan Association of School Boards supports the bill. (4-22-10)

The Michigan Education Association supports the bill. (4-22-10)

Bully Police USA/Michigan Safe Schools supports the bill. (4-22-10)

Mid-Michigan Autism Association supports the bill. (4-22-10)

The Triangle Foundation supports the bill. (4-22-10)

The ACLU of Michigan supports the bill. (4-22-10)

The Michigan Counseling Association supports the bill. (4-22-10)

The National Association of Social Workers, Michigan supports the bill. (4-22-10)

The Washtenaw ISD supports the bill. (4-22-10)

The Michigan Organization on Adolescent School Health supports the bill. (4-22-10)

The Michigan Psychological Association supports the bill. (4-22-10)

The Michigan Association of School Psychologists and the Michigan Association of School Social Workers support the bill. (4-22-10)

The Michigan Women's Commission supports the bill. (4-22-10)

Fight Crime: Invest in Kids supports the bill. (4-22-10)

SADD supports the bill. (4-22-10)

SEIU Lavender Caucus supports the bill. (4-22-10)

Pride at Work-Michigan supports the bill. (4-22-10)

The Lansing Association for Human Rights supports the bill. (4-22-10)

Calhoun ISD supports the bill. (4-22-10)

Oakland Schools supports the bill. (4-29-10)

Tempest Smith Foundation supports the bill. (4-29-10)

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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.