

Catholic Support for Anti-Bullying Legislation Without Exemption for Private Schools: A Position Paper

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I. The Need for Legislation

Bullying has reached a point of crisis. However, bullying has become more difficult to define and identify in this age of the Internet. Bullying includes physical abuse, but it also includes more difficult to observe cyber/electronic or relational aspects which still result in serious emotional damage. Most definitions of bullying agree that the behavior hurts another person physically or emotionally. The targets have trouble stopping the behavior directed at them. Often, there is some “imbalance of power” between the perpetrator and the victim. For example, the student who is the perpetrator is physically larger or in a higher social status or intimidating in some other ways.

<http://www.pacer.org/bullying/resources/info-facts.asp>

Iris Wagman Borowsky, M.D., PhD, Lindsay A. Taliaferro, PhD, Barbara J. McMorris, PhD delineated four types of bullying: physical, verbal, relational/social, and cyber/electronic. They surveyed over 120,000 Minnesota students and published their findings in *The Journal of Adolescent Health* in July, 2013. Numerous other studies have found that both victims and perpetrators have higher levels of physical fighting, weapon-carrying, depression, self-harming behavior, depression, suicidal ideation and suicide attempts. Longitudinal studies indicate that youth involvement in bullying is a risk factor for later suicide ideation and deaths by suicide. (Borowsky, I. W., M.D., PhD. (2013). “Suicidal Thinking and Behavior Among Youth Involved in Verbal and Social Bullying: Risk and Protective Factors.” *Journal of Adolescent Health, 53, S4-S12*).

Although the recent Minnesota survey did not state a direct cause-effect relationship between suicide and bullying, 7.5 % of students who reported no bullying experiences reported attempts of suicide or thoughts of suicide. However, among students who reported being frequently victimized, 28% reported attempts or thoughts of suicide. The risk was greatest for students who reported being both a victim and a perpetrator of bullying. They reported 35% suicidal attempts or ideation. (Olson, Jeremy. “U Study: Teen bullying linked to suicide.” *Star Tribune*, June 19, 2013).

“Bullying is something that happens commonly, and it is associated with serious psycho-social consequences, including suicidal behavior,” Borowsky said. “So we need to pay attention, and we need to pay attention by first of all preventing bullying and then identifying those who are involved in bullying and screening them for various risk

and protective factors.” (Borowsky, 2013).

More than 3.2 million students are victims of bullying each year in the United States. The problem is not resolving itself from teacher interventions alone, because studies report that teachers only intervene 4% of the time. Schools and teachers need to be trained about how to intervene effectively. An estimated 160,000 teens skip school every day because of bullying. Fifty-six percent of students report that they have personally witnessed bullying. As many as 90% of students reported they had been victims of bullying. One out of 10 students will drop out of high school because of bullying. Seventy-one percent of students report incidents of bullying as a problem at their school. Over two-thirds of students believe that schools respond poorly to bullying. The highest occurrence of physical bullying occurs in middle school, although verbal abuse remains constant. [<http://www.stopbullying.gov>]

II. The Legislative Proposals

On May 6, 2013, the Minnesota House passed the 6th Engrossment of House File 826, the Safe and Supportive Minnesota Schools Act. The significant portions of the bill and the major differences with the companion bill-- Senate File 783-- are as follows (all references are to Section 3 of the bills which would add Section 121A.031 to Minnesota Statutes and that section would be entitled SCHOOL POLICY TO PROVIDE SAFE AND SUPPORTIVE SCHOOLS.):

Subdivision 1 establishes the state policy prohibiting bullying and cyber-bullying in schools throughout Minnesota. The Senate bill makes all of the provisions of the act applicable to both public and non-public schools that receive public funds except for schools with 15 or fewer students enrolled. The House bill substantially narrows the scope of protection to “public” schools and charter schools. Specifically, it exempts home schools. In the House bill, non-public schools are encouraged, but not required, to submit data on their bullying incidents to the Department of Education.

Subdivision 2 requires schools and districts who must comply with the bill to adopt policies to prevent and prohibit bullying. The policies must establish research-based and developmentally-appropriate best practices that include preventative and remedial measures, as well, as effective discipline to deter bullying. The policies must specify the characteristics of persons likely to be bullied. They include, but are not limited to: race; ethnicity; color; creed; religion; national origin; immigration status; sex; age; marital status; familial status; socioeconomic status; physical appearance; sexual orientation; gender identity and expression; academic status; disability; or status with regard to public assistance. In addition, the policies must emphasize remedial responses over punitive measures.

Subdivision 3 contains the definitions of “bullying,” “cyberbullying,” “intimidating, threatening, abusive, or harassing conduct,” “prohibited conduct,” and “remedial response.” Senate Bill 783 defines some of these terms separately. The

major differences in the definitions are twofold: The Senate bill only gives examples of conduct that would be considered bullying while the House bill prohibits specific conduct. In defining “prohibited conduct” the Senate bill includes bullying based on “association with a person or group” having the characteristics stated above. Essentially, Senate Bill 783 would prohibit calling someone a “nigger lover,” “fag lover” or “Jew lover” for being friendly with persons having the denigrated characteristic.

Subdivision 4 states the requirements for each district and school policy. Some of these requirements include: designating a staff member to be in charge of implementing the policy; requiring school personnel to address and resolve the bullying incidents they witness; providing procedures for investigating and responding to incidents; as well as prohibiting reprisals against persons who report or provide information about an incident. In addition, Subdivision 4 of Senate Bill 783 would require: periodic reporting; analysis of incidents and remedial responses, as well as ongoing professional training.

Subdivision 5 encourages, without requiring, districts and schools to: provide developmentally appropriate instructions to prevent bullying; cultivate value diversity; and improve students’ knowledge of and skills for solving problems and managing conflicts. In addition, schools and districts are encouraged to: engage all students in creating a safe and supportive school environment; partner with parents; train student bystanders to intervene and report incidents; teach students to advocate for themselves; and foster student collaborations that nurture a safe and supportive school climate.

Subdivision 6 relates to the creation of a State model policy containing essentially the same requirements that each school must adopt. It also requires the Department of Education to adopt procedures for reviewing district and school policies, and investigating reports of non-compliance by individual school districts.

Finally, Subdivision 7 clearly states that the bill does not establish any private right of action, limit other rights currently available, or interfere with a person’s rights of free speech and expression under the First Amendment of the United States Constitution.

III. Criticism of the Bill

The Minnesota Catholic Council (MCC), the official organization of the bishops of Minnesota, takes a strong stand against bullying. In the March 15, 2013 *Catholic Spirit*, Jason Adkins, Executive Director of MCC, stated that the bishops:

“abhor bullying. We think bullying is a tremendous problem and that it needs to be dealt with effectively by schools and particularly at the local level.”

The MCC’s legislative positions for 2013 stated:

“School bullying is detrimental to all children and harms the educational and social environment of public schools. Minnesota should enact policies to

protect all children.”

In an April 24, 2013 article in *MinnPost*, Jason Adkins also stated:

“The Catholic Church unequivocally abhors the bullying of all children, and believes schools and communities should undertake steps to combat this problem....The policy in Catholic schools is to treat every child as someone created in the image and likeness of God....”

Why then do they oppose these bills?

The MCC legislative positions for 2013 says:

“Combating bullying should never be a pretext to impose an agenda of groups of people, or to undermine the rights of parents to bestow their religious or moral values on their children. (CCC: 1701-1703; *Gaudium et Spes*, 24; *The Catholic School*, 35, Sacred Congregation for the Catholic Education of the Holy See)”.

The March 15, 2013 *Catholic Spirit* article said:

“The MCC is opposing these bills because they impose mandates and curriculum requirements on private schools, including Catholic schools, that violate constitutional guarantees of religious freedom.”

In the May 21, 2013 edition, the *Catholic Spirit* reported on what passed and what didn't pass in the legislative session. The article stated that MCC:

“opposed the so-called Safe and Supportive Schools Act because it threatened to impose mandates and curriculum requirements on private schools, including Catholic schools, that violate constitutional guarantees of religious freedom. The MCC also had concerns that the measure would usurp the authority of parents to teach their children in areas such as gender and sexuality.”

The fullest expression of the opposition to the bills comes from Jason Adkins who wrote a column in the March 15, 2013 *Catholic Spirit* entitled “Same-sex ‘marriage’ is just the beginning.” In his column he states:

“But this bill is not designed to protect all kids from school bullying. In fact, some victims of bullying may receive no special protection from the beginning.

The proposed law singles out certain "protected classes" of students — including sexual orientation and "gender identity and expression" — for special attention and favored treatment, and encourages curriculum and programming that will, in all likelihood, undermine traditional social and ethical norms and usurp the rights of parents as first educators of their children.

In attempting to guarantee select groups of students a "safe and supportive learning environment" (dangerously undefined) by prohibiting any words a student could arguably view as "interfering" with her "educational performance," the bill would place chilling authority and burdensome administrative responsibilities in the hands of schools....

We are not done yet! The bill's proponents want to require private schools to follow the mandates of the law as well. If a Catholic school refuses to comply, its students could lose their pupil aid, such as textbooks, school nurses, and transportation.

Does this sound like an Orwellian nightmare? It should, because it is one.

The plethora of free speech and freedom of religion problems contained in this legislation will inevitably lead to an enormous legal headache, but an equally pressing concern is the relentless assault in our schools on the dignity of the human person, authentic sexuality, and the institutions of marriage and family."

In an April 24, 2013 article in *MinnPost*, Jason Adkins stated that MCC "welcomes legislation aimed at combating school bullying." He goes on to cite the North Dakota model that he claims was supported by Minnesota Attorney General Lori Swanson. A copy of the North Dakota statute can be found at <http://legiscan.com/ND/bill/1465/2011> by following the link to the latest bill text. Basically, this statute has the same provisions as the Minnesota proposals except that it does not enumerate the classes of protected individuals as the Minnesota bills do.

In essence, the Catholic bishops have two objections. First, because the bills specify homosexuality and gender identity as protected classes, not all students will be protected. Second, the bills interfere with the religious teachings of the Catholic Church about homosexuality, marriage and the family.

IV. Catholic Support for the Safe and Supportive Schools Act without Exemption for Private Schools

Based on MCC's recognition that bullying is a tremendous problem, that it is detrimental for all children, that it harms the social and educational environment of public schools and that Minnesota should enact policies that protect all children, it is not necessary to justify the need for anti-bullying legislation. All that is necessary is to address their legitimate concerns.

First, since the North Dakota statute does not enumerate the protected classes of individuals, why is it necessary to enumerate them? Will it actually protect, or better protect, all children? OutFront Minnesota addresses this issue in a handout prepared by the Gay, Lesbian & Straight Education Network (GLSEN) (<http://outfront.org/docs/Enumeration%20Handout.pdf>). In this handout, GLSEN states:

“The strength of an enumerated law or policy is that it underscores that those students who research shows are most likely to be bullied and harassed and least likely to be protected by non-enumerated anti-bullying and harassment laws and policies are in fact protected, as well as ALL other students.”

The handout specifically addresses the concern that not all children are protected because only certain classes of individuals are mentioned:

“although enumerated bullying laws place an emphasis on certain categories because of their prevalence, all students are still protected. Furthermore, our research shows that students who live in states or school districts with enumerated laws and policies are provided greater protections across the board.” (Harris Interactive and GLSEN (2005). From Teasing to Torment: School Climate in America, A Survey of Students and Teachers. New York: GLSEN.)

A second point made in the GLSEN handout is that students who attend schools with policies that enumerate categories report less bullying and harassment than students who do not.

“Students from schools with an enumerated policy report that others are harassed far less often in their school for reasons like their physical appearance (36% vs. 52%), their sexual orientation (32% vs. 43%) or their gender identities (26% vs. 37%).” (Citing above mentioned Harris Interactive GLSEN survey.)

A third point made is that enumeration is essential if the law is to be implemented. The handout cites to the U.S. Supreme Court which stated that “enumeration is the essential device used to make the duty not to discriminate concrete and to provide guidance for those who must comply.” (Romer v. Evans, 517 U.S. 620 (1996)) Research also shows that

“Students reported that teachers were significantly more likely to intervene always or most of the time in states with enumerated policies, as compared to states with either non-enumerated policies or no policies at all (25.3% vs. 15.9% vs. 12.3%).” (Citing the above mentioned Harris Interactive and GLSEN survey.)

A final point made in the handout is that safety is ensured and absenteeism is reduced with enumerated policies.

“Students from schools with an enumerated policy are 50% more likely to feel very safe at school (54% vs. 36%). Students without such a policy are three time more likely to skip a class because they feel uncomfortable or unsafe (16% vs. 5%).” (Kosciw, J. G., Diaz, E. M. and Greytak, E.A. (2008). The 2007 National

School Climate Survey: The experiences of lesbian, gay, bisexual and transgender youth in our nation's schools. New York: GLSEN.)

Second, MCC's argument that the bills interfere with the Catholic Church's teachings relating to marriage and the family could be answered by looking solely at House File 826 which would not make the law applicable to non-public schools. However, such a response overlooks a fundamental issue. Should private schools be exempt from the law? They should not be exempt.

It is fundamental to the Catholic tradition that:

"God has created every human person out of love and wishes to grant him or her eternal life in the communion of the Trinity. All persons are created in the image and likeness of God and thus possess an innate human dignity that must be acknowledged and respected." (From Ministry to Persons with a Homosexual Inclination: Guidelines for Pastoral Care, USSCB, November 14, 2006 citing Catechism of the Catholic Church, 2nd ed., nos. 1700-1702)

When a bully intimidates, threatens, abuses or harasses another student so that the student is physically or emotionally harmed, the bully diminishes the human dignity of the student. The proposed legislation does nothing more than to require all students to treat each other with the respect he or she deserves as a human being. The proposed legislation is couched in non-religious terms as it must in our multi-cultural and multi-religious nation, but it serves the same purpose. It would, as the MCC requested, establish a policy that will protect all children if enacted without exemption for non-public schools.

Finally, neither MCC nor Jason Adkins articles explain exactly how this legislation would interfere with the Catholic Church's ability to teach its understanding of marriage and the traditional family. The bills require that the conduct be "objectively offensive." For the Catholic schools to be asking for an exemption from the bills, they are, in essence, asking for the right to teach their students in a way that is intimidating, threatening and abusive. This would be wholly contrary to what Jason Adkins claims is the policy in Catholic schools "to treat every child as someone created in the image and likeness of God..." (*MinnPost*, April 24, 2013) Therefore, it would seem that Catholic schools are already complying with the legislation except for the minor burden of reporting incidents to the Department of Education.

V. Summary

The Council of the Baptized fully supports the Minnesota Legislature's efforts to combat bullying in schools throughout the state with legislation that will define bullying clearly, and enumerates the students who are most likely to be bullied or harassed.

Further, the Council believes that the requirements of the proposed legislation should apply to all schools without exemptions for private and non-public schools.