

A Report Card on Nebraska's Anti-Bullying Law

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Introduction

For over 50 years in Nebraska, the ACLU has worked in courts, legislatures, and communities to protect the constitutional and individual rights of all people. With a nationwide network of offices and millions of members and supporters, we take up the toughest civil liberties fights. Beyond one person, party, or side – we the people dare to create a more perfect union.

The ACLU works with teachers, parents, students, community members, and legislators to ensure equality and dignity for all students in Nebraska schools, regardless of their sex, race, religious affiliation, immigration status, gender identity, disability status, or sexual orientation. Despite the Supreme Court's landmark *Tinker* decision recognizing that students' constitutional rights are not checked at the schoolhouse door,¹ constitutional violations are still far too common in public schools across the state and country. Students are entitled to an education that is free from harassment and bullying and public schools have to address any reported or known harassment against students.² But unfortunately, harassment and bullying continue to be some of the most pervasive, frightening, and potentially damaging threats that students face in our public schools.

Several studies have shown that harassment such as bullying left unaddressed or unremedied can lead bullied students to have poorer academic performance, to miss or drop out of school, turn to alcohol or other drugs, and even attempt suicide.³ Additionally, any of these outcomes increase the likelihood that a student will be funneled into the school-to-prison-pipeline.⁴ The school-to-prison pipeline is a well-established and disturbing trend wherein children are funneled out of public schools and into the juvenile justice and criminal justice systems with lasting and sometimes lifetime negative collateral consequences.⁵

Policymakers and school administrators must address bullying without further exacerbating the school-to-prison pipeline by implementing best practices as modeled by other states. In this white paper, we will describe the national and Nebraska landscape on anti-bullying law and provide an analysis of our sister states' anti-bullying efforts.

National Landscape

In 2005, the federal government began collecting data on incidents regarding harassment or bullying “on the basis of sex; race, color, or national origin; disability; sexual orientation; and religion.”⁶ This annual data collection demonstrates how bullying continues to be a problem for our most vulnerable students. In the 2015-2016 school year, the most often reported bullying incidents out of all the required reporting categories (sex, race, sexual orientation, disability, and religion) pertained to the bullying victim’s sex and race.⁷ Nationally, approximately one in every five students are bullied and one in every three of those students are bullied one to two times a month during the school year.⁸ Due to these disturbing trends, the federal government and a number of state legislatures have taken steps to address bullying.⁹

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Nebraska Landscape

In 2017, approximately 22.4% of the students in Nebraska reported being bullied on school property and 17.5% being bullied electronically (cyberbullied).¹⁰ Both Nebraska rates of bullying at school and cyberbullying are consistent, if not higher, than the national rates of 19% and 14.9%, respectively.¹¹ In Nebraska schools, the most often reported bullying incidents pertained to the bullying victim’s sex, religion, and race.¹²

The ACLU of Nebraska recognizes that Nebraska is fortunate to have many dedicated administrators, teachers and staff in our K-12 public schools who care deeply and strive to ensure every child succeeds in their education. Nevertheless, the single most common complaint the ACLU of Nebraska receives from students or families is regarding serious bullying which is either not properly addressed or left unaddressed altogether by school staff or administrators. The complaints arrive from all corners of the state, from large and small school districts, from a diverse set of families—indicating that Nebraska continues to have a bullying problem in schools and that it has not yet implemented anti-bullying best practices.

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The Nebraska Legislature passed anti-bullying legislation in 2008 which: defines bullying as “any ongoing pattern of physical, verbal, or electronic abuse on school grounds, in a vehicle owned, leased, or contracted by a school being used for a school purpose by a school employee or his or her designee, or at school-sponsored activities or school-sponsored athletic events;” requires that each school district “develop and adopt a policy concerning bullying prevention and education for all students;” and requires that each school district “review

the policy annually.”¹³ Additionally, the Nebraska Department of Education provides guidance on policy and anti-bullying program development.¹⁴

However, the Nebraska anti-bullying statute and Nebraska Department of Education’s anti-bullying policy and program development do not go far enough to protect students’ rights. It generally lacks guidance and direction needed by each school district in drafting its anti-bullying policy. Even with the Nebraska Department of Education’s anti-bullying guidance and policy, school districts have wide discretion as to what to include in their anti-bullying policies, potentially leaving key provisions out, like the ones adopted by other states.

Nebraska Stories

Students’ Real-Life Bullying Stories (pseudonyms used to protect privacy)

Margaret: (She/her/hers)

Race: African-American

School level: Middle School

Margaret is experiencing bullying from her fellow students in school. Her peers have threatened with calling the police on her, made death threats, called her names and racial slurs. Her mother has reached out to teachers, the principal, and superintendent to try and resolve the issue with no success. Margaret has had to eat lunch somewhere other than the cafeteria because her peers will not even let her sit down. The bullying at school has affected Margaret so much that she has been diagnosed with PTSD and has increasingly had suicidal thoughts.

Gavin (He/him/his)

Race: White

School level: High School

Gavin is a transgender boy attending high school. Gavin has let his peers know about his name change from Marissa (pseudonym to protect privacy) to Gavin. Some students are refusing to call Gavin by his preferred name and pronouns.

Brandy (She/her/hers)

Race: Latinx

School level: Elementary School

Brandy is being bullied by other students in her class and tells her teachers who respond that she “be quiet and stop tattling.” One day at recess, another student physically grabbed Brandy by the neck in a headlock position and forced her onto the ground. Brandy was sent to the nurse’s office and was physically fine, but emotionally distraught. If Brandy hears her only friend is not going to school, she also does not want to go to school and even refuses to get out of the car when being dropped off. When Brandy’s mom talked to the superintendent about the bullying incidents her daughter has experienced, the superintendent told her that “[this school] maybe isn’t the place for her.”

Jimena (She/her/hers)

Race: Latinx

School level: Middle School

Jimena has been experiencing months-long bullying and cyberbullying issues at her school. She has been assaulted and intimidated into silence. The bullying incidents have affected her so much that she quit all her extracurricular activities and changed classes to avoid running into other bullies. Jimena used to love school, but now she’s terrified of going and tries to avoid attending. Jimena’s parents have been going to the school 1-2 times per week for months to ask the administration to protect their child without any success. Jimena’s mental health has taken a downturn as she is now battling anxiety and depression as has her academic performance.

Research Methodology

In August 2019, the ACLU of Nebraska conducted legal and policy research to examine the key provisions in other states' anti-bullying statutes to ensure Nebraska is meeting best practices. The ACLU of Nebraska also conducted a review and evaluation of existing anti-bullying materials including the Nebraska Department of Education's anti-bullying policy,¹⁵ policy development guidance,¹⁶ and anti-bullying program development¹⁷ available on the Nebraska Department of Education's website.

Reform Suggestions & Solutions to Bring to Nebraska

Expand Protected Classes

Some students are already protected from bullying due to their federally protected status based on race, religion, national origin, ethnicity, sexual orientation, disability, immigration status, and sex.¹⁸ However, some students are bullied because of other distinguishing characteristics that are not currently explicitly protected by federal or state law. Nationally, there is a growing trend of explicitly expanding the protected classes to include bullying based on other characteristics like weight, pregnancy, gender identity and expression, socioeconomic status, other distinguishing features, or association with a person with any of the protected characteristics mentioned in the statute.¹⁹ Federal law requires that schools address any form of harassment or bullying, leaving states free to expand the categories of protected classes.²⁰

Complaint and Investigation Process

Federal law requires that schools investigate any misconduct brought forward that appears to be harassment and/or discrimination.²¹ To promote accountability, Nebraska should amend its' anti-bullying statute to require that the model policy include a clear and prompt complaint and investigation process.²² This provision in the statute should designate the school district employee(s) responsible for investigating bullying or harassment incidents, require notice to parents or guardians of all students involved, and provide a timeline of the investigation as well as an appeal process to ensure students' due process rights are protected.²³

Disclosure of Anti-Bullying Policy

School districts should not only be required to review their anti-bullying policy annually, but also be required to annually provide all students and their parents/guardians with a written copy of their rights, protections, and support services available concerning bullying in the language most prevalent among students, and parents or guardians.²⁴ Some states further dictate that the anti-bullying policy be posted on each school's website, school grounds, and lounges.²⁵ Disclosing the anti-bullying policy in this manner ensures students are informed of their rights and reiterates school employees' obligations.

Confidentiality

Some states allow bullying complainants to file their concern anonymously and have it remain confidential²⁶ while others require that all reports be kept confidential.²⁷ Providing for a means for students to file complaints anonymously helps school officials gain trust with students.

Anti-Retaliation

When students submit a bullying complaint, often one of their main concerns is that either a student or school official will retaliate against the reporting student.²⁸ To prevent such concerns, many state statutes prohibit school employees from retaliating against anyone who files a report or participates in investigating the report.²⁹

Data Collection with a Plan

Data collection is already sought by the U.S. Department of Education, but states should also incorporate this requirement in their state statutes so that their own department can review bullying incidents annually.³⁰ This state data collection often includes: the number of bullying allegations, the nature of the bullying or retaliation incidents, the number of students disciplined for bullying or retaliating, and recommendations for the next school year to reduce the number of bullying incidents.³¹ The state departments then aggregate the information and publish an annual report.³² This data should be reviewed on a regular basis with attention to disparities based on students' protected statuses. Creating a robust state-based data report on bullying would not require additional resources as the collection is already required by the federal government and would simplify the process for all schools to abide by federal reporting requirements while simultaneously providing the necessary state-based data to promote accountability.

More Counselors & Training

School districts should invest in supportive resources such as mental health counselors and community intervention workers to establish a holistic response to behavioral needs of both the bullied students and the bullies.³³ Teachers, school administrators, and other officials who interact with students should also receive training in de-escalation, mediation, and crisis intervention to further address any bullying they encounter.³⁴

Disciplinary Measures

Suspension and/or expulsion should only be used as a disciplinary measure in incidents of bullying which are repeated and where the student is not being responsive to intervention.³⁵ In Nebraska, a student can be placed in "long-term suspension, expulsion, or mandatory reassignment" for bullying.³⁶ Such strong disciplinary measures can further exacerbate the school-to-prison-pipeline and push the bullying student out of school when instead, they could benefit from mental health support or counseling.

Conclusion

A review of these best practice provisions adopted in other states demonstrates that it is time for Nebraska to update its anti-bullying laws to ensure students can attend school free from bullying and harassment. Nebraska lawmakers should explore the emerging trends incorporated in statutes across the country to further protect our students' rights, promote school accountability and improve student safety by:

- expanding protected classes to include other vulnerable children (implemented in CA, CO, DC, IA, IL, MD, ME, MN, NC, NJ, OR, WA, VT);³⁷
- providing a clear, transparent, and inclusive anti-bullying policy and bullying complaint and investigation process (implemented in CA, FL, MA, ME, NY, WI);³⁸
- providing students the option of anonymously reporting a bullying incident (implemented in CA, FL, MA, WI);³⁹

- incorporating an anti-retaliation protection for students who report bullying (implemented in CA, MA, NY, WI);⁴⁰
- collecting and publishing state-wide data on bullying (implemented in FL, ME, NY);⁴¹
- hiring more counselors and providing staff with training to address bullying behavior (training implemented in CA, DC, FL, IA, MA, MD, ME, MN, NC, NJ, NY, OR, WA, VT);⁴² and
- incorporating restorative disciplinary measures (implemented in IL).⁴³

Should Nebraska choose to take statewide legislative action, it would be joining a growing group of states already requiring an anti-bullying policy which adopt best practices. We need consistency and standards in place that govern what our anti-bullying policy should include. Teachers and administrators have a responsibility to provide a safe environment for the students that is conducive to learning. They also have a responsibility to respect each student's individual rights. As other states have demonstrated, these two missions are not incompatible and taken together will provide all students a better chance to succeed in Nebraska's public schools.

Resources

Nebraska Bullying Know Your Rights in School: https://www.aclunebraska.org/sites/default/files/field_documents/aclune_bullyingkyr_1pg_2017.pdf

ACLU-Nebraska Letter to School Districts on Anti-Bullying Best Practices: https://www.aclunebraska.org/sites/default/files/field_documents/letter_to_superintendents_2017_10_25.pdf

A Resource Guide For Students and Families: https://www.aclu-wi.org/sites/default/files/wysiwyg/bully_book_0.pdf

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Endnotes

1 *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 89 S. Ct. 733 (1969).

2 U.S. Dep't of Educ., Off. For Civ. Rts. & U.S. Dep't of Justice, Civ. Rts. Div., "Dear Colleague" Letter: Harassment and Bullying, (Oct. 26, 2010), <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-201010.pdf>.

3 Preston Mitchum and Aisha C. Moodie-Mills, *Beyond Bullying: How Hostile School Climate Perpetuates the School-to-Prison Pipeline for LGBT Youth*, 9 (2014), <https://www.americanprogress.org/wp-content/uploads/2014/02/BeyondBullying.pdf>; Ctrs.' for Disease Control & Prevention, *Lesbian, Gay, Bisexual, and Transgender Health*, <https://www.cdc.gov/lgbthealth/youth.htm>; Victoria Stuart-Cassel, Ariana Bell, & J. Fred Springer, *Analysis of State Bullying Laws and Policies* 3 (2011), <https://www2.ed.gov/rschstat/eval/bullying/state-bullying-laws/state-bullying-laws.pdf>.

4 U.S. Dep't of Educ., *U.S. Departments of Education and Justice Release School Discipline Guidance Package to Enhance*

School Climate and Improve School Discipline Policies/Practices, U.S. Dep't of Educ. (Jan. 8, 2014), <https://www.ed.gov/news/press-releases/us-departments-education-and-justice-release-school-discipline-guidance-package>.

5 Libby Nelson & Dara Lind, *The school to prison pipeline, explained*, JUSTICE POLICY INSTITUTE (Feb. 24, 2015), <http://www.justicepolicy.org/news/8775>.

6 U.S. Dep't of Educ., *New Data Show a Decline in School-based Bullying*, U.S. Dep't of Educ. (May 15, 2015), <https://www.ed.gov/news/press-releases/new-data-show-decline-school-based-bullying>.

7 2015-16 Civil Rights Data Collection, U.S. Dep't of Educ. Off. for Civ. Rts., *School Climate and Safety* (2018), <https://www2.ed.gov/about/offices/list/ocr/docs/school-climate-and-safety.pdf>.

8 *Id.*

9 In August of 2019, the U.S. House of Representatives passed the Equality Act, a bill that would amend the Civil Rights Act of 1964 to implement a protection for students based on gender, gender identity, and sexual orientation to the already protected statuses like race and religion. This bill is particularly important at this time because the Trump Administration recently rescinded previously implemented protections for students in public schools based on their gender identity. NPR, *Trump And Transgender Rights: What Just Happened?*, <https://www.npr.org/sections/ed/2017/02/23/516837258/5-questions-about-the-trump-administrations-new-transgender-student-guidance> (last visited Sept. 9, 2019).

10 High School Youth Risk Behavior Survey, Ctrs.' for Disease Control & Prevention, *Nebraska 2017 and United States 2017 Results* (2017), <http://need.cdc.gov/youthonline/App/Results>

11 *Id.*

12 2015-16 Civil Rights Data Collection, U.S. Dep't of Educ. Off. for Civ. Rts., *Detailed Data Reports* (2018), <https://ocrdata.ed.gov/>.
13 Neb. Rev. Stat. §79-2,137.

14 Neb. Dep't of Educ., *Bullying Program Development*, <https://www.education.ne.gov/safety/bullying%20program%20development/> (last visited Sept. 10, 2019); Neb. Dep't of Educ., *Bullying Policy Development*, <https://www.education.ne.gov/safety/bullying-policy-development/> (last visited Sept. 10, 2019).

15 Bylaw and Policy Reference Manual, Neb. St. Bd. of Educ., *Nebraska State Board of Education Policy: Anti-Bullying* (Dec. 4, 2015), https://www.education.ne.gov/wp-content/uploads/2017/07/CLEANG11_2015.pdf.

16 Neb. Dep't of Educ., *Bullying Policy Development*, <https://www.education.ne.gov/safety/bullying-policy-development/> (last visited Sept. 10, 2019).

17 Neb. Dep't of Educ., *Bullying Program Development*, <https://www.education.ne.gov/safety/bullying%20program%20development/> (last visited Sept. 10, 2019).

18 Title VI of the Civil Rights Act of 1964 prohibits schools from excluding a person from participation in, denying a person the benefits of, or subjecting a person to, discrimination in any academic, extracurricular, research, occupational training or other program or activity based on sex, physical or mental disability, national origin or race, or sexual orientation. Moreover, Title IX of the Education Amendments of 1972 makes it unlawful for schools to discriminate on the basis of sex and Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990 makes it unlawful for schools to discriminate on the basis of disability. Lastly, the Supreme Court case *Plyler v. Doe* prohibits schools from discriminating on the basis of immigration status. 457 U.S. 202, 102 S. Ct. 2382 (1982).

19 *See generally* California, Colorado, District of Columbia, Iowa, Illinois, Maryland, Maine, Minnesota, North Carolina, New Jersey, Oregon, Washington, and Vermont. *See* Cal. Educ. Code § 234 (Deering 2019); Colo. Rev. Stat. § 22-32-109.1; D.C. Code § 2-1535.03; Iowa Code § 280.28 (LexisNexis); 105 Ill. Comp. Stat. Ann. 5/27-23.7 (LexisNexis); Md. Code Ann., Educ. § 7-424.3 (LexisNexis); Me. Rev. Stat. tit. 20-A, § 254 (LexisNexis); Minn. Stat. Ann. § 121A.03 (LexisNexis); N.C. Gen. Stat. § 115C-407.16; N.J. Stat. § 18A:37-15 (LexisNexis); Or. Rev. Stat. Ann. § 339.356 (LexisNexis); 2019 Wa. ALS 194, 2019 Wa. Ch. 194, 2019 Wa. SB 5689; 6 V.S.A. § 570c.

20 *Supra* note 2.

21 *Id.*

22 *See* Cal. Educ. Code § 234 (Deering 2019); Fla. Stat. §1006.147; Mass. Gen. Laws ch. 71, § 370 (2014); Me. Rev. Stat. tit. 20-A, § 254 (LexisNexis); N.Y. Educ. Law Tit. 1, Art. 2 §§10-18 (2010); Wis. Stat. §118.46.

23 See generally *id.*

24 Some states that provide for some or all of these disclosure requirements include Maine, Wisconsin, California, Illinois, and Massachusetts. See generally Me. Rev. Stat. tit. 20-A, § 254 (LexisNexis); Wis. Stat. § 118.46; Cal. Educ. Code § 234 (Deering 2019); 105 Ill. Comp. Stat. Ann. 5/27-23.7 (LexisNexis); Mass. Gen. Laws ch. 71, § 370 (2014).

25 See Cal. Educ. Code § 234 (Deering 2019).

26 See generally Fla. Stat. § 1006.147; Mass. Gen. Laws ch. 71, § 370 (2014); Wis. Stat. § 118.46.

27 See Cal. Educ. Code § 234 (Deering 2019).

28 [Stopbullying.gov](https://www.stopbullying.gov/sites/default/files/2017-10/prnt_friendly_speaker_notes.pdf), *Bullying Prevention & Response Base Training Module*, 52 (2017), https://www.stopbullying.gov/sites/default/files/2017-10/prnt_friendly_speaker_notes.pdf.

29 See generally Cal. Educ. Code § 234 (Deering 2019); Mass. Gen. Laws ch. 71, § 370 (2014); N.Y. Educ. Law Tit. 1, Art. 2 §§ 10-18 (2010); Wis. Stat. § 118.46.

30 See Fla. Stat. § 1006.147; Me. Rev. Stat. tit. 20-A, § 254 (LexisNexis); N.Y. Educ. Law Tit. 1, Art. 2 §§ 10-18 (2010).

31 *Id.*

32 *Id.*; ACLU, *Cops and No Counselors*, (2019), <https://www.aclu.org/issues/juvenile-justice/school-prison-pipeline/cops-and-no-counselors>.

33 [Stopbullying.gov](https://www.stopbullying.gov/sites/default/files/2017-09/hrsa_guide_mental-health-professionals_508.pdf), *Understanding the Roles of Mental Health Professionals in Community-Wide Bullying Prevention Efforts*, (2017), https://www.stopbullying.gov/sites/default/files/2017-09/hrsa_guide_mental-health-professionals_508.pdf.

34 U.S. Dep't of Educ., *U.S. Department of Education Provides Guidance to Help Classroom Teachers Combat Bullying*, (Sept. 28, 2012), <https://www.ed.gov/news/press-releases/us-department-education-provides-guidance-help-classroom-teachers-combat-bullying>.

35 See generally U.S. Dep't of Educ., *Illinois Compilation of School Discipline Laws and Regulations*, 100, 17 (Jan. 26, 2018), <https://safesupportivelearning.ed.gov/sites/default/files/discipline-compendium/Illinois%20School%20Discipline%20Laws%20and%20Regulations.pdf>.

36 Neb. Rev. Stat. § 79-267.

37 *Supra* note 19.

38 *Supra* note 22.

39 *Supra* note 26, 27.

40 *Supra* note 29.

41 *Supra* note 30.

42 See [Stopbullying.gov](https://www.stopbullying.gov/laws/index.html), *Laws, Policies, and Regulations*, (2018), <https://www.stopbullying.gov/laws/index.html>.

43 *Supra* note 35.