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HOUSE OF REPRESENTATIVES

EDUCATION COMMITTEE HEARING

STATE CAPITOL  
HARRISBURG, PA

MAIN CAPITOL BUILDING  
ROOM 140

WEDNESDAY, OCTOBER 10, 2012  
11:05 A.M.

PRESENTATION ON HB 2464  
BULLYING AND CYBERBULLYING  
PREVENTION LAW

BEFORE:

HONORABLE PAUL I. CLYMER, MAJORITY CHAIRMAN  
HONORABLE JIM COX  
HONORABLE THOMAS J. QUIGLEY  
HONORABLE WILL TALLMAN  
HONORABLE DAN TRUITT  
HONORABLE H. SCOTT CONKLIN  
HONORABLE PATRICK J. HARKINS  
HONORABLE MARK LONGIETTI  
HONORABLE MICHAEL H. O'BRIEN  
HONORABLE KEN SMITH  
HONORABLE JAKE WHEATLEY

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*Pennsylvania House of Representatives  
Commonwealth of Pennsylvania*

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PA DEPARTMENT OF EDUCATION

## P R O C E E D I N G S

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3 MAJORITY CHAIRMAN CLYMER: Well, good morning,  
4 everybody. We welcome you to this, the House Education  
5 Committee public hearing on bullying and cyberbullying  
6 prevention, and we have legislation that we're going to be  
7 considering, HB 2464.

8 Before the prime sponsor gets to that, I'm going  
9 to have the Members of the committee introduce themselves  
10 so that our testifiers know who we are, and we'll start all  
11 the way to my right with Jake Wheatley. Jake.

12 REPRESENTATIVE WHEATLEY: Thank you,  
13 Mr. Chairman.

14 Jake Wheatley from Allegheny County, the city of  
15 Pittsburgh.

16 REPRESENTATIVE O'BRIEN: Good morning.

17 Mike O'Brien, Philadelphia.

18 MR. GINGRICH: Dustin Gingrich, Education  
19 Committee staff.

20 REPRESENTATIVE LONGIETTI: Good morning.

21 Mark Longietti from Mercer County.

22 MS. SMITH: Good morning.

23 Judy Smith from the Education staff.

24 REPRESENTATIVE QUIGLEY: Representative  
25 Tom Quigley from the 146<sup>th</sup> District in Montgomery County.

1           REPRESENTATIVE COX: Representative Jim Cox from  
2 the 129<sup>th</sup> District, western Berks County.

3           REPRESENTATIVE TRUITT: I'm Dan Truitt from the  
4 156<sup>th</sup> District in Chester County.

5           REPRESENTATIVE HARKINS: Good morning.  
6 Pat Harkins, Erie, 1<sup>st</sup> District.

7           REPRESENTATIVE TALLMAN: Will Tallman, the 193,  
8 York and Adams Counties.

9           REPRESENTATIVE CONKLIN: Scott Conklin, the  
10 77<sup>th</sup> District, Centre County.

11          MAJORITY CHAIRMAN CLYMER: And Eileen Krick is  
12 with us, my Administrative Assistant. Well, she was here.  
13 I'm not sure -- oh, she's in the back there.

14           I'm Paul Clymer, the Chairman of the House  
15 Education Committee.

16           I want to thank everyone who has taken the time  
17 to join us today on an important discussion on bullying and  
18 cyberbullying in our public school system. Students face a  
19 lot of challenges and situations as they grow, socialize,  
20 and become young adults. However, one challenge no student  
21 should have to endure is being the target of bullying.

22           In the past several years, we have seen  
23 headline-making cases of students being tormented and even  
24 driven to suicide as a result of cruel and systematic  
25 bullying through physical encounters, gossip, photographs,

1 and harassment through e-mails, social media, and texting.  
2 In fact, nearly -- and some of these facts I'm sure you'll  
3 hear through our testifiers, but it doesn't hurt to be  
4 repetitive on this issue. In fact, nearly 12 percent of  
5 all students in grades 6, 8, 10, and 12 across Pennsylvania  
6 said they have been bullied through the use of the Internet  
7 and their cell phones. That's according to the 2009  
8 Pennsylvania Youth Survey, the most recent statistics  
9 compiled by the Pennsylvania Commission on Crime and  
10 Delinquency. The survey indicated that nonphysical forms  
11 of bullying are the most prevalent among our youth, as more  
12 than one-half of Pennsylvania students reported that other  
13 students tell lies about them or spread false rumors,  
14 43 percent have been called names or teased, and more than  
15 30 percent have been left out of things on purpose.

16           Today's youth have more access to online social  
17 media sites and carry their own cell phones, which provide  
18 gateways to new methods of bullying. That's why  
19 cyberbullying is the new approach, since individuals don't  
20 have to do it face to face. Our public schools should be a  
21 place where children can learn in a safe and nurturing  
22 environment, and we as Legislators need to do all we can to  
23 make sure that type of environment is supported.

24           You know, in my generation, I think we had  
25 tougher moral standards and guidelines, and though we

1 didn't have the sophisticated technology as today, I think  
2 those moral guidelines kept a number of my generation's  
3 classmates in line. But as we slip this slippery slope and  
4 we don't have those strong guidelines as we did, bullying  
5 is going to become more of a problem.

6 I look forward to a healthy discussion today on  
7 HB 2464, which seeks to amend the Public School Code to  
8 require schools to enhance their bullying policies and  
9 addresses this growing and quite alarming trend which is  
10 taking place in our schools.

11 And having said that, I'd like to turn the  
12 microphone over to Representative Tom Quigley, who is the  
13 prime sponsor of HB 2464, for his remarks. Representative  
14 Quigley.

15 REPRESENTATIVE QUIGLEY: Thank you, Mr. Chairman.

16 And I want to thank you for conducting this  
17 hearing today on this important legislation. I want to  
18 thank my colleagues for taking the time out of their  
19 schedule to come out here today to address what I think is  
20 a growing and important issue that, as you mentioned, with  
21 each passing day, it seems there is another story out there  
22 about some type of incident or situation that should cause  
23 all of us concern as it relates to our children.

24 You know, this bill -- and I have worked with a  
25 number of the stakeholders in crafting this bill and



1 working through a couple different drafts. I know some of  
2 my colleagues, Representative O'Brien and Representative  
3 Truitt, also have legislation out there. So it's my hope  
4 that today, through this hearing, we can hear from the  
5 various stakeholders and craft a product that incorporates  
6 all of the important aspects of these various legislations  
7 so that we can be ready early in the next session to have  
8 something meaningful passed.

9 I know that we have a number of testifiers today  
10 who are going to share their feedback with us -- what they  
11 like about this bill; what they think can be improved upon  
12 the bill -- and I really think that's the main focus of  
13 this hearing today, is to gather as much information as we  
14 can to work with this product but also incorporate the  
15 ideas of our colleagues and the different groups so that  
16 when we come back in 2013, we'll have something teed up and  
17 ready to go in short order next session.

18 So again, I thank everyone for coming out and  
19 taking the time to share their testimony and their ideas,  
20 and certainly we'll be working in the coming months to have  
21 something crafted that we think can be passed and put into  
22 law.

23 Thank you.

24 MAJORITY CHAIRMAN CLYMER: The Chair thanks the  
25 gentleman for his remarks.

1           And our first testifier today is Sean A. Fields,  
2 Senior Associate Counsel for the Pennsylvania School Boards  
3 Association.

4           Mr. Fields, it's a delight to have you with us  
5 this morning, and you can begin. Your testimony has been  
6 passed out.

7           MR. FIELDS: Thank you.

8           Good morning. My name is Sean Fields. I'm  
9 Senior Associate Counsel with the Pennsylvania School  
10 Boards Association.

11           First of all, I'd like to thank the committee for  
12 the opportunity to testify on HB 2464, and I would also  
13 like to thank you for the opportunity to be the first one  
14 to testify at this hearing this morning.

15           Rather than read the explicit contents of my  
16 testimony, what I'd like to do is just summarize some of  
17 the main points and answer any questions that the committee  
18 might have about our explicit testimony.

19           I thought it might be helpful, before I get into  
20 the specific contents of the bill, to explain what PSBA has  
21 done so far on this issue and our perception on behalf of  
22 our members on what's being done in the public school  
23 community.

24           It's important to note that the last amendment to  
25 this particular section of the School Code was Act 61 of

1 2008, and that's important because PSBA gave extensive  
2 feedback into that bill. That bill is important because it  
3 explicitly required a policy relating to bullying for  
4 school districts and school entities and also sets some  
5 very definitive parameters for what needed to go into that  
6 policy.

7           Subsequent to that, as the Chair really  
8 emphasized, there has been a lot of attention given to this  
9 issue of bullying in the public schools, and in that  
10 spirit, PSBA has always promoted and supported efforts to  
11 prevent and eliminate bullying where it can be done.

12           In keeping with that objective, PSBA actually  
13 developed an informal instrument called "Ten Questions a  
14 Public School Entity Should be Asking About Bullying  
15 Prevention," and the purpose of this informal instrument  
16 was to challenge school leaders to ask questions about what  
17 they were doing in their policies and procedures to  
18 identify bullying, specific bullying issues; to develop  
19 prevention programs; and to also provide training, and  
20 training not only at all levels of employees within a  
21 particular school district but also educating students on  
22 the hazards and the problems related to bullying.

23           We followed up those efforts with a joint  
24 participation in the 2011 Safe Schools Conference by  
25 appearing with Representatives from the Pennsylvania Human

1 Relations Commission, the Office for Civil Rights for the  
2 U.S. Department of Education, and the Parent Information  
3 and Resource Centers. Anecdotally I can say that you'd be  
4 hard-pressed to come across a school administrator or  
5 school board member or school leader who isn't concerned  
6 about this issue. Safety issues and creating a positive  
7 school climate are frequently paramount and a baseline  
8 thing that needs to be established so that students can  
9 take full advantage of an opportunity to get a good public  
10 education.

11           Now I'll shift my comments to some specific  
12 concerns related to this bill.

13           One of the concerns PSBA has -- and again, I want  
14 to emphasize that we're certainly supportive of any efforts  
15 that would enhance or give school administrators, school  
16 leaders, the ability to prevent and eradicate bullying  
17 where it occurs. But in terms of some specific concerns  
18 related to this bill, this bill would expand the scope of  
19 the existing version of Section 1303.1 by including not  
20 only "bullying" as defined in the bill but also things like  
21 "harassment," "intimidation," and "cyberbullying." It  
22 lumps these concepts together without providing a specific  
23 legal definition of what those terms mean, and there are a  
24 number of problems or a number of concerns related to  
25 that.

1           In terms of harassment, it's important to note  
2 that harassment actually has a meaning under Federal law as  
3 well. I neglected to say in my testimony that there's a  
4 criminal codes definition as well. But in terms of the  
5 Federal law, in 2010, specifically October 26, 2010, the  
6 Office for Civil Rights issued a "Dear Colleague" letter  
7 that reminded schools, public schools, of what they should  
8 have already been aware of, and that's that a lot of the  
9 conduct when we refer to "bullying" in the context of  
10 Pennsylvania State law or even our lay understanding of  
11 what we think bullying is, depending on who's being  
12 bullied, a lot of this conduct is actually already  
13 prohibited by Federal law as illegal harassment, as illegal  
14 discrimination. This "Dear Colleague" letter reminded us  
15 of that.

16           So, for example, under Title VI of the Civil  
17 Rights Act of 1964, you are prohibited from discriminating  
18 against a student on the basis of race, color, or national  
19 origin. Under Title IX of the Education Amendments Act of  
20 1972, you cannot discriminate against an individual student  
21 on the basis of sex. Under Title II of the Americans with  
22 Disabilities Act and Section 504 of the Rehabilitation Act  
23 of 1973, it's illegal under Federal law to discriminate  
24 against a student on the basis of their disability status.

25           How does that come into play with bullying?

1 Well, the "Dear Colleague" letter went on to remind us of  
2 not only what is in Federal regulations but also what the  
3 case law supports, the Federal case law, and that's that if  
4 student-on-student harassment rises to the level that it  
5 creates a hostile environment and such harassment is  
6 encouraged by a school district, is not adequately  
7 addressed, or is not adequately ignored, that's illegal  
8 discrimination under Federal law.

9           So what is a hostile environment under those  
10 legal standards? Well, "hostile environment" has been  
11 defined by the case law and the regulations as when conduct  
12 is "sufficiently severe, pervasive, or persistent" that it  
13 basically interferes with the student's rights, their  
14 ability to access the benefits of the educational program.

15           So the reason I raise this issue is "harassment"  
16 has a very specific definition and meaning under Federal  
17 law, because if a student discriminates against another  
18 student on the basis of protected class status, that's  
19 illegal discrimination and schools have to respond  
20 appropriately to that, not only from a risk management  
21 liability perspective, but obviously the goal of these  
22 Federal laws is to make sure that students have a positive  
23 school climate.

24           I should also add in talking about this issue of  
25 harassment that this kind of conduct is also regulated

1 under the Pennsylvania Human Relations Act. That's one of  
2 the reasons that the Pennsylvania Human Relations  
3 Commission has also had an interest in this.

4 Another aspect of the scope of this particular  
5 bill that PSBA believes should be given some consideration  
6 is the inclusion of "intimidation" in one of the conducts  
7 that is prohibited, and as I stated when talking about  
8 harassment, because it's lumped in with the other  
9 potential offenses, it's not clear exactly what would rise  
10 to the level of intimidation when we're dealing with  
11 student-on-student bullying.

12 That's a concern for a couple of issues. First  
13 of all, whenever we work with our members in the  
14 development of school board policy at the district level,  
15 you always have to be concerned that if the conduct that  
16 you're prohibiting or that you're going to discipline for  
17 is too vague, that increases the likelihood of a successful  
18 challenge to that school board policy.

19 The other thing, on a practical level, if you're  
20 looking at enforcement at the building level, I mean,  
21 typically school principals are the front line in student  
22 discipline as well as teachers. If you don't have a clear  
23 definition of what "intimidation" is, it's going to be hard  
24 for those school administrators and teachers to know what  
25 conduct falls within intimidation and how to enforce that

1 at the building or the classroom level.

2 One of the other concerns that PSBA has about  
3 some of the provisions in this bill are a couple of  
4 sections that create some enhanced liability for school  
5 entities, like school districts and intermediate units.  
6 One provision of the bill, specifically it's  
7 Section 1303.1-A(5), actually creates a new legal duty for  
8 a designated school staff person to ensure that a bullying  
9 policy is implemented.

10 From a practical point of view, one of the things  
11 PSBA and school solicitors have encouraged school districts  
12 and intermediate units and career techs to do is make sure  
13 that your implementation happens from a top-to-bottom  
14 perspective. In other words, successful implementation  
15 isn't simply going to happen if you hold one school  
16 employee, designated school employee, responsible.  
17 Successful implementation is actually going to require the  
18 entire school community, and in some aspects the parent  
19 community and others, to successfully carry out bullying  
20 prevention. So PSBA has some concerns about the enhanced  
21 liability for those specific individuals.

22 There's also a section of the bill that requires  
23 a statement that is very well intended, and this bill would  
24 require a school entity to have language in their policy  
25 that states that "...no student shall be subjected to



1 harassment, intimidation, bullying or cyberbullying in any  
2 public educational institution...." The eradication of  
3 bullying completely and an incident never occurring, that  
4 would be, I think, the goal of anyone in the school  
5 community. However, I would urge the committee and this  
6 body to be mindful of the fact that even the most proactive  
7 school district or intermediate unit or career tech, if you  
8 have an entity that has done a very good job identifying  
9 specific bullying problems in their school -- if they have  
10 a good prevention program; if they're educating their  
11 students at all levels, starting in kindergarten and going  
12 up through 12th grade; and having a process in place to  
13 investigate allegations of bullying and follow through on  
14 those allegations to figure out what the next step is --  
15 you could have a district or an intermediate unit or career  
16 tech with the best program around and those entities would  
17 not be able to ensure that no student was ever bullied or  
18 harassed.

19           Now, what they should make sure of, they should  
20 do their dead-level best to put in place policies and  
21 procedures to prevent such conduct, and they should also  
22 make sure that they have an adequate procedure in place for  
23 parents and students to report incidents of bullying and  
24 follow through on that. But a school district is not going  
25 to be able to ensure that these incidents never occur, so

1 we have a concern about the enhanced liability, although as  
2 I said at the outset, the intent is to prevent and reduce  
3 bullying to the extent the school entity has the power to  
4 do so.

5 I'd like to shift my comments to provisions of  
6 the bill that require community involvement in the adoption  
7 of a bullying policy. PSBA has always supported and  
8 encouraged community engagement in the endeavors of a  
9 school district or an intermediate unit, and certainly  
10 we've encouraged that kind of community engagement when it  
11 comes to the implementation of the policy.

12 When it comes to the specific adoption of policy,  
13 I think it's important to note that because policy at the  
14 school district level has the force and effect of local  
15 law, because it's analogous to an ordinance that a  
16 municipality would pass or a different board would pass,  
17 because of that reason and the fact that school districts'  
18 boards pass policies in consideration of a number of  
19 factors, including the financial costs, school district  
20 operations, and legal considerations, it's possible that  
21 this language could be overly burdensome in the district  
22 actually passing these policies.

23 The other thing I would note is that another  
24 section of the bill requires the Department of Education to  
25 adopt a model policy, and that would seem somewhat

1 inconsistent with the notion that you would have the  
2 community provide or actually be a part of the adoption  
3 process. Certainly we would encourage as a best practice  
4 that kind of community engagement to identify specific  
5 bullying problems. You might have a particular group of  
6 students within a particular school district who are being  
7 targeted. You might have a particular part of the building  
8 where you're having specific problems, and that community  
9 feedback is going to be key to that, but we need to be  
10 careful about where we put the community-engagement piece  
11 in the process of actually adopting the policy.

12           In terms of another issue -- and this was  
13 mentioned by the Chair, and it's one of the things that has  
14 changed significantly in the school community within the  
15 last 10 years, 10 to 15 years -- is the issue of electronic  
16 communications. This particular bill would require a  
17 school entity's policy to be applicable to electronic  
18 communications "whether or not the act originated on school  
19 property or with school equipment." This is a concern for  
20 a number of reasons, and this is an area that, in all  
21 candor, is a topic of frustration for school officials who  
22 want to discipline for electronic communications, and part  
23 of the challenge for Pennsylvania public school districts  
24 is the scope of authority that we have to discipline for  
25 such things and some open questions related to the scope of

1 our authority to regulate cyberbullying or cyber speech.

2 This problem is related to, if we start with our  
3 authority under Section 510 of the School Code, Section 510  
4 of the School Code gives school districts the authority to  
5 discipline students while they are under the supervision of  
6 teachers and principals. So at school-sponsored events,  
7 when coming or going from school or during class hours, we  
8 have clear authority to discipline for that kind of  
9 conduct, and arguably that extends to the use of a  
10 district's server or district's computer equipment.

11 Under Section 510 of the Pennsylvania School  
12 Code, there is case law that supports the proposition that  
13 this authority extends to those instances where there is a  
14 nexus or connection between conduct that occurs off campus  
15 and conduct that occurs on campus. A classic example of  
16 this, in this case that's cited in my written testimony, is  
17 the *J.S. v. Bethlehem Area School District*, and this was a  
18 Pennsylvania Supreme Court case where a student targeted a  
19 teacher, created a Website called "Teacher Sucks" targeting  
20 the math teacher, and also said some pretty ugly things  
21 about the teacher -- had an image of the teacher morphing  
22 into Hitler; suggested that a contract should be taken out  
23 to kill this teacher. And in that case, the Pennsylvania  
24 Supreme Court affirmed the district's ability, their  
25 authority, to discipline for that kind of off-campus

1 conduct, even though that was created during nonschool  
2 hours outside of the school.

3 A couple of recent cases, however, have called  
4 our authority as public school entities to discipline for  
5 that kind of conduct into doubt. The *Layshock v. Hermitage*  
6 *Area School District* and the *J.S. v. Blue Mountain School*  
7 *District* were cases that involved students who created  
8 social media profiles on MySpace. No one uses MySpace  
9 anymore, so that shows how fast these things change. But  
10 what the students did is they created mock profiles of  
11 these administrators, holding them up to ridicule. In the  
12 *Layshock* case, the *Layshock* profile suggested that the  
13 principal might be a drug user, might be a marijuana user,  
14 and the *J.S. v. Blue Mountain* profile was even uglier in  
15 that it implied that the school principal might actually be  
16 a pedophile.

17 Obviously a lot of school administrators would  
18 take the position that you could discipline for that kind  
19 of conduct. And in both of those cases, by the way, those  
20 profiles were created off campus. These cases had a very  
21 long procedural history, but at the end of that tunnel what  
22 happened is, the U.S. Third Circuit Court of Appeals heard  
23 these cases through oral argument before the full court,  
24 and the court concluded that the district did not have the  
25 authority to discipline these students for this kind of

1 conduct. Even though, arguably, this kind of language was  
2 lewd, vulgar, and offensive, these are the kinds of things  
3 you would typically be able to regulate, a student's  
4 speech. If a student engaged in this kind of speech in the  
5 school, there's U.S. constitutional authority, Supreme  
6 Court authority, that tells us that we have the authority  
7 to discipline for that kind of conduct. But the  
8 Third Circuit said, in this particular instance, districts  
9 don't have the authority to discipline for that kind of  
10 speech when it's created off campus.

11 Now, even though those cases involved school  
12 administrators as the target and didn't involve  
13 student-on-student bullying, unfortunately, that leaves an  
14 open question with respect to the scope of our authority to  
15 discipline for this kind of conduct. And for this reason,  
16 a district that wants to step into the realm of regulating  
17 cyberbullying, they have to consider that legal framework  
18 and whether or not the district's policy is going to hold  
19 up to a constitutional challenge.

20 And that was one of the important considerations  
21 with Act 61 of 2008. If you look at the current version of  
22 that section of the School Code, what you will see is that  
23 districts have the option of regulating that kind of  
24 conduct that would originate outside of the campus, and  
25 that's important, because you will inevitably have some

1 school entities that will be willing to regulate that  
2 conduct, even with the kinds of legal questions that exist.  
3 You will have others, on the advice of their solicitors,  
4 that may decide, we need to see what happens in the case  
5 law; we need to see if there might be legislation down the  
6 road that might be able to correct this.

7           So those are some real concerns, because as has  
8 been stated already, technology has changed a lot. It's a  
9 major issue. There was a time when if a student was a  
10 target, that student could at least seek solace in going  
11 home, leaving the school day outside of school hours, and  
12 we know with the advent of technology -- and the students  
13 are usually much better than we are at using the technology  
14 in creative ways -- that you can't get away from it if  
15 you're a student. So this is an area that school entities  
16 would very much like to discipline and regulate, but there  
17 are some real questions about our limitations.

18           The other piece of this legislation generally  
19 that I'd like to address is the enhanced reporting  
20 requirements. There are a couple of places that require  
21 school entities to report incidents involving bullying,  
22 intimidation, and harassment, specifically in the criminal  
23 context, and PSBA thinks it's important to note that if we  
24 look at Section 1303-A, there are already a number of  
25 incidents that school entities are already required to

1 report. In that particular section of the School Code, the  
2 chief school administrator has to provide an annual report  
3 of specific enumerated incidents to the Office of Safe  
4 Schools. And in terms of reporting to police or having  
5 cooperation with local law enforcement, that section also  
6 requires the chief school administrator, which would  
7 include folks like superintendents, to assure that the  
8 school entity enters into a memorandum of understanding  
9 with local law enforcement related not only to cooperation  
10 with local law enforcement but specifically reporting.

11           So when we're considering additional reporting  
12 requirements, PSBA thinks it's a good idea to take a look  
13 at Section 1303-A, make sure or consider any duplication  
14 that might exist between the proposed language and what's  
15 already there, and also make sure there isn't any undue  
16 confusion in what the school entities might be required to  
17 report.

18           I'd like to close with just a couple of brief  
19 comments, and then I'd be more than happy to take the  
20 committee's questions.

21           PSBA applauds this committee and any efforts to  
22 combat bullying and harassment in the public schools. We  
23 believe a lot of good work is already being done to advance  
24 those efforts. However, we do have a number of specific  
25 technical concerns with the legislation, and we'd be more



1 than happy to work with this committee or any legislative  
2 staffers on giving our feedback on that language.

3 So once again I'd like to thank you, and I'd be  
4 more than happy to take any questions.

5 MAJORITY CHAIRMAN CLYMER: The Chair thanks the  
6 gentleman for his very good testimony.

7 A couple of thoughts. You did mention that the  
8 school boards have their solicitors and that's the  
9 direction they should go. If there is a problem here, they  
10 could always go to the Pennsylvania School Boards  
11 Association, but their local solicitor would also be an  
12 important resource for defining whether they're within the  
13 law or not.

14 One of the issues, just an observation, is  
15 students within the school itself, whether it be at a  
16 college, university, or secondary school, they could form  
17 their own group -- not form their own group, but an  
18 organization wearing pins or ribbons and opposing school  
19 bullying that would indicate that that is something that  
20 they oppose, and they could be making a statement. And the  
21 reason I say that is because in the past, I've worked with  
22 Students Against Underage Drinking, and they're very  
23 effective in their own organization trying to reach out to  
24 students and say, you know, this is something you need to  
25 be very careful about. So that is another tool, if

1 necessary. I'm sure some students are already doing that,  
2 and I see in the audience we have a group of students who  
3 have undertaken that.

4 At this time, the Chair recognizes Representative  
5 Longietti for questions.

6 REPRESENTATIVE LONGIETTI: Thank you,  
7 Mr. Chairman.

8 So yesterday I had a phone call from a student in  
9 my district who stated that she has been the victim of  
10 bullying and felt that the school district did not act  
11 appropriately in terms of sanctions in that case. So that  
12 poses the question of, you know, what do we do if a school  
13 district doesn't act appropriately under the circumstances,  
14 and how far do we go legislatively?

15 I mean, she actually advocated the idea that  
16 legislation should actually spell out sanctions when  
17 certain types of bullying occur. You know, there are  
18 obviously some pitfalls to trying to do that. And, you  
19 know, we went down that road a little bit before I was here  
20 with the weapons policy and then made exceptions to it.  
21 But what are we to do, if anything, legislatively to  
22 address the issue of that occasional school district that  
23 perhaps doesn't act appropriately when bullying is brought  
24 to their attention?

25 MR. FIELDS: Well, there are a couple of

1 considerations. I think the current version of  
2 Section 1303.1-A already went a long way in 2008 with  
3 making certain that districts had to have a policy relating  
4 to bullying.

5 I think it's important in the abstract that  
6 districts have adequate reporting procedures for students  
7 and a procedure in place for the district to investigate,  
8 follow through, and come to some kind of conclusion.  
9 Unfortunately, I don't think, regardless of whatever  
10 language you might come up with, you're never going to be  
11 able to completely satisfy every student or parent or  
12 eradicate every instance.

13 But it's also important to note, particularly if  
14 you're dealing with one of the categories of protected  
15 classes under Federal law, that students could also take  
16 legal action that's short of initiating litigation against  
17 a district if they didn't do what they were supposed to do.  
18 But they could also go through the Office for Civil Rights.  
19 There's a complaint process there. Now, that only applies  
20 to those instances where the student is the target based on  
21 protected-class status.

22 But in terms of general concepts that might help  
23 advance the ball in terms of combating bullying, I would  
24 just say that districts already are required to have a  
25 policy in place. Districts need to have a complaint

1 procedure and a follow-through procedure for  
2 investigations.

3           In terms of the issue of specific penalties for  
4 specific kinds of activities, one of the things we have to  
5 keep in mind is that usually the perpetrator is another  
6 student, and it may in fact be a student who was the victim  
7 of bullying at some point in time. I'm not a social  
8 scientist, but there is research to indicate that. So when  
9 a school administrator is considering discipline against an  
10 individual student or if it rises to the level where the  
11 superintendent thinks it might warrant expulsion and the  
12 school board would have to decide that, they're typically  
13 going to make the decision with respect to penalty based on  
14 a number of different factors. They're going to base it on  
15 the degree of the conduct: How egregious was it? Has it  
16 been a repeated kind of thing? What does the student's  
17 discipline record look like: Is this the first time the  
18 student has been in trouble?

19           And one of the pitfalls with doing an enumerated  
20 set of penalties like you would find in the Crimes Code is  
21 you would take that latitude away from school  
22 administrators, and we've seen that in instances -- you  
23 mentioned weapons. You know, the current state of the  
24 School Code with respect to weapons essentially says if a  
25 school administrator catches a student with a weapon,

1 there's a mandatory expulsion for 1 year unless the  
2 superintendent makes a recommendation for a lesser penalty.  
3 So what we've seen with that as an example are situations  
4 where boards don't have the ability to exercise any  
5 judgment, so if a student inadvertently happens to have an  
6 item -- that is obvious to everyone was a mistake -- that  
7 is a weapon, they don't have any latitude to exercise any  
8 judgment. So that would be one of the pitfalls, but  
9 certainly our organization would work with this committee  
10 or any staffers on any ideas related to that.

11 REPRESENTATIVE LONGIETTI: Thank you,  
12 Mr. Chairman. And it is a difficult issue to deal with.  
13 Your responses were similar to what I told the student.  
14 Civil rights claims could be available. That certainly is  
15 an imperfect system. And obviously it's difficult for  
16 school districts, particularly in a cyberbullying  
17 situation.

18 The *Layshock* case was in my legislative district,  
19 and the complaint that I got was in regard to the same  
20 school district. So school districts are trying to sort  
21 out what they're supposed to do to avoid lawsuits on both  
22 ends, and I certainly appreciate the need for discretion.  
23 But it shows you, I think all of us here could identify  
24 situations where, for whatever reason, bullying is not  
25 being appropriately addressed, and I think that's why

1 you're seeing legislation not only from Representative  
2 Quigley but from Representative O'Brien and others.

3 Thank you.

4 MR. FIELDS: Thank you.

5 MAJORITY CHAIRMAN CLYMER: The Chair recognizes  
6 Representative Wheatley for a question.

7 REPRESENTATIVE WHEATLEY: Thank you,  
8 Mr. Chairman.

9 And I'm over here, Mr. Fields, hiding in the  
10 corner.

11 MR. FIELDS: I'm sorry. Good morning.

12 REPRESENTATIVE WHEATLEY: Good morning. How are  
13 you doing?

14 MR. FIELDS: Doing well. Thanks.

15 REPRESENTATIVE WHEATLEY: Thank you for your  
16 testimony. I have a couple of questions, and I'm not sure  
17 if you'll be able to respond to them all here.

18 One is, does your organization track or is there  
19 some system that's tracking just how frequent this is  
20 occurring in school? How frequent is bullying or  
21 cyberbullying or some of this occurring out here?

22 MR. FIELDS: Our organization does not  
23 specifically track the incidents of bullying, and one of  
24 the things you'd have to do is make sure you have it  
25 defined adequately, whether or not you're defining it in

1 terms of the statutory definition in the School Code or  
2 whether or not you're going with a more research based. If  
3 you look at the research, Olweus provides a lot of training  
4 and resources. They have a specific definition. Patchin  
5 and Hinduja are a couple of researchers that have another  
6 definition. So you need to make sure that you had a  
7 definition that you could track.

8           The Office of Safe Schools, as I mentioned during  
9 my testimony, collects statistics, but those statistics, to  
10 the best of my knowledge, relate more to conduct that's  
11 going to rise to the level of criminal incidents. But the  
12 short answer to your question is, our organization does not  
13 collect data.

14           REPRESENTATIVE WHEATLEY: And according to you,  
15 you mentioned earlier in your testimony that in Act 61, we  
16 further expanded some authority for the boards, the  
17 districts out there, and we define "bullying" in there.  
18 The definition of "bullying" that was defined in there, is  
19 that somehow different than what the research defines  
20 "bullying" as?

21           MR. FIELDS: Well, if you just give me just a  
22 moment, I think I actually have the definition here.

23           REPRESENTATIVE WHEATLEY: And you can forward  
24 that.

25           MR. FIELDS: Okay.

1           REPRESENTATIVE WHEATLEY: You don't have to take  
2 up -- you can forward it.

3           MR. FIELDS: Well, I think it's like anything you  
4 deal with. In most statutes, you're going to have a  
5 specific legal definition that has ramifications for how a  
6 student is disciplined and what is required to go into the  
7 policy.

8           There are characteristics that are very similar.  
9 If you look at a lot of the research, and again, I'm not a  
10 social scientist; I'm a school attorney, but "bullying"  
11 tends to be defined as something that is repeated conduct  
12 that targets another student. Usually there's a power  
13 indifference involved, and it includes a lot of different  
14 kinds of things, including physical bullying and obviously  
15 things like verbal bullying, and we've had lots of  
16 discussions about cyberbullying being included. So  
17 frequently, the legal definition is different than what the  
18 researchers might identify from a social science or even an  
19 education perspective.

20           REPRESENTATIVE WHEATLEY: And the reason I'm  
21 asking that is because what kind of prompted me to ask you  
22 a question, you kept referring to what's already in law,  
23 Federal law, for protected classes. So it was making me  
24 think that your organization or some organization out there  
25 is tracking the amounts of incidents, and maybe your data



1 is showing you that students who are in these protective  
2 classes are the ones who are more likely to be bullied.  
3 Otherwise, I guess, where would the student who is not in a  
4 protected class but is being bullied or intimidated by  
5 another student who is not of a protected class, where  
6 would they turn? And so I think I heard you answer part of  
7 that saying, depending on the level of that bullying, that  
8 it may be something that could essentially be, you know, of  
9 a physical nature or something that could be of a criminal  
10 nature that could be turned over.

11 But I'm saying the atmosphere of bullying; again,  
12 the Chairman mentioned back in the day when he was coming  
13 through. And I will tell you, when I was growing up, I'm  
14 just glad that we're even talking about this subject,  
15 because when I was growing up, there was no person you  
16 could turn to for bullying except, you know, either taking  
17 the occasions of being a bully or figuring out how you were  
18 going to defend yourself at some point, and that was just  
19 the way it was. You didn't have a safe school advocate;  
20 you didn't have a teacher or anything else. So where would  
21 that student turn to now? Is that a standardized process  
22 in these school districts that everyone knows? And you  
23 talked about, I think some of it you were saying your  
24 organization directs to districts, kind of like how they  
25 can monitor their polices to make sure they have polices

1 that will meet the law of requirement. But who actually  
2 monitors to make sure that environment is being one that is  
3 created?

4 MR. FIELDS: Other than at the local district  
5 level, I mean, the first responsibility is the  
6 responsibility of the school district to make sure that  
7 they have a policy that complies with existing law, but  
8 also, even more importantly, to make sure that they're  
9 actually carrying out that policy. We're aware of a number  
10 of instances with our members in some cases where if the  
11 district doesn't actually follow through and carry through  
12 the policy, sometimes that's worse than not having the  
13 policy at all. So it has to start at the district level.

14 Beyond that, in terms of any regulation, for the  
15 protected classes you might possibly have some intervention  
16 by the Office for Civil Rights or the Pennsylvania Human  
17 Relations Commission. But other than that, to the best of  
18 my knowledge, there isn't some super authority that's  
19 making certain that districts are carrying out their  
20 policies.

21 REPRESENTATIVE WHEATLEY: And then my last  
22 question, so just I'm clear on what you are testifying  
23 today, you are testifying today to say the current bills  
24 that we have before us or this particular bill that we have  
25 before us doesn't really help the districts do the ultimate

1 job of what we want them to do, one, because of some  
2 definition questions, one, because of some clarity  
3 questions -- or I'm sorry -- some litigation questions that  
4 may open the districts up to further litigation without  
5 some specificity to them, but you are not against -- or  
6 maybe again I need your clarity -- you are not against the  
7 State saying to districts that you have a responsibility to  
8 not only have a policy but to have some mechanism to  
9 monitor that policy's effectiveness to make sure we are  
10 actually eliminating the occasions and incidents of  
11 bullying.

12 MR. FIELDS: I think our organization would have  
13 to see specific language and analyze the ramifications of  
14 that.

15 And in response to another point you made, even  
16 though there are going to be some students who are not  
17 going to fall into one of those categories of protected  
18 classes, the current definition of "bullying" in the School  
19 Code would cover a lot of those students. And in addition  
20 to this, districts do have the authority to pass rules and  
21 regulations at the district level, certainly in instances  
22 where those students are under the supervision of teachers  
23 and administrators.

24 So again, I think any effect of measures that  
25 enhance elimination or reduction of bullying, they're

1 ultimately going to have to start at the school district  
2 level, because that's really ground zero in the battle.  
3 That's where it starts; that's where it begins.

4 REPRESENTATIVE WHEATLEY: Sure.

5 MR. FIELDS: And it's not just -- a lot of the  
6 times we read the press reports, and we have a number of  
7 examples of this happening in the middle school and high  
8 school levels, but it starts with educating kindergarten  
9 students on nice words and not-so-nice words.

10 And I'll also add that one of the benefits of  
11 having a district-based approach is you have professional  
12 educators at that level, and so while I can tell you a lot  
13 about school law, I couldn't begin to tell you what would  
14 be an effective education program for a second grader to  
15 educate them on bullying.

16 REPRESENTATIVE WHEATLEY: Sure.

17 MR. FIELDS: Because if I talk to my 7-year-old  
18 twins and I say, "Well, don't engage in conduct that is  
19 severe, persistent, or pervasive against Johnny," they're  
20 not going to understand that.

21 REPRESENTATIVE WHEATLEY: Right.

22 MR. FIELDS: But if you talk to them about  
23 bullying and generally what it means to respect other  
24 people, they understand that. So it's not only an issue of  
25 discipline and enforcement, but there's a resource at the

1 district level that you can utilize.

2 REPRESENTATIVE WHEATLEY: Thank you.

3 Thank you, Mr. Chairman.

4 MAJORITY CHAIRMAN CLYMER: The Chair thanks the  
5 gentleman and recognizes Representative Cox for questions.

6 REPRESENTATIVE COX: Thank you, Mr. Chairman.

7 Like Representative Longietti, and I think  
8 probably other Members of the committee and other Members  
9 of the House, I, too, hear from parents and students  
10 regarding bullying. I don't hear from them as much about  
11 cyberbullying. I think the media has taken some of these  
12 things, and so that has become the focus. And I think on  
13 some levels that's unfortunate that that appears to be the  
14 primary focus, and it kind of takes the focus off or the  
15 attention off of the fact that more traditional bullying is  
16 still taking place on an everyday basis. And, you know,  
17 some of these instances that I hear about are straight out  
18 of, you know, a poorly made 1980-something made-for-TV  
19 movie about bullying, but these things are happening and  
20 they're continuing to happen on a daily basis.

21 I know there are parents and students who don't  
22 come to me, but what I hear frequently is that they  
23 understand, and you mentioned it a moment ago, you know,  
24 that they have a policy in place, and the parents look at  
25 the policy and they say, okay, this is what's supposed to

1 happen and this is what you're supposed to do when this  
2 happens and when I report the behavior, and nothing  
3 happens, and so we essentially have a policy that either  
4 isn't being enforced or it's a policy that has no teeth.  
5 And I'm finding that this is not just, you know, one school  
6 district within my legislative district. I have three  
7 entire school districts and two others, and I'm hearing it  
8 from all of them. So it's not isolated, I don't think, to  
9 a handful of school districts, and I've talked to other  
10 Representatives who have said, hey, we're hearing some of  
11 the same things.

12 I have seen a correlation as well. I don't think  
13 the younger ages, at least in my district I'm not seeing  
14 the younger ages as being the problem. Most of my school  
15 districts, the parents will come in and give rave reviews  
16 about the types of behavior that is acceptable and how  
17 bullying is dealt with on the younger grade levels.

18 My daughter had an incident in fourth grade. She  
19 told her teacher about it. The world of the little girl  
20 who bullied my daughter, her world came crashing down. She  
21 had to apologize. She had to stand up in front of the  
22 class and talk about types of behavior that are acceptable  
23 and not acceptable. I think she had a partial -- she had  
24 some sort of extra work assignments. I mean, her world  
25 vastly changed, and as a result, this girl's behavior

1 toward my daughter changed and there was never anything  
2 else. I can't say they're best of friends, but there has  
3 not been any incident since then.

4 But parents have told me that the incidents as  
5 they reach middle school start to increase, and then in  
6 high school it goes back to, like I said, the more  
7 traditional bullying -- sports teams picking on nonsport  
8 individuals. The "geeks," whatever you want to call them,  
9 whatever terminology that kids are applying to the kids  
10 today that don't fit their mold, they're still being  
11 bullied, and I have a real problem with that.

12 You touched on a cooperative effort that you  
13 think is, you know, that the entire school community is  
14 supposed to work together to report these things? I just  
15 submit that the cooperative effort is exactly what failed  
16 in the Penn State scandal. There was, you know, "You were  
17 supposed to report"; "You were supposed to report"; "No, I  
18 reported it here." You know, everybody was able to pass  
19 the buck because there was not one individual or one office  
20 where you could say, I went there; they dropped the ball;  
21 and increased liability or not, they knew about it and did  
22 nothing.

23 To me, that's where parents are telling me they  
24 don't feel like they have anywhere to go. They don't have  
25 the ability to point the finger and say, "I told him on

1 this day, this day, and this day and nothing happened." So  
2 making a legal case or whatever becomes a mish-mosh of "he  
3 said, she said," "I thought I told him," and it's a mess.

4 We need a law with teeth. I don't think we  
5 should go down the road of the zero tolerance where the  
6 first time a kid bullies, he gets, you know, suspended for  
7 a week. I defended students who brought nail clippers to  
8 school under the zero-tolerance weapons policy in a  
9 previous job, and so I know the dangers of, you know, the  
10 zero tolerance, the school board having no authority  
11 whatsoever. But at the same time, we've got to have  
12 something with teeth. Parents are sick and tired of their  
13 children feeling helpless.

14 I don't think it's any coincidence that cyber  
15 schools have become available opportunities and  
16 alternatives to traditional schools, traditional public  
17 schools, or private schools for that matter. I pulled my  
18 son out of a private school. He actually asked to come  
19 home. It was a private school, and bullying was happening.  
20 I talked to the administration: "Oh, yeah, we'll do this;  
21 we're going to put a policy in place." They didn't even  
22 have to put a policy in place necessarily. And time and  
23 time again I went to them. Ultimately, my son is at home.  
24 He's being cyber-schooled. And guess what? My wife is not  
25 bullying him, neither are his siblings.



1           But I do think that there's a lot to be said for  
2 why we're seeing parents looking for alternative forms of  
3 education or of educating their children. They don't --  
4 they're tired of it. And a lot of the people that I've  
5 interacted with in the cyber school movement, bullying is a  
6 key factor. It is huge, and so we have got to address it.  
7 I'm all for cyber-schooling if that's what parents want,  
8 but it should be a choice they make because it works for  
9 them, not because they feel like they don't have another  
10 choice.

11           So I'll go back to the idea that a single person  
12 or an office that has that full responsibility, that's key.  
13 That's one of the reasons I like this bill. There is a  
14 consolidation, if you will.

15           Anonymous tips, things like that, are very  
16 important. We use them in other areas, child abuse  
17 reporting and things like that; why can't we use them when  
18 a child himself feels he's being abused? Why does he not  
19 have the ability to say "I'm being abused" anonymously if  
20 that's his only comfort level?

21           So I made more of a statement. I would like you  
22 to comment on the cooperative effort thing, because how do  
23 you feel that a cooperative effort is going to somehow work  
24 here when it has failed in other scenarios?

25           MR. FIELDS: Well, I don't want to overreach or

1 engage in any puffery on the cooperative-effort portion of  
2 my statements. The area where we have particularly  
3 encouraged a cooperative effort is the identification of  
4 specific bullying problems, and the way it incorporates the  
5 entire school community in terms of enforcement is ensuring  
6 that you have that reporting process in place and that  
7 investigative process in place and, more importantly, that  
8 students and parents are aware of that -- you know, what do  
9 you do? Who do you report it to? And in referring to the  
10 entire school community, we would include not only parents  
11 but employees at every level.

12           So while it's a little difficult to respond or  
13 defend the cooperative effort in a specific sense, our  
14 organization still believes that that's going to be the key  
15 to any effective efforts to deal with this issue. And  
16 that's reflected in my testimony, that you can make one  
17 designated person specifically responsible for  
18 implementation, but implementation within a school entity  
19 that consists of, in some cases, thousands of students and  
20 in some cases thousands of employees, if you don't have a  
21 systematic effort that's district based, I'm not sure how  
22 much that's going to advance the ball in terms of combating  
23 bullying.

24           MAJORITY CHAIRMAN CLYMER: The Chair thanks  
25 the gentleman for his question and turns to

1 Representative Tallman for a question.

2 REPRESENTATIVE TALLMAN: Thank you, Mr. Chairman.

3 Thank you, Sean, for being here this morning.

4 And I want to compliment you, because when I read the bill,

5 I had the same questions on "intimidation" and "harassment"

6 -- what is the actual definition of those terms? -- and I

7 think we need to define those, because I think that could

8 lead us down a wrong path.

9 So let me ask you, and I think Representative

10 Wheatley kind of asked this question; I want to ask you

11 direct: Are the current statutes and regulations we have

12 in place, are they adequate to take care of bullying and

13 cyberbullying, because you've cited several instances in

14 your testimony where, hey, it's already there.

15 MR. FIELDS: My belief is that with what

16 currently exists, and if a district has a policy that

17 addresses those concerns that I have articulated this

18 morning, that a district would have an adequate policy in

19 place. Now, that presupposes that they're actually

20 executing what's in policy, because what I mentioned during

21 one of my comments is that you could have the best policy

22 in the world, and if it's not implemented and executed,

23 it's really not doing the students or the teachers or the

24 administrators very much good. But I think what you

25 currently have in place, between the directives we've been

1 given by OCR with respect to Federal law and what currently  
2 exists in the School Code, may be adequate to address it  
3 systemically.

4           Could more be done in terms of prevention  
5 programs? Could more be done in terms of education  
6 programs? We haven't collected data on how many districts  
7 actually have programs in place, but I can tell you  
8 anecdotally, it's pretty hard to run into a district or an  
9 administrator where a district is not doing these kinds of  
10 things, not doing extensive prevention and education  
11 efforts for students. I mentioned my sons earlier. It  
12 started in kindergarten; it continues.

13           So I think the scheme you have currently likely  
14 is effective to address this. And moreover, there was a  
15 lot of input into Act 61 by various interests, not just  
16 PSBA, but the Department of Education analyzed that, and  
17 there were also, I believe, some student-rights advocates  
18 who also looked at the constitutional ramifications that I  
19 mentioned during my testimony this morning.

20           REPRESENTATIVE TALLMAN: Thank you.

21           Just, you know, Representative Cox said that the  
22 few -- I haven't had near that many -- the few that have  
23 received this, the school district hasn't done anything.  
24 They have a policy on the books, but they don't do  
25 anything. So that may be the issue.

1           Let me ask one more question, and we have Hannah  
2 present here, and we may need to ask her. But anyway, this  
3 bill puts procedures in place, policies, requires personnel  
4 to do things that haven't been done before, and I'm always  
5 concerned about putting mandates on school districts and  
6 the costs involved. Do you have an estimate? Because  
7 we've also established some legal liability under this bill  
8 as it's currently written. Would you give an estimate on  
9 what the impact on cost would be to the school district to  
10 implement this?

11           MR. FIELDS: I appreciate your concern about the  
12 cost, because that's obviously always a concern in the  
13 current climate. To the best of my knowledge, we have not  
14 collected any estimates on the cost from a personnel  
15 perspective of carrying this out. We have identified the  
16 litigation concerns.

17           And that's not always just a financial decision.  
18 I think we always have to be mindful whenever we take on  
19 additional statutory or policy responsibilities. If those  
20 come with an additional cost, there is a chance that we end  
21 up actually taking away resources from education program  
22 efforts to combat bullying or some prevention program. A  
23 number of districts have gone with programs like Olweus or  
24 things being offered by Patchin and Hinduja. There are a  
25 number of different programs out there that are being

1 offered for a fee, and a number of districts are spending  
2 money on those programs to combat the problem, so I think  
3 we always have to be concerned about that. But the short  
4 answer to your question is, we have not estimated the cost  
5 of this.

6 REPRESENTATIVE TALLMAN: Thank you, Mr. Chair.

7 MAJORITY CHAIRMAN CLYMER: The Chair thanks the  
8 gentleman and recognizes Representative Smith for a  
9 question.

10 REPRESENTATIVE SMITH: Thank you, Mr. Chairman.

11 Thank you, Mr. Fields, for your testimony today.

12 As I listened to your testimony and the opinion  
13 of, I guess the opinion of PSBA, my thought in my head was  
14 this was a very bureaucratic response, convoluted response  
15 to a situation in our schools throughout this Commonwealth.  
16 It is very serious and is at the level of epidemic.

17 My hope is, moving forward, that we would take a  
18 more commonsense approach and listen to the parents and  
19 listen to the students so that we could, at the end of the  
20 day, use their ideas and their testimony and less input  
21 from the bureaucrats and less input from the lawyers and  
22 sometimes their paralyzing process. And you spoke about  
23 how on the Federal level there are many laws already put  
24 into place. Well, here's an answer from somebody that  
25 hears from the school districts and the parents every

1 single day: It's not working. It's broken, and it needs  
2 to be fixed.

3 Now, my hope is that after listening to you, you  
4 had referenced the Federal level. Well, if we have to wait  
5 for the Federal level, whether it be, let's just say  
6 Congress to get their act together, this is going to be a  
7 long journey that's going to outlive most of us in this  
8 room, because it just doesn't seem to happen there.

9 But in hope, I think I heard from you that it is  
10 better to do this on a local level, and my question to you  
11 is, do you feel and is PSBA comfortable with allowing the  
12 local level to do what they need to do, because they're in  
13 the trenches and they see it. Each school district is  
14 their own entity and has their own needs. Do you  
15 understand what I'm saying?

16 MR. FIELDS: Is the question whether or not PSBA  
17 is comfortable with the authority remaining at the local  
18 level? Is that your question?

19 REPRESENTATIVE SMITH: Yes.

20 MR. FIELDS: Well, to the extent that the  
21 decisions are being made at the local level in compliance  
22 with existing laws, and I don't want to sound like a  
23 bureaucrat, or I certainly don't want to sound convoluted,  
24 but you're looking at a piece of legislation that's going  
25 to have not only an impact on students and teachers and

1 school administrators, it's going to have legal  
2 implications. And the nature of public school, public  
3 education, is that it's a highly regulated environment  
4 currently. That is the terrain we find ourselves on. And  
5 if you talk to any teacher or school administrator, they  
6 didn't go to school to become a teacher or an administrator  
7 to become a legal scholar, but now we're in a situation  
8 where we have to actually offer them that training,  
9 including in an area like bullying.

10 So I think we would take the position that,  
11 again, this can be more effectively combated at the local  
12 level, but it does require those local school districts and  
13 our other members to be aware of what exists in current  
14 State and Federal law, to adopt a policy that's consistent  
15 with that, and more importantly, to execute that.

16 REPRESENTATIVE SMITH: Good. I'm happy with  
17 that, and I think that this piece of legislation by  
18 Representative Quigley and the piece of legislation by  
19 Representative O'Brien, I think it's a step in the right  
20 direction. I just hope that we take the roadblocks down  
21 and allow us to move forward through the parents, through  
22 the students, and the local school districts. Thank you.

23 Thank you, Mr. Chairman.

24 MR. FIELDS: Thank you.

25 MAJORITY CHAIRMAN CLYMER: The Chair thanks the



1 gentleman and recognizes Representative O'Brien for a  
2 question.

3 REPRESENTATIVE O'BRIEN: Thank you, Mr. Chairman.

4 You finished your testimony by saying "I can tell  
5 you a lot about the law," but I've got to tell you,  
6 Mr. Fields, you don't know a lot about the pain of kids.  
7 You don't know a whole lot about a young fellow frail of  
8 frame who spends years and years with questions of his  
9 sexuality. You don't know the pain of someone of bulk, of  
10 girth -- me -- and the years of the jibes.

11 And when I was a kid in school, you could find  
12 solace with a friendly teacher, with your friends, but now  
13 in this day and age it goes on and it goes on and it goes  
14 on through social media.

15 But, you know, it's very interesting that  
16 New Jersey came up with a bill, and I have no shame in  
17 saying that the bill I introduced modeled heavily upon it,  
18 and I see elements of it in Representative Quigley's bill.  
19 Interestingly enough, in the first year of the New Jersey  
20 bill being in effect, 12,244 cases of bullying, harassment,  
21 were reported up through the chain. But do you know what  
22 was even more interesting than that? There was a  
23 reciprocal drop in cases reported in these schools of  
24 assaults, fights, criminal threats. Isn't that  
25 interesting? Isn't that interesting? And it seems the

1 simple good was achieved by establishing a central chain of  
2 command, if you will.

3 Now, maybe I'm picking on Mark, and Mark goes to  
4 the bully person in the school. Maybe all it requires is  
5 "Yo, Mike, knock it off." Perhaps it requires what was  
6 experienced by Representative Cox's daughter. But you lay  
7 out this lengthy bureaucracy, but it's not helping the kid.  
8 It's not protecting the kid. This is a very simple, direct  
9 way to reduce these incidences of bullying. So do me a  
10 favor, stop playing the lawyer for one second and tell me  
11 why we can't, and tell me from your point of view how we  
12 can.

13 MR. FIELDS: With all due respect---

14 MAJORITY CHAIRMAN CLYMER: Yeah; I have to  
15 interrupt here and say, Representative O'Brien, the  
16 gentleman is here to give his testimony on HB 2464.

17 REPRESENTATIVE O'BRIEN: I withdraw, Mr. Chair.

18 MAJORITY CHAIRMAN CLYMER: All right. He  
19 withdraws the question. The Chair thanks the gentleman.

20 The Chair recognizes Representative Truitt.

21 REPRESENTATIVE TRUITT: Thank you, Mr. Chairman,  
22 and thank you, Sean, for your testimony.

23 As usually happens to me, Representative Tallman  
24 took my question. But I just want to pinpoint and  
25 establish very clearly, I'm hearing conflicting things in

1 your testimony in that you're saying, you talk a lot about  
2 existing law and so forth. And it's no secret I have  
3 introduced a similar bill, and on my Facebook page, one of  
4 my constituents wrote back something to the effect of  
5 "We already have enough laws to bury the bullies. What  
6 about..." and then he went into other areas that he was  
7 more concerned about.

8           So my question is similar to what Representative  
9 Tallman said. To put a very fine point on it, do you think  
10 the current laws are working?

11           MR. FIELDS: That's obviously a bit of a loaded  
12 question, because---

13           REPRESENTATIVE TRUITT: It's really a "yes" or  
14 "no" question. Do you think they're working?

15           MR. FIELDS: Well, if you're the victim of this  
16 kind of conduct and you don't feel like your district has  
17 adequately addressed it, you're going to feel like the  
18 current laws aren't working. But in terms of just focusing  
19 on the statutory scheme that's in place, I think you have,  
20 what you at least have is a baseline for a current  
21 structure that could effectively work if a district has an  
22 effective policy. And it's not just simply a matter of a  
23 bureaucratic overlay. The reason you would have a policy  
24 in place with reporting procedures and investigation  
25 procedures is not only to comply with the law but to

1 effectively deal with that.

2           And, you know, when we use these terms, we think  
3 in terms of some kind of government or bureaucratic  
4 investigation, but it's frequently an informal way for an  
5 administrator to find out what happened to a student by  
6 talking to students. So I think you currently have a  
7 framework that could be effective in any school district,  
8 and certainly PSBA is willing to continue to provide its  
9 feedback and work with this committee and work with any  
10 staffers on any proposed language that might improve this.

11           REPRESENTATIVE TRUITT: I'll take that as a no,  
12 it's not working.

13           And, you know, frankly what we do as a  
14 Legislature, we pass laws to give certain abilities to  
15 local governments or our school districts or whatever, and  
16 if they don't work, you know, then we have to go back and  
17 fix them. If we give school districts a certain amount of  
18 latitude to deal with bullying and after a few years we  
19 decide it's not working, then obviously we have to tighten  
20 it up a bit.

21           So the point that I'm simply trying to make is,  
22 we do have all these laws in existence, but they're not  
23 working, and so now we have to go back and revisit it. And  
24 I just want to make sure that my colleagues understand --  
25 and I think everybody's in agreement or we wouldn't be

1 having this hearing -- that something needs to be done.

2 And I do appreciate your input. I think there  
3 are things that can be done to address the specific  
4 concerns that you raised, but in the end, we have to come  
5 up with something new and we've got to get it passed.

6 Thank you.

7 MAJORITY CHAIRMAN CLYMER: The Chair thanks the  
8 gentleman.

9 Attorney Fields, thank you very much for your  
10 testimony here today. It was very helpful, and this is  
11 just the beginning. You're the lead-off man, along with  
12 Representative Quigley here, to testify as we broaden our  
13 scope and find ways that we can deal with this issue.

14 And there are many things that we can enter into.  
15 I'm not going to get involved in those, because we want to  
16 bring in our next testifiers, but thank you very much for  
17 joining us today.

18 MR. FIELDS: Thank you.

19 MAJORITY CHAIRMAN CLYMER: Next on the panel of  
20 testifiers is the Anti-Defamation League panel, and the  
21 Chair welcomes to testify Nancy Baron-Baer, the Associate  
22 Regional Director of Eastern Pennsylvania/Southern  
23 New Jersey/Delaware of the Anti-Defamation League;  
24 Sharon Giamporcaro, Deputy District Attorney,  
25 Montgomery County District Attorney's Office; and

1 Dr. Fayez El-Gabalawi, President of the Eastern  
2 Pennsylvania-Southern New Jersey Regional Council of Child  
3 and Adolescent Psychiatry.

4 Dr. Fayez, did I do it right or---

5 DR. EL-GABALAWI: Very close.

6 MAJORITY CHAIRMAN CLYMER: Very close? Well,  
7 would you like to---

8 DR. EL-GABALAWI: Yes. It's Fayez El-Gabalawi.

9 MAJORITY CHAIRMAN CLYMER: Gabalawi.

10 DR. EL-GABALAWI: Yes; that's correct.

11 MAJORITY CHAIRMAN CLYMER: Okay. Not bad.

12 So we have your testimony, and if  
13 Nancy Baron-Baer would like to start the testimony, you may  
14 begin.

15 MS. BARON-BAER: Thank you, Chairman Clymer, and  
16 thank you to the entire panel for convening this hearing  
17 today. It's such an important issue, and we appreciate the  
18 time that you took out of your schedules to be here.

19 As we heard, my name is Nancy Baron-Baer, and I  
20 am the Associate Regional Director at the Anti-Defamation  
21 League, and we are here today to present testimony in favor  
22 of bill 2464.

23 For nearly 100 years, the Anti-Defamation League  
24 has fought anti-Semitism and prejudice and bigotry on all  
25 fronts. We have long been at the forefront of national,

1 State, and local initiatives and efforts to deter and to  
2 counteract all kinds of hatred and intolerance. Our  
3 diversity and our anti-bias education programs have reached  
4 over 56 million youth and adults across the world. We have  
5 seen firsthand through our work the effects that bullying  
6 can have, both around the country and here locally in the  
7 State of Pennsylvania.

8 The passage of anti-bullying legislation is  
9 critical so that we can secure a safe learning environment  
10 for all of our students. Forty-nine States plus the  
11 District of Columbia have bullying laws in place. We have  
12 a bullying law in place, but it is not as comprehensive, it  
13 is not as thorough or as effective as it can be.

14 We have developed curricula and programming for  
15 teachers, students, and the community at ADL on how to  
16 respond to bullying and how to respond to cyberbullying,  
17 and we have developed model bullying legislation that has  
18 been introduced throughout the country. This bill that we  
19 are discussing today is based on that model legislation,  
20 and we believe that any comprehensive anti-bullying bill  
21 should have, as part of its components, the following:

- 22 • A strong definition of bullying and  
23 cyberbullying;
- 24 • Two, notice requirements for students and parents  
25 where there are clear reporting procedures;

- 1           • Three, make sure that we have training for our  
2           teachers. To pass a bill that does not include  
3           training is toothless. We cannot expect all  
4           personnel at schools, we can't expect the  
5           teachers, the custodians, the people who work in  
6           the cafeteria, to know automatically what to do  
7           without proper training;
- 8           • And also, we need to make sure that we develop,  
9           introduce, and implement curriculum that is  
10          age-appropriate for the students in our schools.

11  
12           HB 2464 would require the Pennsylvania Department  
13          of Education to develop a model policy as well as training  
14          materials that will help the schools to implement the  
15          policies. It would require that each school district  
16          tailor its policies particularly to their needs in their  
17          particular community. It would require, unlike before,  
18          that districts work with many aspects of their community --  
19          the parents, the students, law enforcement, other  
20          stakeholders -- so that we create the most effective policy  
21          we can.

22                  Children today have ready access at almost any  
23          time of the day or the night to the Internet, and we have  
24          to deal with that and we have to deal with the issue of  
25          off-campus bullying when there's a connection to the school



1 environment. The bill addresses that in particular.  
2 School officials will be able to respond to cyberbullying  
3 when there is a nexus -- and again, there must be a nexus  
4 -- between the off-campus actions and what happens in  
5 school with school learning.

6 The bill encourages schools to create bullying  
7 prevention task forces, and you'll hear a little bit more  
8 from some of the other individuals that are here about  
9 where we can partner with our parents and community members  
10 to work together.

11 School policies will not only include strategies  
12 for providing counseling but also referral services, but  
13 not only to the victim, because there are other parties  
14 involved here. We need to educate the bystanders. We need  
15 to make sure that we help the perpetrators of bullying,  
16 too, and all of their family members. The bill does not  
17 discuss or provide for criminal penalties for any offense  
18 committed, but it does require that there be a procedure in  
19 place for reporting to the proper authorities anything that  
20 may constitute criminal activity.

21 We believe that bullying can produce very  
22 devastating effects and consequences and is often a  
23 precursor to much more serious kinds of criminal behavior.  
24 There was an Associated Press survey in 2009, and in that  
25 survey, 60 percent of young people that have been bullied

1 reported that destructive behavior such as smoking  
2 cigarettes, drinking alcohol, using illegal drugs, or  
3 shoplifting was something that they engaged in. Children  
4 who are bullied are also much more likely to suffer from  
5 depression, anxiety, loneliness, lower self-esteem, and  
6 most importantly, thoughts of suicide.

7           That same survey from the Associated Press said  
8 that targets of digital abuse from our cyberbullying are  
9 twice as likely to report having received treatment from  
10 mental health professionals. Again, we will hear more  
11 about this in a minute.

12           That same survey found that bullied students were  
13 three times more likely to consider dropping out of school.  
14 If our students can't concentrate on the material they are  
15 given in school and have to consider dropping out, how will  
16 we in Pennsylvania advance the learning process?

17           In 2009 there was a study by the Cyberbullying  
18 Research Center, and it found that students who were  
19 bullied were one and a half to two times more likely to  
20 have attempted suicide. The children who actually do the  
21 bullying -- the perpetrators -- are more likely than their  
22 peers to engage in physical violence, vandalism, smoking,  
23 drinking, school absenteeism. Increases in youth violence,  
24 school harassment, and bullying pose significant threats to  
25 school safety and the academic achievement. It is well

1 known that if you do not feel safe, you cannot learn.

2           Unfortunately in Pennsylvania, we have not been  
3 immune to the tragedies that come from violence and suicide  
4 due to bullying. Unfortunately, we have a number of  
5 examples of students in recent years from all over the  
6 State who have been victims.

7           For instance, Nadin Khoury -- this was national  
8 news a little over a year ago -- is a 13-year-old boy from  
9 Upper Darby. It happens that he comes from Liberia. He  
10 was bullied by children in his school, he said perhaps  
11 because he was a little bit smaller and perhaps because he  
12 came from Liberia. But one day after school, they grabbed  
13 him; they hung him from a fencepost until someone could  
14 take him down.

15           We have South Philadelphia High School -- also  
16 national news; I'm sure all of you have heard about that --  
17 where the Asian students were repeatedly bullied over many  
18 years within the school system. They were attacked; they  
19 were kicked; they were beaten.

20           And then we have the suicides -- Brandon Bitner.  
21 He was a 14-year-old high school freshman who came from  
22 Snyder County. This young man went to Perry County, stood  
23 in front of a truck, and was run over because he wanted to  
24 end his life. His suicide note explained that he didn't  
25 think he could tolerate 4 more years of being bullied.

1           There's Tiffani Maxwell, who was a 16-year-old  
2 junior from Slippery Rock. She shot herself in the head.  
3 Her parents said it was because of bullying, and I could go  
4 on.

5           Teachers and school administrators cannot be  
6 expected to tackle the issues alone, not without training,  
7 and therefore the bill, 2464, provides for annual training  
8 of those individuals who have significant contact with  
9 students. We believe training is critical if we want to  
10 make any real progress in trying to protect our students.

11           In addition, many students and their parents  
12 remain ill-informed about how they can prevent, identify,  
13 and respond to any incidents of bullying. So therefore,  
14 HB 2464 provides for school policies to include educational  
15 programs, educational information, to be provided to  
16 parents and students.

17           Today, our young people consider e-mailing and  
18 texting and instant messaging and blogging as a vital means  
19 of their way to self-express. While the Internet brings  
20 substantial value to these young people, both educationally  
21 and socially, it can also bring trouble. An increasing  
22 number misuse online technology. As opposed to what many  
23 parents, including me when I grew up, experienced on the  
24 playground, today's bullies use the Internet to target  
25 their victims. And what is different from the bullying

1 that many of us may have felt when we were younger is the  
2 fact that cyberbullying can spread a simple comment about a  
3 student over and over thousands if not millions of times to  
4 reach people throughout the country and throughout the  
5 world.

6           Students, parents, teachers, and administrators  
7 must be prepared to handle what's going on in the age of  
8 the new technology. We're not necessarily all trained,  
9 parents or teachers, in how to handle these issues.

10 Parents frequently have limited involvement in and  
11 oversight of online activity, because young people  
12 generally don't discuss what they're doing.

13           One constant we have is that schools are a focal  
14 point for bullying and cyberbullying. Schools are where  
15 "bullies" learn and are taught and convene. Our HB 2464  
16 requires schools to develop strong policies in both of  
17 these areas. Any anti-bullying legislation today that does  
18 not include cyberbullying would be totally ineffective.

19           The United States Department of Education  
20 Office for Civil Rights recently published provisions from  
21 various State laws throughout the country that represent  
22 best practices. Among the States that they chose were  
23 New York, their Dignity for All Students Act, which has  
24 strong language on monitoring and transparency. They also  
25 mentioned Ohio and Iowa for adopting similar kinds of

1 approaches. Pennsylvania was not mentioned as one of the  
2 premier States to watch and observe and follow.

3 We believe that accountability is a very  
4 important component here. Data collection and reporting is  
5 critical so that we can ensure compliance with the law.  
6 HB 2464 requires the Department of Education to become a  
7 central repository for that information. In addition, all  
8 acts of harassment and bullying covered under the bill  
9 would be reported to the State semiannually.

10 We believe HB 2464 plays a very critical role in  
11 providing our children with access to safe schools, free  
12 from forms of bullying and harassment. We urge you to  
13 please support this bill so that Pennsylvania can join the  
14 vast majority of other States that have comprehensive laws  
15 protecting their students. This bill and protecting our  
16 students, who will be our leaders of the future, should be  
17 a priority for every Member here.

18 Thank you for your time and for your attention.

19 MAJORITY CHAIRMAN CLYMER: The Chair thanks  
20 Nancy Baron-Baer for your testimony.

21 And now Sharon Giamporcaro, it's your turn to  
22 share your testimony.

23 MS. GIAMPORCARO: Thank you, Chairman Clymer, and  
24 good morning, Members of the committee.

25 My name is Sharon Giamporcaro. I'm one of the

1 Deputy District Attorneys in the Montgomery County District  
2 Attorney's Office, and I'm also the Chief of the Juvenile  
3 Division. I am here today on behalf of District Attorney  
4 Risa Vetri Ferman to provide testimony in support of  
5 HB 2464.

6 And I have submitted the written testimony.  
7 Rather than go through that today, I'd like to spend my  
8 time highlighting a few of the features of this bill which  
9 I support from a law enforcement perspective.

10 Just beginning, in my discussion as a Juvenile  
11 Court prosecutor, I can tell you that bullying behavior is  
12 an underlying conduct in numerous juvenile delinquency  
13 proceedings. It doesn't have to be charged. It's a  
14 conduct from both the victim's standpoint and from the  
15 offender's standpoint.

16 The current law that we have is certainly an  
17 important initial step in combating bullying, but in  
18 reality, student safety is contingent on the strength of an  
19 anti-bullying policy, and that is, I think, a fundamental  
20 reason why HB 2464 is important. It puts procedures into  
21 place that would address and prevent bullying. From a law  
22 enforcement perspective, it holds people accountable and it  
23 helps to prevent crime.

24 To begin with, it sets forth some certain minimum  
25 requirements, giving schools somewhat of a roadmap --

1 requiring schools to have reporting protocols, notification  
2 procedures; requiring schools to have things such as  
3 intervention measures, safety plans, and whatnot. And in  
4 addition to that, it also designates a person or persons by  
5 job title responsible for certain tasks -- receiving the  
6 reports, investigation, notifying a parent/guardian,  
7 notifying law enforcement -- and intervention measures  
8 designed to target both the bullies and the victims.

9           And part of the importance of having these  
10 specific parameters is it does help educators, parents, and  
11 students to know, how do you go about reporting a bullying  
12 complaint? Who do you go to, where do you go, and how do  
13 you get help? These are important procedures to have in  
14 effect and to be documented, and it sheds light on this  
15 topic for everyone involved.

16           Being, you know, in the law enforcement and as a  
17 prosecutor, a veteran prosecutor, actually for a little  
18 over 20 years now, I've seen bullying take many forms, and  
19 one of the good components in this bill is that it does  
20 provide a more expansive definition of "bullying." It  
21 includes harassment, intimidation, bullying, and  
22 cyberbullying, but I'd like to concentrate on the  
23 importance of the cyberbullying piece.

24           I do recognize that the term "cyberbullying" is  
25 in fact included in our current law. What's missing is the



1 definition of "electronic communication." And this current  
2 bill before you does define "electronic communication," and  
3 it encompasses all modalities of communication through  
4 digital devices. You know, it's important for students to  
5 understand that prohibited conduct can in fact occur  
6 through text messaging and blogs and pagers and e-mails and  
7 Internet Websites and online games and whatnot. From a  
8 law enforcement perspective, investigating cyberbullying  
9 incidents are one of the most difficult types of cases that  
10 law enforcement faces in terms of investigating, because  
11 naturally what you have are victims and witnesses that are  
12 reluctant to come forward to report incidents. They're  
13 reluctant to provide information.

14 One of the key features of this bill before you  
15 is that school policies will have to have a statement  
16 included prohibiting the retaliation or false accusation  
17 against anyone that comes forward with reliable  
18 information, and that's important. That's going to help  
19 school educators, victims; that will help law enforcement  
20 investigation.

21 You know, the bottom line is when kids get  
22 bullied, the chances increase for kids to drop out of  
23 school and, hence, crime going up. This is a bill before  
24 you that can be looked at essentially as a crime prevention  
25 tool. You know, in the long run, it saves tax dollars

1 because it's a crime prevention tool and it's promoting  
2 public safety.

3           There are a number of other areas that this bill  
4 addresses which are very important. Some of the areas  
5 include remedial measures. And other areas on this bill, I  
6 would say safety strategies. In effect, it has academic  
7 intervention, guidance for both bullies and the victims.  
8 There are also provisions for mandated training for the  
9 educators. There's educational programming for parents and  
10 students, and there is ongoing oversight for compliance  
11 purposes -- periodic annual reviews and making reports to  
12 the Department of Education.

13           One of the key features is also the fact that a  
14 school's anti-bullying policy would be actually  
15 incorporated into the school curriculum, not just the  
16 Code of Student Conduct, as our current law has, so that  
17 students will be very familiar with the policy and the  
18 procedures and they'll be learning about that, that it  
19 would still be accessible on available Internet and posted  
20 prominently throughout the school.

21           The Department of Education does have some  
22 responsibilities. They're not overly burdensome. They  
23 have one responsibility to create a model policy, and  
24 that's an important feature. It will give a roadmap for  
25 school entities on how to develop a good policy, what is

1 expected from the policy. Schools aren't asked to put into  
2 effect certain procedures and policies, they're asked to  
3 develop a procedure that suits their own means. So here  
4 you have a bill that is flexible with each of the counties  
5 and yet specific in giving them proper guidance. The  
6 Department of Education also will have to develop training  
7 materials and a list of preventive programs in addition to  
8 having a central repository so that the reports from the  
9 schools, they can assess the levels and nature of bullying.

10           One of the most unique features of this current  
11 House bill before you is the fact that it permits school  
12 entities, as they deem appropriate, to develop task forces.  
13 I'm from Montgomery County, and we currently already have a  
14 bullying and cyberbullying countywide task force. There  
15 are some 40 or 50 members on this task force, and they  
16 comprise members from all different disciplines -- law  
17 enforcement, social workers. There's a representative from  
18 the District Attorney's Office, a representative from the  
19 Attorney General's Office, Juvenile Probation, the Office  
20 of Children and Youth. We have parents. We have community  
21 volunteers, mental health workers.

22           The task force has just been wonderful. It's  
23 recommendations, the purpose of the task force is to  
24 develop recommendations based on best practices in  
25 preventing, responding, and ultimately combating bullying.

1 And it also acts as a key resource for everyone, not just  
2 the various stakeholders and interdisciplinary people but  
3 for students and parents. So far, it has been extremely  
4 valuable.

5           So I think that the bill as a whole has a lot of  
6 checks and balances and has just the key core ingredients  
7 to put the meat on the bones of a current law that we  
8 already have that does an important aspect for us in  
9 raising awareness to prevent bullying.

10           And still, as I've looked at the bill from a law  
11 enforcement perspective, I have included in my written  
12 notes, the testimony, certain recommendations -- three, to  
13 be exact.

14           On page 3 in the bill, the bill suggests that  
15 there should be immediate notification to the  
16 parents/guardian of both the victim and the bully, and  
17 certainly I would agree to the immediate notification  
18 procedure to the parents/guardian of victim. I would  
19 suggest that the notification to the parents or guardian of  
20 the bully be after consultation with law enforcement,  
21 because it is law enforcement's job to ensure a victim's  
22 safety. Furthermore, they will be doing some initial  
23 investigation, and as I said before, witnesses are  
24 reluctant to give reliable information. They're reluctant  
25 to come forward with that information, to give written

1 statements, oral or written, or even to testify. So I  
2 would ask that consultation be with law enforcement before  
3 notification to the parent or guardian of the bully.

4           The second recommendation concern is also on  
5 page 3, and it talks in terms of applying the bullying  
6 policy for electronic communications on or off school  
7 property, and what it does is say that that policy would be  
8 applicable when there is "substantial disruption or  
9 interference with the orderly operation of the school,"  
10 giving the nexus to the school environment. I might note  
11 that in our current law right now, it does indicate that  
12 schools are not prohibited from defining "bullying" on or  
13 off school property as long as it substantially disrupts or  
14 interferes with a student's education, creates a  
15 threatening environment, or substantially disrupts or  
16 interferes with the orderly operation of the school. That  
17 is the current law right now. It's giving a trifold  
18 threshold triggering, a nexus for the school to reach its  
19 arm out and be able to have those electronic communications  
20 that are bullying conduct come within their realm.

21           What I'm suggesting with our current law and when  
22 it's referring to "electronic communications," rather than  
23 just have the threshold of "disruption or interference with  
24 the orderly operation of the school," to add the threshold  
25 of "disruption or interference with a student's education."

1 It is a nexus to the school environment, and it is an  
2 easier triggering threshold to demonstrate, because  
3 bullying does disrupt a student's education. Sometimes it  
4 may not disrupt the orderly operation of a school, but it  
5 certainly disrupts a student's education.

6 Finally, the third recommendation that I've noted  
7 is on page 6 of 9 under Section 1(d), and it also concerns  
8 defining "bullying" in a way outside of school property.  
9 It actually refers to a couple of subsections that the bill  
10 seems to have deleted, so it creates a little confusion.  
11 But because it concerns the very same topic of encompassing  
12 acts outside of school property, again I would ask that the  
13 "disruption or interference with a student's education" be  
14 added to that provision, just insert the same definition as  
15 previous so that there are two thresholds, either  
16 "disrupting the orderly operation of a school" or  
17 "interfering with a student's education."

18 I think with those recommendations and the bill  
19 as a whole, this really is flexible for every county. It  
20 provides a lot of specifics and a good roadmap for school  
21 entities to follow. It prevents crimes; it protects  
22 victims; it holds people accountable, and I think in the  
23 end what you'll have is a good law, a policy that fortifies  
24 the safety of the children for our Commonwealth.

25 Thank you.

1 MAJORITY CHAIRMAN CLYMER: The Chair thanks you  
2 for your testimony and now recognizes Dr. Gabalawi---

3 DR. EL-GABALAWI: That's good.

4 MAJORITY CHAIRMAN CLYMER: --for his testimony.

5 DR. EL-GABALAWI: I'm Dr. El-Gabalawi.

6 Thank you, Chairman and Members of the committee.

7 I'm the President of the Regional Council of the  
8 American Academy of Child and Adolescent Psychiatry for  
9 Eastern Pennsylvania and Southern New Jersey, and on behalf  
10 of the council, I'm endorsing HB 2464.

11 I also, just like any other child psychiatrist,  
12 see patients and teenagers and children in hospitals and  
13 inpatient units and outpatient clinics, and we deal with  
14 the clinical aspect of bullying and the psychological and  
15 psychiatric consequences of the bullying behavior. We see  
16 victims. We see perpetrators and their families,  
17 bystanders. We see the whole process of bullying as it  
18 unfolds in the schools.

19 I'm going to read the testimony, but I'll be glad  
20 to answer any questions regarding the clinical aspect that  
21 we see of the bullying behavior.

22 The mission of the American Academy of Child and  
23 Adolescent Psychiatry is to promote the healthy development  
24 of children, adolescents, and families. Bullying is a  
25 major health concern for children and, as such, is a focus

1 of attention for the Regional Council of Child and  
2 Adolescent Psychiatry.

3 A student is being bullied or victimized when he  
4 or she is exposed repeatedly and over time to negative  
5 actions on the part of one or more other students. Now,  
6 that's just a clinical definition, but as you heard from  
7 previous testimonies, really the definition of "bullying"  
8 is not well established yet. It is almost a spectrum where  
9 you see different kinds of bullying with different degrees  
10 of severity.

11 Bullying can take many forms, including verbal  
12 communication, physical intimidation or aggression,  
13 texting, e-mailing, Facebook postings, and YouTube clips.  
14 These modern forms of communication have enlarged the scope  
15 of the problem so that children and teens cannot escape  
16 bullying, even in their own homes.

17 In the United States, the prevalence of bullying  
18 is about 14 percent in elementary schools, 11 percent in  
19 middle schools, and 10 percent in high schools. However,  
20 many victims refrain from reporting bullying for the fear  
21 of threats and retaliation, and some recent surveys  
22 indicated that over 40 percent of Pennsylvania students  
23 have been bullied.

24 Now, the literature shows a wide range of  
25 prevalence of bullying in the schools, and I heard the



1 question earlier and first this morning. There is no real  
2 consistency in those surveys yet, because again, the  
3 definition is hard, really, to agree on totally, and  
4 there's a reluctance of many victims of actually reporting  
5 it. So that area needs more work even to have consistent  
6 results of the surveys and of the prevalence.

7           Bullying has major implications for children and  
8 their families who are victims or perpetrators of bullying.  
9 Bullies are likely to be referred to an outside agency by a  
10 State agency or court and will include children diagnosed  
11 with attention deficit/hyperactivity disorder, oppositional  
12 defiant disorder, conduct disorder, bipolar disorder, and  
13 impulse control disorder.

14           Victims of bullying, on the other hand, are  
15 typically referred by child protective agencies and child  
16 welfare services and parents. Victims often include  
17 children diagnosed with anxiety, mood disorder, or  
18 posttraumatic stress disorder who suffer from serious  
19 mental health problems, low self-esteem, and even suicidal  
20 thoughts and behaviors.

21           Suicide is the third leading cause of mortality  
22 for adolescents in the United States. That's following  
23 accidents and homicides. Epidemiologic studies suggested  
24 that in 1 year almost, 19 percent of high school students  
25 had serious suicidal ideation, 15 percent made a specific

1 plan to attempt suicide, 8.8 percent reported suicidal  
2 attempts, and 2.6 percent made a serious suicidal attempt  
3 that required medical attention.

4           For children at greater risk for suicide,  
5 perceived peer rejection, being bullied, and being a  
6 perpetrator of bullying were associated, directly and  
7 indirectly, with major depression, substance use, and  
8 antisocial behavior with severe suicidal ideation.

9           The strongest associations between all types  
10 of bullying and suicidal risks were found in  
11 victim-perpetrators. There are victims who become  
12 perpetrators -- and that phenomenon exists widely, actually  
13 -- both in the general population of children and  
14 adolescents and also in populations with special needs such  
15 as behavioral problems or LGB sexual orientation.

16           Bullying behavior and the ensuing feelings of  
17 humiliation and alienation among vulnerable students have  
18 been implicated in many tragic school-shooting incidents.  
19 News reports have highlighted cases of suicide following a  
20 particularly pervasive form of bullying -- cyberbullying.  
21 Now, studies conducted among Internet-using adolescents  
22 indicated that within a year, 72 percent of respondents  
23 reported at least one online incident of bullying,  
24 85 percent of whom also experienced bullying in the  
25 school.

1           Repeated school-based bullying experiences  
2 increased the likelihood of repeated cyberbullying, and  
3 about two-thirds of cyberbullying victims knew their  
4 perpetrators. However, 90 percent -- 90 percent --  
5 reported they do not tell an adult about cyberbullying, and  
6 that's just an inherent dilemma in the bullying phenomenon,  
7 where kids really are reluctant for a period of time to  
8 divulge any information about bullying.

9           Youth who are the victims of bullying can become  
10 bullies themselves, further propagating the problem of  
11 victimization in school. Youth who develop mental health  
12 problems from bullying place even more stress on already  
13 overburdened mental health systems.

14           Children who are bullied also place more stress  
15 on their families who are already struggling to raise  
16 healthy children in a culture that must deal with the  
17 modern problems of drugs, violence, economic stress, among  
18 other challenges. Additionally, children who are bullied  
19 are often resistant to attend school and may suffer from  
20 academic failure. Youth who refuse to attend school are  
21 considered truant and increase demands on truancy court  
22 caseloads as well.

23           HB 2464 would address harassment, intimidation,  
24 bullying, and cyberbullying in public educational settings,  
25 and the Regional Council of the Child Academy supports the

1 Anti-Bullying Coalition's efforts to eradicate bullying and  
2 to provide a safe learning environment for children.

3 Therefore, we support HB 2464.

4 Thank you.

5 MAJORITY CHAIRMAN CLYMER: The Chair thanks the  
6 gentleman for his testimony and recognizes Representative  
7 Quigley for a question.

8 REPRESENTATIVE QUIGLEY: Thank you, Mr. Chairman.

9 Sharon, I had a question for you with regard to  
10 -- and I appreciate the feedback here. I know I spoke with  
11 District Attorney Ferman a couple weeks ago and she  
12 indicated that you would be coming up, and I appreciate the  
13 feedback and the input.

14 On the one suggestion you had for the  
15 notification of law enforcement first, before the bully's  
16 parents would be notified, is that for like all instances,  
17 or would there be some -- like, for example, if it was  
18 just, I can't even think of an example, but, you know, some  
19 type of verbal bullying or something like that where, and I  
20 guess I mean "in all instances," is there any  
21 differentiation of where it wouldn't rise to the level  
22 where law enforcement would need to be involved, or are you  
23 saying that we should go to law enforcement first and let  
24 them say whether or not it arises to that occasion?

25 MS. GIAMPORCARO: Actually, that's a very good

1 point that you're making there, and not all bullying gets  
2 to the law enforcement level, and some of it may be at a  
3 level where law enforcement decides not to even charge.

4 Certainly when bullying is at the chargeable  
5 level or it gets to the level where the school believes  
6 that it's prudent to notify law enforcement because it  
7 could escalate, the conduct could escalate, then the  
8 recommendation in the bill is recommending that there be  
9 consultation with law enforcement before notifying the  
10 parents of the bully.

11 And along the lines of what you're suggesting  
12 here, when it's not at the level of law enforcement, there  
13 should be some mechanism in place, in my own opinion, at  
14 the school level in terms of assessing the type of conduct  
15 and the nature of it before immediately notifying the  
16 parents of the bully as far as having a safety strategy and  
17 for the victim's benefit.

18 REPRESENTATIVE QUIGLEY: Okay.

19 MS. GIAMPORCARO: At the very least -- and making  
20 sure that certain initial investigatory moves are made on  
21 the school's part. If they want to get statements from  
22 students and create narrative reports or only speak to  
23 certain witnesses, that would be prudent before going to  
24 the parents of the bully.

25 REPRESENTATIVE QUIGLEY: Okay.

1           And right now, so do you think there would need  
2 to be, you know, additional training or guidelines perhaps  
3 for school districts to do just that, or can you give  
4 instances where that's happening like right now?

5           MS. GIAMPORCARO: I think what might help is  
6 language within the bill itself that when a bullying  
7 conduct does not rise to the level of notification to the  
8 law enforcement authorities, that school's designated  
9 individuals should ensure the victim's safety first and  
10 complete an initial investigation on the bullying report  
11 prior to notifying the parents of the bully.

12           REPRESENTATIVE QUIGLEY: Okay. All right.  
13 Thanks for that clarification.

14           MAJORITY CHAIRMAN CLYMER: The Chair thanks the  
15 gentleman and recognizes Representative Wheatley for a  
16 question.

17           REPRESENTATIVE WHEATLEY: Thank you,  
18 Mr. Chairman.

19           I want to say this question is probably for both  
20 Ms. Baer and the District Attorney. Before we heard from  
21 the School Boards Association that the current law,  
22 basically the definition of "bullying" is defined, and that  
23 at the Federal level there is a current definition for  
24 "harassment" and other legal terminology that in this bill  
25 we're not well defining it, and so it leaves the districts

1 or it could leave the districts up for possible further  
2 litigation. And in your testimony, I think reading through  
3 some and trying to listen to what all you were saying, what  
4 you are saying is our current law doesn't necessarily cover  
5 -- and by the way, his testimony said that our current law  
6 pretty much gives the policy, I want to get his statement  
7 right, but basically the policies are in place now and set  
8 the framework for good enforcement of this bullying issue.  
9 More can be done, but we certainly have the policy in  
10 place. We don't necessarily need to create something more  
11 at the State level.

12           And then what I heard from you all is currently,  
13 it might have been a good step what we did in Act 61, but  
14 it's not enough in that we need to go further and that you  
15 believe that this bill actually -- and I think it was your  
16 testimony, District Attorney, that talked about the  
17 defining, that it gives better definitions or will define  
18 these other things and allow for law enforcement and others  
19 to better enforce the law.

20           So can you help me understand where I think I'm  
21 hearing conflicting -- maybe I'm just not clear, but I  
22 think I'm hearing conflicting testimony, or if we have  
23 currently a law that's in place and that if we change it  
24 with this current bill, that we will open them up for more  
25 liabilities, the districts. What I'm hearing you saying is

1 no, our current law is not covering everything, and if we  
2 were to pass 2464, it would do more to help not only the  
3 victims and their families but also to help in the  
4 persecution of anyone that might be engaging in this  
5 bullying behavior.

6 MS. BARON-BAER: I can begin.

7 The definition in the act where we describe  
8 "intimidation, harassment, bullying and cyberbullying," the  
9 belief is that on the one hand, people sometimes use the  
10 word "bullying," sometimes they use the word "harassment,"  
11 sometimes they may use the word "intimidation," but when  
12 they meet the definition for any of those four words that  
13 are very explicitly described in the bill, they will be  
14 subject to the contents of the bill.

15 We don't want it such that someone says, well, I  
16 wasn't bullying; it was harassment. The idea is, if it's  
17 any of these things and it fills all of the definitions  
18 required, all of the statements in the act, it should be  
19 covered.

20 As far as what I think is the second part of your  
21 question as to whether or not the policy in place is  
22 sufficient, if we thought it was sufficient, obviously we  
23 would not have come forward with a bill that looks much  
24 more detailed, much more in-depth, and we believe much more  
25 effective than what's in place.



1           If we do not pass the current bill or something  
2 very similar, there will be no training mandated. There  
3 will be no insistence on having groups within the community  
4 come together to try to both determine policy and to  
5 implement programs, provide educational opportunities, and  
6 the like.

7           It was a very, we'll call it a very basic initial  
8 bullying law. While 2008 is only 4 years ago, it is almost  
9 a lifetime ago when it comes to this subject of bullying  
10 and cyberbullying. So much has been learned in the last  
11 4 to 5 years that we need to stay up with where society and  
12 what we have learned should take us.

13           MS. GIAMPORCARO: In my testimony I indicated  
14 that I thought it was a great idea that the bill  
15 specifically defines the term "electronic communication,"  
16 and that's because I think the laws need to be innovative  
17 and they should be keeping pace with what's going on in our  
18 schools and in our courtrooms and in our world today.

19           In terms of those particular words "harassment  
20 and intimidation" and the fact that they're defined in  
21 Federal law -- I mean, they're also in the Pennsylvania  
22 Crimes Code, "harassment" under Section 2709 and  
23 "intimidation" in the 5700s, I believe -- I understand and  
24 agree with the intent that Nancy was just speaking about  
25 that the school needs to get the word out to students that

1 these are things that would encompass a bullying policy.

2 And I would suggest that there wouldn't be the  
3 conflict that the prior speaker was referring to if a bill  
4 was particular in terms of the wording of that policy such  
5 that it might say, the terms "harassment," "intimidation,"  
6 and "bullying" are defined only insofar as this school  
7 policy is concerned; in other words, isolating those terms  
8 to be owned by the school policy, because those terms have  
9 separate definitions under the Pennsylvania criminal code  
10 as they have separate definitions under the Federal law.

11 REPRESENTATIVE WHEATLEY: And -- I'm sorry. Yes?

12 MS. BARON-BAER: If I can just add one thing.

13 We also need to be careful, because the Federal  
14 laws, in some cases, some of the Federal protections are  
15 only for certain classes or they were put together at  
16 certain times to address certain particular situations, and  
17 this would cover all students in the Commonwealth.

18 REPRESENTATIVE WHEATLEY: And to your point  
19 around the electronic communications, cyberbullying,  
20 because one of the things I think I picked up in your  
21 testimony was it really was expanding now the role that the  
22 district would have as it relates to oversight around this  
23 nexus you refer to when the communication happens. I think  
24 you used the example of a student might be being  
25 intimidated on a Facebook page but comes to school and

1 can't learn because of that situation that is transpiring  
2 on Facebook, that now the districts would have to have a  
3 policy of somehow rectifying that situation. And we heard  
4 from the prior speaker talking about case law that  
5 basically said to districts, you're not necessarily  
6 responsible for those things that are done outside of the  
7 campus and not on systems that you totally control.

8           So help me -- and I guess this gets to the other  
9 point of the liability question -- help me understand, are  
10 we then forcing districts to do things that they really  
11 don't have control over, and will that cost them in the  
12 long term? I'm just trying to figure out from the case law  
13 that was cited earlier, from the statements that were made  
14 earlier, from this new terminology that we obviously are  
15 trying to include into this language, how we make sure that  
16 they are on legal firm ground and able to control those  
17 things even when that is not happening on their system or  
18 under their supervision.

19           MS. GIAMPORCARO: Well, what I tried to  
20 communicate earlier in my testimony is the current law as  
21 it stands already has those triggers in effect.

22           REPRESENTATIVE WHEATLEY: Okay.

23           MS. GIAMPORCARO: Although there might be some  
24 case precedent discussing those triggers, according to the  
25 current law, it says that a school shall not be prohibited

1 from defining "bullying" on or off of school property if  
2 it---

3 REPRESENTATIVE WHEATLEY: Okay.

4 MS. GIAMPORCARO: ---does A, B, and C, or  
5 whatever, I could read them out of the law---

6 REPRESENTATIVE WHEATLEY: Okay.

7 MS. GIAMPORCARO: ---and it either disrupts the  
8 student's education, creates a threatening environment, or  
9 interferes with the orderly operation of the school, and  
10 that is our current law. So that is giving the school the  
11 authority, statutorily---

12 REPRESENTATIVE WHEATLEY: Okay.

13 MS. GIAMPORCARO: ---to overcome, you know, to  
14 reach their hand out for those types of electronic  
15 communications.

16 REPRESENTATIVE WHEATLEY: Okay.

17 MS. GIAMPORCARO: And what I was indicating with  
18 respect to this particular bill is, because it didn't  
19 include all those three triggering factors that our current  
20 law has, in essence, it's making it harder. It's lessening  
21 -- it's making the threshold higher for us, and what it  
22 should do is include what the current law already has.

23 REPRESENTATIVE WHEATLEY: Sure.

24 MS. GIAMPORCARO: At least two of them, because  
25 that's already in effect and has not been challenged.

1           REPRESENTATIVE WHEATLEY: Sure.

2           MS. BARON-BAER: I think in addition we need to  
3 be mindful of the current cases. They have been very few  
4 and far between, both here in Pennsylvania and nationally,  
5 and the cases that were discussed previously for the most  
6 part concerned very unfortunate, very horrendous conduct  
7 toward school officials. The cases did not involve  
8 student-on-student conduct where the protections would be  
9 different than what was discussed, and I think they all  
10 concerned off-hours kind of activity, and there can be  
11 cyberbullying that occurs also in school. So we don't want  
12 to throw the baby out with the bathwater, so we need to  
13 look at these court decisions in a precise and limited kind  
14 of fashion.

15           REPRESENTATIVE WHEATLEY: Thank you.

16           And I know the Chairman is about to cut me off,  
17 so I just wanted to ask if you could point me in the  
18 direction, you talked about 49 other States plus the  
19 District of Columbia have statutes, already comprehensive  
20 statutes, I'm assuming with the "electronic communication"  
21 components in them. So if you could just point me in that  
22 direction.

23           MS. BARON-BAER: I will gladly, after the  
24 hearing. I can provide you with a paper that shows what  
25 each State, how far they have come in their bullying

1 efforts. You know, it's a wide variety across the country.

2 So we have a bullying law. It's not  
3 comprehensive. Some of the States have much more  
4 comprehensive, some of the States have a little bit more  
5 comprehensive, and some are where we are.

6 REPRESENTATIVE WHEATLEY: Okay. Thank you.

7 MAJORITY CHAIRMAN CLYMER: The Chair thanks the  
8 gentleman and recognizes Representative Longietti for a  
9 question.

10 REPRESENTATIVE LONGIETTI: Thank you,  
11 Mr. Chairman.

12 I just want to follow up on Representative  
13 Wheatley's last point, because I'm concerned, and maybe my  
14 concern is misplaced. But the language "substantial  
15 inference" with either a student's education or the orderly  
16 operation of the school that's being recommended, and I  
17 understand and maybe it would serve me well to read what  
18 currently is law, but I'm concerned about that statement,  
19 because as I sat here in this hearing and I listened to the  
20 doctor and I listened to the testimony, I can't think of  
21 too many instances, if any, where conduct would not  
22 substantially interfere with a student's education.

23 So, you know, if somebody is electronically off  
24 campus making statements on media saying "Mark is dumb.  
25 Mark is a dumb person," on and on, that's probably going to

1 affect me in my education. But are the courts going to go  
2 there?

3 I'm just worried, being familiar with the  
4 *Layshock* case, and I understand it's school officials and  
5 not students, but as that case unfolded, one would have  
6 thought that the courts, even in that case, would have said  
7 that was a substantial disruption with the school  
8 operation. Because here is the principal being  
9 significantly ridiculed, and they've got to go to school  
10 and they've got to administer the rules of the school  
11 district and not be undermined, and yet the courts have  
12 said no, no, this is free speech; free speech overrides.  
13 So even when we put it in law, we know as lawyers that the  
14 Constitution is higher than whatever we pass here and tells  
15 us that we cannot prohibit free speech.

16 And I'm just concerned, I believe in the intent  
17 of that language, I believe in my heart that it makes  
18 sense, but I wonder whether or not the courts are going to  
19 say that's a sufficient nexus. Have they said that in case  
20 law? Have they used the language "substantial interference  
21 with a student's education"? I know they've used the  
22 language "orderly operation of the school," and they've  
23 interpreted that in much nicer -- granted -- times. But do  
24 we know, have they used that language?

25 MS. GIAMPORCARO: I'm not an education attorney

1 so I would not know that case law, as familiar as I am with  
2 the criminal case law. But in terms of your question as  
3 far as you're hard-pressed to find an instance where a  
4 student's education is not substantially interfered with, I  
5 think the flip side of that coin is, it's quite difficult  
6 to find an incident where the orderly operation of the  
7 school is disrupted, and perhaps that calls upon  
8 Legislatures to come upon some wording that in some way  
9 compromises and meets in the middle between those two  
10 bases.

11 REPRESENTATIVE LONGIETTI: I agree with that  
12 assessment. I guess the problem that I have is that the  
13 Federal courts haven't given us that standard, that they've  
14 said "orderly operation of the school," maybe much to your  
15 chagrin and my chagrin. That's where they've left us, and  
16 I'm just worried about putting schools in a spot where on  
17 the one hand, if they don't do X, they're violating State  
18 law that we've now passed; on the other hand, if they do do  
19 X, the Federal courts say, you violated the Constitution  
20 and free speech rights.

21 MS. GIAMPORCARO: Well, free speech would not --  
22 when you commit a crime, obviously your First Amendment  
23 rights are not going to be a forefront if in fact the words  
24 coming out of a particular student's mouth amount to  
25 something that is a chargeable offense. So at the very



1 least, those cases of bullying, I would think the schools  
2 could certainly---

3 REPRESENTATIVE LONGIETTI: Sure, and I agree with  
4 you on that; it's just when it doesn't rise to the level of  
5 the crime. Clearly in the *Layshock* case no crimes were  
6 charged; it didn't rise to that level, and yet the courts  
7 did say free speech.

8 Thank you.

9 MAJORITY CHAIRMAN CLYMER: The Chair thanks the  
10 gentleman and recognizes Representative Tallman.

11 REPRESENTATIVE TALLMAN: Thank you, Mr. Chairman.

12 Representative Wheatley had already asked my  
13 question, an obvious contradiction with our District  
14 Attorney and the school board attorney. So I'm going to  
15 ask the doctor a question, and you may not have this, but  
16 is there any differentiation on the amount of bullying by  
17 gender?

18 DR. EL-GABALAWI: Well---

19 REPRESENTATIVE TALLMAN: I mean, I know I was,  
20 most likely by today's definition, bullied, and we handled  
21 it different ways back then. But, I mean, I have an  
22 assumption, but can you direct me which way you think it  
23 goes.

24 DR. EL-GABALAWI: Yeah. Actually, there is a  
25 difference between the bullying and gender, but it's not

1 necessarily the quantity of it, sometimes it's the quality  
2 or characteristics of bullying.

3           So females, female bullying usually targets  
4 social network defamation of the other girls, ostracizing  
5 other girls and so on. And boys, male bullying tends to be  
6 intimidation and even physical aggression more. But the  
7 outcome can be psychologically or psychiatrically still the  
8 same, where they both just can be devastated and can lead  
9 still to psychiatric problems, suicidal tendencies, and so  
10 on.

11           So it's just a different kind of bullying,  
12 although we see sometimes they cross to each other. We see  
13 also -- I mean, that's not necessarily a rule, just a  
14 tendency. But we see aggressive girls and vice versa with  
15 boys. But that's really the difference. It exists really  
16 in both.

17           Interestingly also, it exists actually more in  
18 younger children, which is very unusual, like elementary  
19 schools. But when it goes to middle school and high  
20 school, it becomes more ominous and devastating and takes  
21 on aggression and so on. So there's not really  
22 quantitative differences in gender.

23           REPRESENTATIVE TALLMAN: Thank you, Mr. Chairman.

24           MAJORITY CHAIRMAN CLYMER: The Chair thanks the  
25 gentleman.

1           The Chair thanks our testifiers today. It has  
2 been very informative, very helpful, as we have discussed  
3 the many issues and many definitions to date.

4           We're going to continue now with our next  
5 testifier, and that is Michael J. Crossey, who is President  
6 of the Pennsylvania State Education Association, and we  
7 welcome Mr. Crossey to give testimony.

8           We have your written testimony, sir, and so when  
9 you get yourself seated, you may begin your testimony.

10           MR. CROSSEY: Thank you.

11           Good afternoon, Chairman Clymer, Chairman  
12 Roebuck, and Members of the committee.

13           My name is Mike Crossey, a teacher in the  
14 Keystone Oaks School District with more than 34 years of  
15 classroom experience, and I am currently on leave from my  
16 district while serving as the President of the Pennsylvania  
17 State Education Association, PSEA.

18           On behalf of our 187,000 members, I thank you for  
19 the opportunity to talk with you today about the critically  
20 important issue of preventing bullying and, in particular,  
21 the provisions of HB 2464.

22           PSEA appreciates the committee's efforts to  
23 review current law and to determine whether it provides the  
24 necessary protections for students to prevent bullying.  
25 This hearing certainly is timely, given that October is

1 National Bullying Prevention Month. But bullying  
2 prevention must occur each and every day. Any type of  
3 bullying is unacceptable, and any incident must be taken  
4 seriously by students, educators, staff, administrators,  
5 parents, and members of the community. Ideally, we must  
6 all work together, not only to intervene when incidences of  
7 bullying occur but to create safe and caring school  
8 environments that prevent such incidences in the first  
9 place.

10           The nature of bullying has changed over time, and  
11 its prevalence is increasing. Bullying can involve direct  
12 contact, physical contact such as hitting, but it can also  
13 include verbal aggression in the form of threats, name  
14 calling, or spreading rumors intended to cause emotional  
15 harm. And in recent years, students faced cyberbullying,  
16 which elevates bullying to a new level of intensity. Using  
17 interactive technologies such as text messages or social  
18 media, cyberbullying can occur around the clock, and the  
19 text or images can be widely disseminated well beyond  
20 school grounds.

21           Students who have been bullied report feeling  
22 depressed, anxious, and isolated. Many will experience  
23 academic, interpersonal, physical, and mental health  
24 problems such as a consequence of their being victims of  
25 bullying. And in some cases, as the nation and

1 Pennsylvania has recently seen, some students are so  
2 tormented that they have taken their own lives or the lives  
3 of their tormentors. This clearly demonstrates a need for  
4 quality, consistent bullying-prevention efforts in our  
5 schools across the country.

6 PSEA has a long history of supporting efforts to  
7 reduce bullying. We do this through education and through  
8 advocacy. PSEA shares resources with our members and with  
9 the public about bullying to increase the awareness and its  
10 detrimental impacts on students and on their ability to  
11 learn and what we can all do to help reduce and prevent  
12 incidences of bullying.

13 For example, we recently shared a bullying  
14 prevention toolkit with thousands of interested parents and  
15 community members who have joined with PSEA as Partners for  
16 Public Education in recognition of October as Bullying  
17 Prevention Month.

18 In addition to our communication efforts, PSEA  
19 offers trainings to our members. The trainings are often  
20 in conjunction with partners such as the Pennsylvania  
21 Parent Education Network and PACER, the Parent Advocacy  
22 Coalition for Educational Rights, focused on best practices  
23 for preventing and reducing bullying in our schools.

24 But we recognize that awareness and education  
25 alone is not enough. PSEA believes that it is important

1 that our State policies assert positions that will help  
2 reduce the incidences of bullying in Pennsylvania schools.  
3 Because of that belief, we were one of the primary  
4 stakeholders in 2008 seeking improvements to Pennsylvania's  
5 bullying statute, including establishment of a more  
6 comprehensive definition of bullying that includes  
7 "electronic communications"; requiring school districts to  
8 enact policies providing for bullying prevention,  
9 intervention, and awareness of the problem; and three,  
10 requiring districts to delineate discipline for bullying.  
11 Yet while these changes have been helpful in increasing  
12 awareness and most likely reducing incidences of bullying  
13 in Pennsylvania, we can and should do more to address this  
14 critical issue.

15           As discussed before, bullying is disruptive to  
16 learning and harmful to the development of our students  
17 into confident, respectful adults. These behaviors can be  
18 addressed and modified by helping our school communities  
19 implement commonsense policies and strategies proven to be  
20 effective.

21           PSEA's "Solutions that Work" proposal, which I  
22 believe you all have a copy of, released in June 2011,  
23 includes a number of these strategies, several of which are  
24 also incorporated in HB 2464 sponsored by Representative  
25 Quigley. While PSEA does not have a formal position on the

1 bill, we support many of its provisions, particularly those  
2 that mesh with our research-based approaches contained in  
3 "Solutions that Work." These include:

- 4 • Additional training for school employees. In  
5 order to better identify, respond to, report, and  
6 prevent bullying, school staff training is  
7 essential. According to a national survey of  
8 thousands of school employees conducted by the  
9 NEA, 98 percent of educators believe it is their  
10 job to intervene when they see bullying happening  
11 in their school, but many do not feel equipped to  
12 do so.

13  
14 Any training that occurs should include all  
15 school personnel, including school bus drivers  
16 and food-service workers. Locations in schools  
17 like the cafeteria are often not monitored by  
18 teachers but by food-service workers,  
19 paraprofessionals, volunteers, or parents. These  
20 individuals also need to learn the tools for  
21 recognizing and intervening in student-to-student  
22 bullying situations, not just educators.

23  
24 According to the NEA survey referenced above,  
25 more than two-thirds of food-service workers

1 reported that they needed additional training on  
2 how to address different forms of bullying --  
3 physical, verbal, and relational -- and in  
4 situations involving children being bullied  
5 because of sexual orientation, race, gender, and  
6 religion.

7  
8 As the committee considers HB 2464, you may want  
9 to include parameters for training such as  
10 requiring school districts to use high-quality  
11 training models such as national models like the  
12 trainings offered by NEA, the Anti-Defamation  
13 League, PACER, and others. This way, schools are  
14 not duplicating efforts and will help to ensure  
15 that the individuals receiving the training are  
16 being provided the tools necessary to implement a  
17 successful bullying prevention program in their  
18 school community.

19  
20 • Anonymous tips regarding bullying. HB 2464  
21 and PSEA's "Solutions that Work" proposal call  
22 for school districts to establish a procedure to  
23 allow an anonymous tip about bullying. This can  
24 be accomplished in a number of ways such as a  
25 hotline or a suggestion box. Some schools have



1 even created a "cyberbullying" box as part of the  
2 school Website for reporting incidences of  
3 bullying, making it easier for parents as well as  
4 children to make a report.

5  
6 PSEA also agrees with the bill that no formal  
7 disciplinary action should be taken solely on the  
8 basis of an anonymous report. We would suggest  
9 that students and parents be encouraged to use  
10 the anonymous "hotline" or "suggestion box," not  
11 only to report possible incidences of bullying  
12 but to provide ideas and strategies that could be  
13 used to create a more positive school climate.

14  
15 • PSEA's "Solutions that Work" calls for the  
16 creation of a school safety committee, and  
17 HB 2464 calls for prevention task forces. It  
18 doesn't really matter what the groups are  
19 ultimately titled, but the concept of involving a  
20 diverse group of the school community -- parents,  
21 teachers, support professionals, administrators,  
22 law enforcement, volunteers, and students -- in  
23 an ongoing effort to identify ways to improve the  
24 school climate is an important one to establish.  
25 We would again, as I just mentioned, recommend

1           that the bill be updated to add students as  
2           members of that task force, given how important  
3           it is for peers to identify, report, and help  
4           prevent bullying.

5  
6           HB 2464 references "school staff" as part of any  
7           task force created, and we wholeheartedly support  
8           that inclusion. According to NEA's national  
9           survey on bullying, school bus drivers,  
10          food-service workers, and other education support  
11          professionals often see incidences of bullying or  
12          have students report incidences to them, but they  
13          do not feel adequately trained, if at all, to  
14          appropriately respond to prevent bullying.

15  
16          A number of them also report that they are not  
17          invited to participate in any formal bullying  
18          prevention efforts in their schools, whether it  
19          be a task force, a committee, or other prevention  
20          program. It is important that this staff, this  
21          level of staff that live in the community and  
22          have daily and direct contact with students, be  
23          included in all bullying prevention efforts.

24  
25          As you consider this legislation, the committee

1           may also want to include specific suggestions for  
2           the roles and responsibilities for the task  
3           forces. These could include, but not be limited  
4           to, conducting an annual initial and future  
5           tracking school climate survey focused on  
6           gathering data to demonstrate which strategies  
7           are working for a positive school climate and  
8           which may need to be revised or improved; and  
9           two, promptly reviewing suggestions for improving  
10          school climate as provided through the anonymous  
11          "hotline" or "suggestion box" and developing  
12          plans for implementation as appropriate.

13  
14          • HB 2464 requires that school districts  
15          establish an educational program for students and  
16          parents in preventing, identifying, responding  
17          to, and reporting bullying. PSEA fully supports  
18          such an initiative. In fact, the NEA has  
19          developed an excellent program that seeks to  
20          engage adults, including parents, more directly,  
21          since research tells us that one caring adult can  
22          make all the difference in a bullied student's  
23          life.

24  
25          The "Bully-Free: It Starts With Me" campaign

1 identifies caring adults in our schools and  
2 communities who are willing to stand up and  
3 pledge to help bullied students. These caring  
4 adults agree to listen carefully to the bullied  
5 student who comes to them. They also agree to  
6 take action to stop the bullying. NEA, in turn,  
7 provides these caring adults with the resources  
8 they need to provide solace and support to a  
9 bullied student and to take the appropriate  
10 actions needed to stop the bullying.

11  
12 In addition to the strategies already contained  
13 within HB 2464, PSEA would encourage the committee to  
14 consider one more: the implementation of a School-Wide  
15 Positive Behavior Supports program in our schools.  
16 Research continues to reinforce the idea that teaching  
17 behaviors, reinforcement of appropriate behaviors, and  
18 using data to inform actions actually reduces bullying and  
19 time away from academic instruction. PBS, Positive  
20 Behavior Supports, is a research-based, highly effective  
21 approach to creating, teaching, and reinforcing students'  
22 social, emotional, and academic learning skills that  
23 improves and sustains academic achievement and mental and  
24 emotional well-being for all students. PBS works with all  
25 school partners to serve as effective-change agents to

1 implement a uniform and positive approach in all school  
2 settings so that there is a predictable, consistent, and  
3 positive school culture for all students and staff. PBS  
4 schools focus on prevention and consistently and frequently  
5 reward students who do the right thing.

6 PSEA is a part of the statewide alliance for  
7 Pennsylvania Positive Behavior Supports and would be happy  
8 to provide the committee more in-depth information on the  
9 program if you are interested in further exploring its  
10 potential to increase student achievement and create safer  
11 schools.

12 PSEA supports the strategies contained within  
13 HB 2464 and additional ones such as Positive Behavior  
14 Supports, but we would be remiss if we did not note our  
15 serious concern about whether or not our school districts  
16 have the resources they need to move forward and implement  
17 these strategies on a consistent and ongoing basis. Our  
18 districts continue to suffer from the \$860 million loss in  
19 funding with over 20,000 positions eliminated these last  
20 2 years and the dramatic cuts that have resulted to student  
21 programs.

22 HB 2464 references the possible distribution of  
23 "safe schools funds" to school districts whose plans are  
24 approved by the State Board of Education and reporting is  
25 in compliance with the required procedures. We agree with

1 these qualifications to be eligible for funding targeted at  
2 bullying prevention, but we question whether these funds  
3 even exist. The question of resources and capacity in our  
4 schools is an important one to consider as the committee  
5 continues to deliberate and debate about the best methods  
6 for providing our students with positive and safe school  
7 climates.

8           In closing, PSEA supports the committee's efforts  
9 to protect the students of Pennsylvania from the  
10 detrimental impacts of bullying. As a Commonwealth, we  
11 know the problems that we have and the research to show us  
12 the solutions. Now it takes all of us working together to  
13 support safe and supportive learning environments for our  
14 students and prevent bullying. PSEA stands ready to work  
15 with you as a partner and to achieve this laudable goal.

16           And if I may, outside of my testimony, make one  
17 suggestion. As I read the definition in the bill, I  
18 noticed that the bill defines "harassment, intimidation,  
19 bullying and cyberbullying" as "...any written, verbal or  
20 physical act, or any electronic communication...to:  
21 ...physically harm a student or damages the student's  
22 property..., " and then it goes on to delineate a few more  
23 parts of the definition. I would suggest that that says  
24 "physically or emotionally harm a student or an educator,"  
25 because there are incidences in our schools where educators

1 are also bullied or intimidated in some situations.

2 Thank you, and I'll be glad to answer any  
3 questions you might have.

4 MAJORITY CHAIRMAN CLYMER: The Chair thanks the  
5 gentleman and recognizes Representative Longietti for a  
6 question.

7 REPRESENTATIVE LONGIETTI: Thank you,  
8 Mr. Chairman.

9 Actually, just a quick comment on behalf of  
10 Chairman Roebuck, who, due to a schedule conflict, was  
11 unable to be here this morning and afternoon. And he  
12 issued a statement that was distributed to all the Members  
13 of the committee and in that statement emphasized that he  
14 supports a comprehensive effort to establish safe and more  
15 positive school cultures and specifically stated that he  
16 supports the School-Wide Positive Behavior Supports that  
17 Mr. Crossey just testified about.

18 So I just wanted to draw that attention to  
19 Chairman Roebuck's statement. Thank you.

20 MAJORITY CHAIRMAN CLYMER: And I do appreciate  
21 the fact that in your comments you mentioned students,  
22 because I think students can play a very important role.  
23 Leadership is so important, no matter where it's at -- in a  
24 retail store, in government. If you have responsible  
25 leadership willing to step out and say, you know, it's

1 wrong to do this, to bully other students, and provide a  
2 role model, that's so important, especially among the  
3 peers. But you know what peer pressure can do. If one  
4 student begins to bully a student, then everyone thinks,  
5 well, to be cool, I've got to get onboard and bully that  
6 same student, and that's not the way we want to see these  
7 things go. That's the purpose of these hearings.

8 MR. CROSSEY: Thank you.

9 MAJORITY CHAIRMAN CLYMER: The Chair recognizes  
10 Representative Truitt for a question.

11 REPRESENTATIVE TRUITT: Thank you, Mr. Chairman.

12 Thank you, Mr. Crossey.

13 MR. CROSSEY: Yes, sir.

14 REPRESENTATIVE TRUITT: I'm delighted to hear  
15 that PSEA is onboard with the concept to do something in  
16 here, and I was thinking of one of the questions that came  
17 up earlier and I was curious as to where your organization  
18 would stand in terms of, I see it as an essential  
19 component, that there has to be somebody at each building  
20 that is the point person or the person who is responsible  
21 in making sure that this gets done versus when we had the  
22 conversation with the gentleman from the PSBA. They were  
23 talking more about a community approach.

24 I mean, do you have an opinion on that? Would  
25 your organization be okay with there being a designated



1 person at each facility that bears some additional  
2 responsibility for ensuring that a program is properly  
3 implemented and followed up upon?

4 MR. CROSSEY: Absolutely. There has got to be a  
5 schoolwide program. We believe in a schoolwide. If you  
6 have the same discipline plan all the way through the  
7 school, everybody understands it, everybody works with it.  
8 It goes along, and, you know, you actually hear students  
9 quoting the discipline plan.

10 And in our case, you know, not only should there  
11 be one point person and that person should include  
12 everybody else in their process and in the thing, but  
13 everything should go to one person. And while we're doing  
14 that, it needs to be one of those ones that discipline, in  
15 my mind as a teacher, isn't always necessarily punitive.  
16 It may come to the point where there's something punitive,  
17 but discipline should be instructive. Discipline, you  
18 know, if there's a minor incidence of bullying, it can be  
19 handled as a teachable moment, and we can take that student  
20 and teach them, no, this isn't the way you behave, and we  
21 can also teach our students how not to be victims. And so  
22 every time we have an incident, if it's a small incident,  
23 we take care of that inside the school, and there should be  
24 a standard approach as much as possible to doing that, even  
25 though we know that most incidences of bullying, you know,

1 can vary widely, especially now with cyberbullying.

2 But we have to teach our students what's right  
3 and what's wrong and involve the parents in that, because  
4 that's not necessarily our role. But in the school  
5 setting, we need to take an active role in making sure of  
6 including the parents and administrators and everybody in  
7 the school community.

8 REPRESENTATIVE TRUITT: I agree. I see a big  
9 component of your eventual result of anti-bullying  
10 legislation could be to have the effect of teaching kids to  
11 be more civil to other kids or other human beings and treat  
12 people with respect. So I see it as an educational kind of  
13 thing. So I'm really glad to hear some of the opinions  
14 that you expressed here.

15 MR. CROSSEY: Thank you. You're exactly right.  
16 I mean, our schools need to be more inclusive. They need  
17 to be more accepting. And, you know, tolerance is not just  
18 -- tolerance itself is not acceptable. You need to be  
19 accepting and inclusive.

20 REPRESENTATIVE TRUITT: Thank you.

21 MAJORITY CHAIRMAN CLYMER: The Chair thanks the  
22 gentleman.

23 And we thank Mr. Crossey for being with us today,  
24 for your very important testimony, and we may be back again  
25 as we continue these hearings.

1           MR. CROSSEY: I thank you. I look forward to the  
2 opportunity of working with you in the future.

3           MAJORITY CHAIRMAN CLYMER: Thank you.

4           Our final testifier today is no stranger to many  
5 of us: Dr. Joan Duvall-Flynn, Chair of the Pennsylvania  
6 State NAACP Education Committee. She had been working with  
7 us on issues in the past, and we are so glad to see her  
8 again this afternoon.

9           Dr. Duvall-Flynn, we enjoy your presence, and I  
10 know your testimony has also been spread, so you may begin  
11 whenever you want.

12          DR. DUVALL-FLYNN: Thank you.

13          I want to thank the committee for hearing from  
14 the NAACP on what might be one of the most important issues  
15 to children at school. And you have my testimony. I will  
16 just highlight some of the observations that I make.

17          I make my observations from inside the school  
18 culture where I spent 40 years. I make my observations in  
19 support of supportive school discipline after the fashion  
20 of teaching children how to be civil and live in proper  
21 relationship with each other.

22          I want us to reflect on the fact that this is an  
23 epidemic, that "epidemic" is a medical term, and it implies  
24 a contagious, spreading condition. And as that is  
25 substantiated by the doctor who mentioned that people who

1 bully have probably been bullied, that in itself supports  
2 the suggestion in the legislation that there be an  
3 opportunity for intervention, for referral to therapeutic  
4 services. I think that's the strongest notion in the bill.

5 I think it's the strongest notion in the bill  
6 because of the amount of trauma that children bring to  
7 school that acts itself out in bullying behaviors, in  
8 truancy, in drug use, in alcohol use and promiscuity and  
9 those things that are just destroying the lives of  
10 children. It is the role of the school to develop human  
11 potential, and school is the first-line advocate for so  
12 many of these children.

13 I want you to remember when you write this law in  
14 its final form that you are creating rules that pertain to  
15 children, and we don't want to criminalize them if we don't  
16 have to. So I want you to step back and look at it and  
17 just weigh it out in ways to understand what the doctor  
18 taught us today, that most bullying happens in elementary  
19 school. So let's keep light fingers. Children are very  
20 precious.

21 We are looking at, I'm on page 2 where I say "PA  
22 NAACP supports the notion that disciplinary consequences in  
23 local school codes provide prevention, intervention and  
24 education programs." And in the proposal it says that a  
25 school "may," but we think that language would be more

1 appropriate if it said a school "shall."

2           When I look at page 3 where we talk about we hold  
3 that to stop bullying behaviors, the abuser must be healed?  
4 We sincerely are convinced. But all the research we are  
5 now doing in traumatized children, in the hearings that  
6 Attorney General Holder held across this country with his  
7 defense of children task force, that 60 percent of our  
8 country's children have been traumatized and trauma behaves  
9 in the ways that the doctor described, a part of that is  
10 going to school and picking on someone else.

11           When we think about the trauma that goes on in  
12 elementary school -- and I'm talking off script, because  
13 I'm talking out of the hallways that I lived in all my  
14 life. When we talk about bullying in the middle school  
15 hallway, it is emotionally and psychologically devastating  
16 to the victim, but we now see that it's being perpetrated  
17 by children who have been emotionally and psychologically  
18 devastated themselves. So the intervention and the  
19 therapeutic model all suggested in this bill are probably  
20 the only way we'll ever get rid of bullying in the school  
21 system.

22           And think about all that you know about what has  
23 happened to children. We have statistics that we speak of  
24 but we don't reflect on. Consider the number of children  
25 who have been sexually abused, the statistics. They're

1 walking these halls. They are wounded and angry and  
2 looking for someone to hurt. Just consider all the  
3 physical abuse, the exposure to violence, the chaos in  
4 communities, the depravation of hunger and poverty, all of  
5 those burdens that those children carry into the  
6 schoolroom, and as you flesh out the final version of your  
7 bill, just remember that.

8           We look at the section -- I'm on page 4 -- that  
9 "PA NAACP recommends that language at Section 1303-1-A  
10 which mandates the makeup of the committee to create or  
11 revise school policy...." We look at a different lineup of  
12 participants, and I would just call that to your attention.  
13 We think that parent participation, school staff  
14 participation, and community representation must reflect  
15 the ethnic makeup of the students being educated by the  
16 district, and we suggest that to you because different  
17 cultures have different morals. And in my lifetime, so  
18 many times I've seen children reported and chastised for  
19 behaviors that in their culture are not assigned certain  
20 guilts, so that needs to be a part of the conversation in  
21 the district when districts are composing their codes.

22           We say "that school staff assigned to the  
23 committee must include counselors and school  
24 psychologists," because you're dealing with something that  
25 has psychological and emotional and cognitive implications.

1 We've looked at the way trauma impedes learning, and the  
2 way it impedes learning behaves in the classroom and ties  
3 what is necessary in order to learn. It impedes the  
4 capacity to recall, to process language, to access the  
5 executive functions. You can't organize yourself. You  
6 can't organize tasks. This is the work of learning, and  
7 here we are, with all these children in a medical  
8 condition, that will not allow them to do those things.

9           And then in a broader way, we look at the scores  
10 of students in Pennsylvania; we have all these wounded  
11 children trying to do things they can't do, and we're  
12 seeing it display itself in many ways. I'll just leave  
13 that for your thought.

14           We suggest that the community representatives  
15 that participate on the group to design policy include  
16 local mental health agencies.

17           And finally, we shift away from law enforcement.  
18 As you think of the executive branch and law enforcement,  
19 we shift this notion over to having that group include a  
20 family court judge or a juvenile court judge, because they  
21 come with a different perspective on what outcomes for  
22 children should be. And we find that is in line with the  
23 new direction that the Department of Justice and the  
24 Department of Education together, finally talking to each  
25 other, call a supportive school discipline initiative. And

1 that is research based, and I think if you think about that  
2 and look at the ramifications of that, that might be a very  
3 wise shift.

4           When I look at page 5 where we propose that  
5 "...Section 1303-1-A(v) would be greatly improved if it  
6 were adjusted in terms of developmental appropriateness,"  
7 there are ways kids learn, so we suggest it would be good  
8 to include that "The policy needs to be distributed in  
9 print to each student's household and in the first language  
10 of the parents." I don't know how many languages are  
11 spoken in Pennsylvania, and many of the parents who need to  
12 understand what the discipline code is need access to that  
13 in a language that they can interpret and even read the  
14 nuances of.

15           "There should be a process for documenting that  
16 every student's caregiver has received and read the  
17 policy," and in some schools, it is just a very compulsive  
18 way of saying, everybody takes it home on Tuesday, of  
19 course except the kids who are absent; everybody brings it  
20 back by Thursday; the teacher checks it in; someone calls  
21 the parents who didn't return it in a consistent way until  
22 they get that back and it is demonstrated that the parent  
23 has read that, because we're talking mostly about juveniles  
24 here. And the parents do need to have read it, because  
25 ultimately they're accountable for their child's behavior.



1           "The policy should be reviewed with students  
2 within the first five days of...school...." Bullying does  
3 not wait 90 days to start. The kids who come to school may  
4 have been doing it all summer, you know? They hit the  
5 hallway; they carry on their behaviors. And so that first  
6 5 days of school where kids are being acclimated to the  
7 school, rules and all of that -- what it looks like in the  
8 school, depending on how old the kids are; if they're in a  
9 group and an adult, whether it's their teacher or the  
10 administrator or counselors, talks to them about it and  
11 explains it to them in age-appropriate terms and asks if  
12 there are any questions, and it is training -- it needs to  
13 happen immediately.

14           "The policy should be reviewed with the school  
15 population specifically and systematically four times  
16 per...year." You know, public school runs on a set of four  
17 9-week periods. At the beginning of every 9 weeks, sit  
18 them down and tell them again. Why? Because kids should  
19 get stuff. It gets used to them. They move away from it  
20 in its immediacy, and so you bring them back to it and you  
21 say, hey, look, this is how it goes here; this is how we  
22 live.

23           We suggest -- I'm on page 6 -- that  
24 Section 1303.1-A should be more appropriate to school  
25 culture and school setting. So you have a recommendation

1 that a school look at their policy every 1,000 days. Well,  
2 kids are just too smart today; you can't wait that long.  
3 So at the end of every year, we suggest the school needs to  
4 look and say, did it get any better? If it didn't get any  
5 better, where is the space? Where are the gaps? What  
6 didn't we catch? Let's tighten it up.

7 Kids are smart, and technology changes every day.  
8 You could have a policy that works today, and the kids will  
9 be in there bumping and thumping and telepathing and  
10 everything else, you know, within 2 months. So tighten  
11 that up, I would suggest.

12 And I agree with the President of PSEA, and we  
13 question the limitation on bullying being specifically  
14 against students, and we question that because of the way  
15 children learn. If it's a rule, it's a rule. If it's not  
16 a rule, it's not a real rule. And so if I cannot mess with  
17 a kid, you didn't say I couldn't mess with the principal,  
18 and this needs to be consistent. All behavioral scientists  
19 agree that the way to change behavior is to have consistent  
20 and specific expectations and consistent and specific  
21 consequences. It's like putting a box and there's no door  
22 out. If you don't say you can't do this to anybody, then  
23 there's a door out, and children will take it.

24 Then we looked at that part of the bill that  
25 refers to the fact that some schools in Pennsylvania don't

1 have to report incidences of bullying, and we just have a  
2 question about that, and we question that because children  
3 are killing themselves. They don't all go to public  
4 school, and so we ask you to think that through and see  
5 what you think is wise in that area. Because this is so  
6 dangerous and life threatening, shouldn't everyone have to  
7 protect the children over whom they take charge?

8           We like the capacity -- I'm on page 7 -- for  
9 children to report things anonymously, and we call to your  
10 attention how children learn, and so these signs need to be  
11 in all the common places and in every classroom. They need  
12 to be in the library, the lunchroom. Not just what the  
13 rules are -- they should be everywhere -- but also what you  
14 do if you know someone is being bullied. That should be  
15 posted, too.

16           There is no way to describe how children take in  
17 information or where they'll be when it clicks. You just  
18 don't know. It's the same thing with training significant  
19 people. There's no way to predict who will be significant  
20 to a child. And so we agree with PSEA, and we are happy to  
21 have had them say it before us, this needs to be universal  
22 training.

23           If you think back to your days in elementary,  
24 middle, and high school, it wasn't the person you spent the  
25 most time with who was necessarily significant to you. It

1 could have been a lady in the lunchroom with whom you  
2 clicked because you knew her in the neighborhood. It could  
3 have been the custodian or a facilities person. It could  
4 have been anyone who was significant. And so everyone who  
5 works with children needs to be equipped to participate in  
6 their protection. They need to know the rules, how to  
7 report, when to report, how to recognize. So that needs to  
8 be universal training.

9 I'm thinking of the training model from the  
10 International Institute for Restorative Practices where the  
11 first thing they do is train every adult in the building.  
12 West Philadelphia High School, who has that program, found  
13 a 57-percent decrease in aggressive behaviors the first  
14 year and a 42-percent decrease the second year. When you  
15 add that together, it came out to like a 97-percent  
16 decrease in aggressive behaviors. Well, that's almost  
17 zero, and so it demonstrates that all adults need to know  
18 how to interact with children, how to recognize the  
19 problem, and how to report it up line.

20 I think pretty much those were the issues that we  
21 wanted to address. We did go, on page 9, looking at the  
22 definition of what bullying or cyberbullying or  
23 intimidation or harassment is "intended to...." We would  
24 join PSEA in saying "physically, emotionally or socially  
25 harm a student or school personnel, or damage the

1 property...." And we would include "emotionally or  
2 socially," because we've walked the halls with children  
3 where pretty little girls with ribbons and all the physical  
4 accoutrements will gather in a circle around another little  
5 girl and just have at her emotionally -- or threaten. I  
6 have seen children come into school and say to a victim,  
7 "Today we're going to tell everyone you're a lesbian." I  
8 have taken children into my mentoring program and just  
9 protected them during those open spaces in the hall so that  
10 they were not violated in those ways. I've seen children  
11 become school-phobic. I've seen them become depressed.  
12 And so I think it's important that you include "emotionally  
13 or socially" in that definition.

14           We're also intrigued by the suggestion that some  
15 consideration is being given to the school's response to  
16 outside forces. The NAACP takes calls when people feel  
17 threatened and they don't know where else to go. So we've  
18 had instances where hate groups in Delaware County put up  
19 racist material on a Website, had all the children in  
20 school in a hubbub -- nothing could happen at school -- and  
21 the recourse we had, we reported it to the FBI as a hate  
22 crime, and the response we got back was, there are adults,  
23 you know, who have done this. I remember when a student at  
24 a terminal in the Philippines released a virus that crashed  
25 pretty much international finance, and Janet Reno found

1 that kid, so I know they can find out who did that. But  
2 what I'm thinking of today is that it is important for you  
3 to figure out how to handle that kind of situation; what  
4 can the school do. And I know that you have to look at  
5 laws, Federal, State, and weigh that out, but I want you to  
6 know it's an issue and that schools would be strengthened  
7 in their capacity to protect kids if there is a way for  
8 them to address it.

9           So those were our reflections on this piece of  
10 legislation, which we were pleased and happy to see. And I  
11 know that as you work to refine this and make it the best  
12 it can be, that you have a wide eye across a State that has  
13 varying populations from different cultures and that you  
14 will do your best to make sure that this is something that  
15 keeps kids safe and helps to develop their human potential.  
16 We don't need to criminalize them.

17           Thank you.

18           MAJORITY CHAIRMAN CLYMER: The Chair thanks  
19 Dr. Flynn for your very informative testimony. That was  
20 excellent, and we'll try to integrate that into our public  
21 policy issue on bullying as we move forward on this issue.

22           There is a question by Representative Truitt and  
23 recognizes Representative Truitt.

24           REPRESENTATIVE TRUITT: Thank you, Mr. Chairman.

25           It isn't so much a question as a comment. But

1 between listening to you and Mr. Crossey earlier, I hadn't  
2 even thought about the direction that this legislation  
3 could go in terms of protecting adults from children,  
4 because you don't typically think of kids bullying adults.  
5 Then I just remembered that story that was on the news not  
6 too long ago about the volunteer on a bus and a bunch of  
7 kids tormented this poor lady to the edge of tears. So I  
8 appreciate your input on how we can improve the bills and  
9 thank you for taking the time to come out here today.

10 DR. DUVALL-FLYNN: Thank you.

11 MAJORITY CHAIRMAN CLYMER: The Chair recognizes  
12 Representative Quigley for a question.

13 REPRESENTATIVE QUIGLEY: Thank you, Mr. Chairman.

14 Thank you for your testimony and some of the  
15 feedback. As I said, we are hoping to gather as much input  
16 as we can as we craft a comprehensive bill for the next  
17 session.

18 As it relates to the law enforcement aspect of  
19 it, though, I guess it's your point that that should be a  
20 last resort as far as the involvement of them? I mean,  
21 clearly if something of a criminal nature happens, we need  
22 to get law enforcement involved. But I just wonder if you  
23 could just clarify where you think how far should we go or  
24 not go with the involvement of, you know, a law enforcement  
25 component of that.

1 DR. DUVALL-FLYNN: I think including a judge from  
2 family court or juvenile justice court brings to you a full  
3 knowledge of the law with a view for redemption and  
4 restoration.

5 When children get into the law enforcement  
6 component, that has to go a different -- it has to go down  
7 a certain avenue, and so what we would want is for children  
8 not to have to be criminalized. We think that the term  
9 that should be required is "mental health" as opposed to  
10 "criminalization." Certainly we want to restore as many  
11 young people to a balanced and productive citizenship as is  
12 possible, and that will only happen if they are healed.

13 It's traumatizing for a child to have the police  
14 come and put handcuffs on them. I don't know that they  
15 will ever get past that trauma. It is a different thing to  
16 have a counselor take them aside and find out, what  
17 happened to you, because the rest of us aren't doing this,  
18 and so surely it's obvious this isn't the acceptable way  
19 for people to interact with each other. So something has  
20 happened to cause this to be the choice of this child and  
21 find out what it is and help the child to balance out and  
22 be in right relationship with the community. That's what  
23 we want. Schools develop human potential.

24 REPRESENTATIVE QUIGLEY: Okay. Thank you.

25 DR. DUVALL-FLYNN: Okay.



1 MAJORITY CHAIRMAN CLYMER: Well, again, the Chair  
2 thanks Dr. Flynn for being with us today.

3 DR. DUVALL-FLYNN: Thank you.

4 MAJORITY CHAIRMAN CLYMER: There is a group that  
5 has been sitting with us very patiently, and I believe it's  
6 the Pennsylvania Student Equality Coalition. Is that  
7 correct? They're here, and they have their signs, which we  
8 have been seeing all day, and that's fine; we certainly  
9 appreciate that. They've been very good.

10 And Jason Goodman is one of the students. We  
11 have a few seats there, so if you and some of your  
12 colleagues would want to sit there. We are recorded, you  
13 know, across Pennsylvania on this hearing, so if you want  
14 to sit down and just say a few comments.

15 I'm not going to ask the Members of the committee  
16 to ask questions. We just want to hear from you. Is there  
17 anyone else who wants to sit in there and make a few  
18 statements? You have this opportunity to do so.

19 I would just ask that -- we have four seats  
20 there, so if you want to squeeze another person in. We  
21 just ask you to take a few minutes, introduce yourselves,  
22 and we are more than welcome to hear what you have to say.

23 We'll start to my right over here. If you would  
24 introduce yourself and make some comments about the issue  
25 of bullying.

1 MR. MEDINA: Thank you. Can everybody hear me?

2 MAJORITY CHAIRMAN CLYMER: We can hear you.

3 MR. MEDINA: Okay.

4 I'm Luis Medina. I'm a recent graduate from  
5 Bloomsburg University. I've been involved with PSEC over  
6 2 years now, and the issue of bullying is personal to me  
7 because I experienced it myself.

8 Although I did not go to a Pennsylvania school --  
9 I was raised in Puerto Rico -- I, too, have experienced the  
10 same experiences that other students had. It came to a  
11 point where I was sexually harassed; I was verbally  
12 harassed. And a lot of things were happening, and I didn't  
13 know who I could turn to, who could help me.

14 It was so emotionally draining, so mentally  
15 draining, that it came to a point where I thought that the  
16 only option was to take a knife to my wrist and my life.  
17 And I have thought of that many times, and having the  
18 conversation of bullying and having these bills passed is  
19 important, and I'm glad and I'm thankful that this is going  
20 to, because no one should have the need or think that they  
21 have to end their own life just because they see no other  
22 option and not being protected.

23 MAJORITY CHAIRMAN CLYMER: The Chair thanks you,  
24 and we'll go to the next person.

25 MS. SAPPPIR: Hi. I'm Baylie Sappir, and I am a

1 current graduate student at Bloomsburg University, going  
2 for my master's in deaf education. My undergrad was in  
3 special education and elementary education, so I have, you  
4 know, a personal connection as a teacher and as part of the  
5 LGBT community a huge passion for bullying. You know,  
6 being in the forefront of the classroom and seeing it  
7 happen through my own eyes, you know, it's very sad.

8           You know, during student teaching, I saw it every  
9 day. And I tried very hard to, you know, stop it in the  
10 classroom or address it within the students, but, you know,  
11 being only the student teacher, it is very hard. And  
12 seeing the policies that are in place in the school  
13 districts now, you know, they're very weak and they're not  
14 very strong.

15           You know, in the one school district I was  
16 student teaching in, they had it in every classroom, you  
17 know, like poster on the wall, a sheet of paper that said  
18 the outline, you know, their bullying policy. But to the  
19 extent that they followed that, I have no idea, because I  
20 didn't see any repercussions taken or any actions, you  
21 know, based off of this sheet of paper that was hanging on  
22 the wall. I think it was just there for show and tell to  
23 say that, yeah, we have something in place and here it is.  
24 But, you know, did we actually follow it? I don't think  
25 that they did.

1 MAJORITY CHAIRMAN CLYMER: The Chair thanks the  
2 gentlelady and goes to Jason.

3 MR. GOODMAN: Hi, Chairman Clymer. Thank you so  
4 much again for giving us the opportunity for a couple of  
5 minutes to give a student perspective on the issue.

6 I'm going to keep my comments very brief, and  
7 then I think it's really wonderful that we'll end with  
8 Tammy Simpson, who is Brandon Bitner's mother, who was  
9 mentioned in earlier testimony.

10 My name is Jason Landau Goodman. I'm the  
11 Executive Director of the Pennsylvania Student Equality  
12 Coalition. You heard from some of our student leaders from  
13 northern Pennsylvania. We are a statewide, entirely  
14 youth-led organization representing thousands of students  
15 at over 50 chapters in support of the Pennsylvania Safe  
16 Schools Act, Representative Truitt's HB 2636.

17 We are the students with the pins, and we  
18 strongly support this legislation. We know that if we're  
19 not protected, we can't learn.

20 HB 2636 has 30 cosponsors and supporting  
21 organizations such as domestic violence shelters, suicide  
22 prevention organizations. We have Mayors for Safe Schools  
23 in support of the Pennsylvania Safe Schools Act, known  
24 as the PASS Act, such as Mayor Ravenstahl of Pittsburgh,  
25 Mayor Stock of Butler, and Mayor Nelson in Milton.

1           The PASS Act was written by students, for  
2 students. We had about 2 years of input from educational  
3 stakeholders and Legislators, many of whom are on this  
4 committee, over the past year. It's obvious that the  
5 current system does not work.

6           In 2008, those amendments were great, but they  
7 were very vague, essentially stating, as we heard in  
8 earlier testimony, that, you know, they have to have a  
9 policy at the school districts but not necessarily what  
10 needs to be in them. This is the legislation that we need  
11 that has teeth.

12           The Pennsylvania school board associations need  
13 reporting, investigations, and follow-through, and that's  
14 exactly what the PASS Act does with the timeline,  
15 accountability, and follow-through.

16           Also, just a quick thing about the Pennsylvania  
17 Safe Schools Report, which has been compiled by PDE since  
18 1999. That report is done annually in January and has  
19 about 40 checkboxes on the form. Bullying was added in the  
20 past 5 years, not by statute, just by the department.

21           In the Philadelphia School District, there were  
22 only 52 cases of bullying reported in the past year. We  
23 know that bullying is widely unreported and that we really  
24 need to make sure that students don't fall through the  
25 cracks. So we really need something with definitions in

1 reporting, not that bullying and incidents "should be"  
2 followed through with but that there "must" be  
3 accountability and there "must" be support.

4 In the past 2 weeks, there have been four student  
5 suicides in northeastern Pennsylvania in Luzerne County  
6 related to bullying. At a community forum in Pittston we  
7 were at just about a week ago, there was so much pain from  
8 the community. Administrators, parents, teachers, and  
9 students -- no one really knew what the bullying policy  
10 was. They knew they had to have one but not necessarily  
11 what needed to be in it.

12 So this is a very important issue that truly  
13 takes, you know, all the community stakeholders to get  
14 together. The PASS Act represents the best practices from  
15 the New Jersey law that was passed really unanimously and  
16 signed by Governor Christie last year. We really, truly  
17 hope that the students that we represent across the State  
18 can count on your support for the PASS Act, as it's our  
19 best chance for real change, to make that change  
20 underground in our schools. So thank you.

21 MAJORITY CHAIRMAN CLYMER: The Chair thanks the  
22 gentleman.

23 We're going to go to our next testifier, and I  
24 think he introduced you, but would you like to introduce  
25 yourself?

1 MS. SIMPSON: Yes. Hi. My name is  
2 Tammy Simpson. I'm the mother of Brandon Bitner, who  
3 committed suicide November 5, 2010. That's a picture of  
4 Brandon there.

5 Brandon committed suicide due to the bullying  
6 that he endured for the past 5 years at Midd-West School  
7 District. Brandon pointed that out in his 3-page suicide  
8 note that he left behind. He walked 7 miles in the cold  
9 and dark and stepped out in front of a tractor-trailer to  
10 end his life at 3 a.m. that morning.

11 I looked up our school's bullying policy. It was  
12 so vague. And so many parents looked it up; nobody  
13 understood it. It was so vague. We attended a school  
14 board meeting. They basically did not want to hear from  
15 us. They put us on a timer, gave us like 10 minutes to  
16 speak. We actually had one of the school board members get  
17 up and use the restroom in the middle of us talking. They  
18 said that they had in place this bullying policy and that's  
19 all they needed to have in place; they needed nothing more.  
20 They did not want to hear from us, even though parents were  
21 there in attendance with us. They just wanted us out of  
22 there. They wanted nothing to do with us.

23 I keep in contact with students from that school.  
24 I get contacted by parents daily. I see everything  
25 firsthand. I lost my son, okay? You guys hear the

1 stories, but you don't live my life. My only son, my life,  
2 he's gone. I don't get him back. I'll never see him  
3 graduate high school. He didn't attend the prom. He  
4 didn't turn 16 to drive a car. He died at 14, you know?

5           It's imperative we get a bill across here. We  
6 need to protect the kids that are still in these schools.  
7 I am sick of hearing statistics. I'm sick of hearing, you  
8 know, percentages. Walk in my shoes once. For 2 years I  
9 waited for something to be done, for somebody to step up to  
10 the plate and do something in these schools, and nothing,  
11 nothing has happened -- at all.

12           It is time for you guys to work with us and do  
13 something to protect our kids. We do not need more  
14 suicides, and it was the bullying that pushed my son to the  
15 limit. He was a distinguished honor-roll student. He was  
16 an accomplished violinist. He was going to go to  
17 Juilliard. This wasn't a kid that was flunking school, you  
18 know, doing drugs. This kid had the biggest heart ever,  
19 you know?

20           We need to come together, you know? You need to  
21 push something through, because every day I live with the  
22 fact that I don't have my son. I don't have him anymore.  
23 You guys still have your children or your grandkids or your  
24 nieces and nephews. I don't have him anymore. So please,  
25 look at the PASS Act. It's probably the best one we have.



1           I know we're looking at this bill now, but the  
2 PASS Act, it's better; it's stronger; it's what we need in  
3 our schools. So let's just all work together and do  
4 something for our kids.

5           Thank you.

6           MAJORITY CHAIRMAN CLYMER: Well, I thank you for  
7 your very good testimony, and it gives us an incentive to  
8 really push forward.

9           We will work in a collaborative way as Members of  
10 the General Assembly to put together the very best  
11 legislation that would protect people like your son, who  
12 very, very sadly and tragically and unfortunately took his  
13 life because of bullying. That's the purpose of this  
14 hearing, to stop it in all its forms as much as we possibly  
15 can, and we will continue our efforts until we get this  
16 mission accomplished.

17           You need to know that our session is coming to an  
18 end and we're not going to be able to put the bill through  
19 this year, but we have created the groundwork. From this  
20 day forward, we will now move until we get a bill in that  
21 will do some of the things that you four have and others  
22 that are seated around here have labored and worked so  
23 tirelessly. And I know Jason keeps knocking on my door all  
24 the time. It's getting worn out.

25           But in any event, thank you for your testimony,

1 and we appreciate your coming here---

2 MS. SIMPSON: Thank you.

3 MAJORITY CHAIRMAN CLYMER: ---and listening to  
4 all the testimony from all our testifiers.

5 This meeting is now adjourned. Thank you very  
6 much for everyone being here.

7 MS. SIMPSON: Thank you.

8

9 (The hearing concluded at 2:20 p.m.)

1           I hereby certify that the foregoing proceedings  
2 are a true and accurate transcription produced from audio  
3 on the said proceedings and that this is a correct  
4 transcript of the same.

5  
6  
7           Debra B. Miller

8           Committee Hearing Coordinator/

9           Legislative Reporter

10          Notary Public

11  
12          Diana Sharbaugh

13          Transcriptionist