

SUPPLEMENTAL MATERIALS  
U.S. COMMISSION ON CIVIL RIGHTS BRIEFING  
ON  
INTER-STUDENT VIOLENCE  
MAY 13, 2011

FRANCISCO M. NEGRÓN, JR.  
GENERAL COUNSEL  
MAY 26, 2011



*Working with and  
through our State  
Associations, NSBA  
Advocates for Equity and  
Excellence in Public  
Education through  
School Board Leadership*

May 26, 2011

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U.S. Commission on Civil Rights  
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**RE: Supplemental Materials, Briefing on U.S. Commission on Civil Rights Briefing on  
Inter-Student Violence, May 13, 2011**

Dear Commissioners:

Thank you for the opportunity to share with the Commission the school board perspective on bullying and harassment. The following materials supplement the written statement of the National School Boards Association and are intended to further inform the work of the Commission as it prepares its report in this area. Accordingly, attached to this letter please find extensive materials that provide a snap shot of the tireless work that state school board associations and local districts are doing to prevent and address bullying in schools.

Since the issue came to prominence in the last decade, with states enacting anti-bullying laws requiring school districts to implement policies and report incidents, state school boards associations have provided—and continue to provide – expert guidance to their members. Their member school boards, in turn, have assessed the needs of their school communities and implemented effective programs. Thanks to this work, school leaders recognize the devastating effects bullying and harassment can have; school district communities are engaged in bullying prevention efforts; and school climate is improving.

***State School Boards Associations Are Providing Guidance and Training***

State school boards associations have created an impressive body of training and resource materials for local districts reflecting the ever-changing legislative enactments and ever-increasing research on bullying and its effects. The associations conduct enumerable training sessions for board members on the requirements of state law and best practices for improving school climate, issue substantive guidance materials with summaries of the legal requirements and limitations on school boards in the state, and publish articles for board members explaining the very real toll bullying takes on the victim, the bully, and the school community and offer steps to address the problem. Importantly, the associations provide model policies to school boards in their state, which become invaluable tools and reflections of current state and federal law. (See state association policies at Tab 1, sections 1-5.)

- In addition to timely and thoughtful articles spotlighting the human toll of bullying and the measures school districts should take on the legal and educational fronts (See PSBA Bulletin articles, Tab 1, section 1), the Pennsylvania School Boards Association conducts training for boards on the requirements of the state anti-bullying law, and provides helpful guidance in the form of ten questions school systems should be asking on identification, policy implementation, reporting, training, and review of prevention techniques. (*Ten Questions Public School Systems Should Be Asking About Bullying Prevention*, Tab 1, section 1.)
- The Minnesota School Boards Association has long provided exemplary policies and support for school boards in the state. In recent months, the MSBA has advised districts to make their harassment and discrimination policies consistent with their equal educational opportunity policies, emphasizing safety for all students, regardless of sex, race, creed or sexual orientation. (See MSBA model policies on Harassment and Violence and Bullying Prohibition at Tab 1, section 2.)
- In addition to thorough model policies and thoughtful articles in its publication for school boards, the Texas Association of School Boards provides an extensive guidance document on the legal and practical issues of student bullying. (See TASB materials, Tab 1, section 3.) With a new anti-bullying measure currently pending before the legislature, the association will soon revise those materials to reflect current law, an ongoing process. (Committee Substitute for House Bill 1942, Tab 1, section 3.)
- New York's recent passage of the Dignity for All Students Act (effective July, 2012) has resulted in numerous training materials and policy revisions by the New York State School Boards Association. As part of the state-wide task force to draft new policy language for school districts, the NYSSBA will lead the way for school district implementation of the law. (See its draft policy currently in the works at Tab 1, section 4.) NYSSBA provides training for school districts on a national level, as well, presenting at the National School Boards Association annual conference this spring on the issue of technology misuse. (*Navigating the Landmines of Technology Misuse*, Tab 1, section 4.)
- No state anti-bullying legislation to date requires more training and procedures than the New Jersey Anti-Bullying Bill of Rights, enacted in January, 2011. New Jersey School Boards Association is actively involved in formulating policy reflecting the new law's requirements. The NJSBA participates on the advisory body for the state education agency as it develops an administrative framework to accompany the law (NJDOE Safe and Supportive Schools Anti-Bullying Guidance Document Subcommittee Intervention – Complaint Procedure Commentary, Tab 1, section 5.) NJSBA has conducted and participated in multiple training sessions for school officials and school attorneys regarding the requirements of the new law (See NJSBA Anti-Bullying Presentation Somerset, Tab 1, section 5), and has alerted district administrators and superintendents through its electronic newsletter when it revises its model policies. (See NJSBA Policy 5131.1 Harassment, Intimidation & Bullying, Tab 1, section 5.)

### ***Local School Districts Engage Their Communities and See Results***

School districts use the support they receive through guidance from the state associations, as well as their own unique community engagement processes to develop and implement effective prevention programs that really work. Below are examples of exciting, important programs local schools are implementing.

- Longview Independent School District in Texas has implemented a bullying prevention program with a joint focus on English language acquisition, an important goal of the community. (*Longview ISD: ELA/Bully Prevention Implementation*, October, 2009.)
- Frederick County Public Schools in Maryland engages parents and students at all levels by implementing the Olweus Bullying Prevention Program. The district's approach to bullying prevention is multi-faceted, from direct communication with parents (*What You Can Do To Prevent Bullying: A Guide for Parents & Students*, Tab 2, section 3) to thorough complaint procedures and training by the district's General Counsel. (Olweus Bullying Prevention Program training slides, District legal counsel training slides, Bullying complaint Process, Tab 2, section 3.)
- Williamsport Area School District in Pennsylvania has adopted a three-pronged, district-wide positive behaviors program that is reinforced in every school and every grade level to create a culture of respect. David Wright, Director of Student Services tells us that combined, the three pronged approach develops a common language and an expectation of self-awareness; responsibility to and for others and the school community; and clear behavior expectations that are taught, practiced, and rewarded. (*Comprehensive District-Wide Positive Behavior Programming Set*, Matrix of core desired and taught behaviors, Tab 2, section 2.)
- Although success with bullying prevention measures is difficult to measure, an Illinois school district appears to be doing just that. In Rochester 3A Schools, after four years of dedicated implementation of the "Steps to Respect" bullying prevention program, the district saw a reduction in the percentage of students reporting that they had been bullied at school. The junior high school saw a decrease from 26.6 percent to 10.8 percent of children reporting that they had been bullied in the last two or three months. (*Illinois schools aim to reduce bullying*, Rochester School Summary of bullying survey slides, Tab 2, section 4.)

### ***The National School Boards Association Provides National Perspective and Voice***

The National School Boards Association, with and through its state associations, provides support for public schools at the national level. As part of that effort we continue to express concerns about federal initiatives that may over-burden districts when state and local initiatives appear to be working well. We urge you to consider the successes documented here as you determine whether additional federal involvement is needed in this area. The Commission's report, therefore, should be informed by the ways in which state legislation provides varied and specific solutions and how local school leaders are implementing resulting policies.

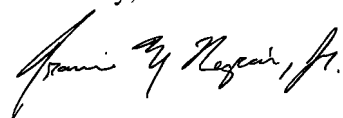


We will continue to participate in the nationwide effort to reduce the scourge of bullying in public schools through, among other efforts, support of the Pearson Foundation's excellent Million Voices project. To support the project, NSBA is developing a tool kit called "Students on Board: A Conversation Between School Board Members and Students," to facilitate board member conversations with students about school climate. NSBA will provide school board members practical, straightforward guidance on how to effectively gauge the school environment from one of the best sources available: the students. Our goal is to expand the dialogue between national stake-holders on this important issue, so that local work can continue to be effective.

NSBA will also continue our current work with national organizations to provide and endorse guidance on legal standards surrounding student rights in areas such as First Amendment free speech, LGBT student concerns, and cyberbullying (see NSBA Tab 3, sections 1-3), as well as continuing legal education for school board attorneys on the issue of bullying and harassment.

Thank you, again, for the opportunity to inform the work of the Commission on this important issue. Should you require additional information, please do not hesitate to call.

Sincerely,

A handwritten signature in black ink, appearing to read "Francisco M. Negrón, Jr.", written in a cursive style.

Francisco M. Negrón, Jr.  
General Counsel

# Table of Contents

## TABLE OF CONTENTS

### NSBA/State Association Bullying Prevention Resources and Efforts

#### **TAB 1**

##### **State School Boards Associations**

###### **Section 1 – Pennsylvania School Boards Association**

Pennsylvania Anti-Bullying Statute

PSBA model Bullying/Cyberbullying Policy

PSBA *Ten Questions Public School Systems Should Be Asking About Bullying Prevention*

PSBA slide presentation, *Bullying: Requirements, Reality & Risk Management*, May 2011

PSBA Bulletin, *Leighton Area partners with students to stop school violence*, December 2010

PSBA Bulletin, *Legislation requires policy on bullying/cyberbullying*, October 2008

PSBA Bulletin, *Schools face difficult challenges from cyberbullies*, February 2007

###### **Section 2 – Minnesota School Boards Association**

MSBA/MASA model Harassment and Violence Policy

MSBA/MASA model Harassment and Violence Report Form

MSBA/MASA model Bullying Prohibition Policy

###### **Section 3 – Texas Association of School Boards**

Texas Anti-Bullying bill currently before the legislature, Committee Substitute for House Bill 1942

TASB model Freedom From Discrimination, Harassment and Retaliation Policy (legal)

TASB model Freedom From Discrimination, Harassment and Retaliation Policy (local)

TASB model Freedom From Bullying Policy (local)

TASB training Q&A for school districts, *Bullying: Identification & Prevention*

TASB training text for school districts, *Social Networking*

TASB Texas Lone Star, *Remembering Montana: Anti-bullying Initiatives Offer Hope for Students Suffering from Age-old Problem*, April/May 2010

TASB Texas Lone Star, *When Push Comes To Shove: Schools Continue to Battle Never-Ending Bullying Problem*, October, 2008

###### **Section 4 – New York State School Boards Association**

NYSSBA DRAFT sample Student Bullying Prevention and Intervention Policy

(Still in draft stage after passage of Dignity for All Students Act, effective July, 2012)

NYSSBA sample Student Bullying Prevention and Intervention Policy

NYSSBA sample Sexual Harassment Policy

NYSSBA sample Essential Partners Policy

NYSSBA presentation slides for National School Boards Association Annual Conference, *Navigating the Landmines of Technology Misuse*, April 2011

NYSSBA training slides, *Essential Policy Elements of School Safety: Keeping Children Protected*

**Section 5** – New Jersey School Boards Association

New Jersey *Anti-Bullying Bill of Rights Act*, NJ P.L.2010, Chapter 122

NJSBA 5131.1 Policy Harassment, Intimidation and Bullying

NJSBA Commentary to the New Jersey Department of Education's Safe and Supportive Schools Anti-Bullying Guidance Document Subcommittee Intervention Complaint Procedure

NJSBA training slides, *Anti-Bullying Bill of Rights Act*, May 2011

NJSBA training slides, ERIC Academy of Teaching and Learning, *The Known and the Unknown*, May 2011

**TAB 2**

**Local School Districts**

**Section 1** – Longview Independent School District, Texas

Presentation slides for TASA/TASB, *Longview ISD: ELA/Bully Prevention Implementation*, October 2009

**Section 2** – Williamsport Area School District, Pennsylvania

Presentation slides for PASA/PSBA conference, *Comprehensive District-Wide Positive Behavior Programming Set*, 2010, available at

[http://www.psba.org/search/index.asp?cx=003254664041178724810%3AoqjluK0xy-4&cof\\_FORID%3A11&Q=Williamsport+Area&sa.x=0&sa.y=0&sa=Go](http://www.psba.org/search/index.asp?cx=003254664041178724810%3AoqjluK0xy-4&cof_FORID%3A11&Q=Williamsport+Area&sa.x=0&sa.y=0&sa=Go)

Matrix of core desired and taught behaviors

**Section 3** – Frederick County Public Schools, Maryland

Brochure for families, *What You Can Do To Prevent Bullying: A Guide for Parents & Students*

Urbana Middle School web page announcement, *Bullying Prevention Program Begins at Urbana Middle School*

NPR Story, *Hit Back At Bullies? Not At This School*, on program at Urbana Middle School, March 25, 2010, available at

<http://www.npr.org/templates/story/story.php?storyId=125137071>

Olweus Bullying Prevention Program training slides for use in eight schools, summer, 2011

District legal counsel training slides for high school students and demonstrated for board members

Bullying – Harassment – Intimidation Complaint Process for Students

**Section 4** – Rochester 3A Schools, Illinois

Associated Press story, *Illinois schools aim to reduce bullying*, March 26, 2011

Rochester School Summary of bullying survey slides, 2010

**Section 5** – Richardson Independent School District, Texas

Dallas Morning News story, *Richardson ISD program wards off bullying by strengthening bonds between students*

**Section 6** – Roundlake-Brewster, Minnesota

McClatchy-Tribune Business News, *RL-B Students stand up to bullying*, November 22, 2008

**Section 7** – Lehigh Area School District, Pennsylvania

Community Matters – Safe School Ambassadors Program Overview, Spring 2010

**Section 8** – Minnesota Institute of Public Health

“Avert” community-based safe schools assessment and bullying prevention program, developed at the request of schools, *available at* <http://www.miph.org/projects/avert>

### **TAB 3**

#### **National School Boards Association**

**Section 1** – NSBA Publication

*Dealing with Legal Matters Surrounding Students’ Sexual Orientation and Gender Identity*, providing practical guidance on schools’ legal rights and responsibilities in this area, *available at* <http://www.nsba.org/SchoolLaw/COSA/Search/AllCOSAdocuments/DealingwithLegalMattersSurroundingStudentsSexualOrientationandGenderIdentity.pdf>

**Section 2** – The First Amendment Center publication, endorsed by NSBA

*A Teacher’s Guide to Religion in the Public Schools*, emphasizing the shared vision of religious liberty encapsulated in the First Amendment, *available at* <http://s111617.gridserver.com/madison/wp-content/uploads/2011/03/teachersguide.pdf>

**Section 3** – Center for Safe Schools Guidelines, endorsed by NSBA

Web page on bullying prevention focus, *available at* <http://www.safeschools.info/bullying-prevention/about-bullying-prevention>

NSBA’s Technology Leadership Network, in partnership with Cybersmart Cyberbullying prevention materials. Web page on cyberbullying prevention program, *available at* <http://cybersmartcurriculum.org/cyberbullying/NSBA/>



Section 1  
Pennsylvania School Boards Association

**Effective: July 1, 2008**

Purdon's Pennsylvania Statutes and Consolidated Statutes Currentness  
Title 24 P.S. Education

☞ Chapter I. Public School Code of 1949 (Refs & Annos)

☞ Article XIII-A. Safe Schools (Refs & Annos)

→ § 13-1303.1-A. Policy relating to bullying

(a) No later than January 1, 2009, each school entity shall adopt a policy or amend its existing policy relating to bullying and incorporate the policy into the school entity's code of student conduct required under 22 Pa. Code § 12.3(c) (relating to school rules). The policy shall delineate disciplinary consequences for bullying and may provide for prevention, intervention and education programs, provided that no school entity shall be required to establish a new policy under this section if one currently exists and reasonably fulfills the requirements of this section. The policy shall identify the appropriate school staff person to receive reports of incidents of alleged bullying.

(b) Each school entity shall make the policy available on its publicly accessible Internet website, if available, and in every classroom. Each school entity shall post the policy at a prominent location within each school building where such notices are usually posted. Each school entity shall ensure that the policy and procedures for reporting bullying incidents are reviewed with students within ninety (90) days after their adoption and thereafter at least once each school year.

(c) Each school entity shall review its policy every three (3) years and annually provide the office with a copy of its policy relating to bullying, including information related to the development and implementation of any bullying prevention, intervention and education programs. The information required under this subsection shall be attached to or made part of the annual report required under section 1303-A(b). [FN1]

(d) In its policy relating to bullying adopted or maintained under subsection (a), a school entity shall not be prohibited from defining bullying in such a way as to encompass acts that occur outside a school setting if those acts meet the requirements contained in subsection (e)(1), (3) and (4). If a school entity reports acts of bullying to the office in accordance with section 1303-A(b), it shall report all incidents that qualify as bullying under the entity's adopted definition of that term.

(e) For purposes of this article, "bullying" shall mean an intentional electronic, written, verbal or physical act, or a series of acts:

(1) directed at another student or students;



24 P.S. § 13-1303.1-A

Page 2

- (2) which occurs in a school setting;
- (3) that is severe, persistent or pervasive; and
- (4) that has the effect of doing any of the following:
  - (i) substantially interfering with a student's education;
  - (ii) creating a threatening environment; or
  - (iii) substantially disrupting the orderly operation of the school; and

“school setting” shall mean in the school, on school grounds, in school vehicles, at a designated bus stop or at any activity sponsored, supervised or sanctioned by the school.

CREDIT(S)

1949, March 10, P.L. 30, No. 14, art. XIII-A, § 1303.1-A, added 2008, July 9, P.L. 846, No. 61, § 6, retroactive effective July 1, 2008.

[FN1] 24 P.S. § 13-1303.1-A.

24 P.S. § 13-1303.1-A, PA ST 24 P.S. § 13-1303.1-A

Current through Act 2010-92

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SECTION: PUPILS  
 TITLE: BULLYING/  
 CYBERBULLYING  
 ADOPTED:  
 REVISED:

249. BULLYING/CYBERBULLYING	
1. Purpose	The Board is committed to providing a safe, positive learning environment for district students. The Board recognizes that bullying creates an atmosphere of fear and intimidation, detracts from the safe environment necessary for student learning, and may lead to more serious violence. Therefore, the Board prohibits bullying by district students.
2. Definitions SC 1303.1-A	<p><b>Bullying</b> means an intentional electronic, written, verbal or physical act or series of acts directed at another student or students, which occurs in a school setting</p> <p>{ } and/or outside a school setting,</p> <p>that is severe, persistent or pervasive and has the effect of doing any of the following:</p> <ol style="list-style-type: none"> <li>1. Substantial interference with a student’s education.</li> <li>2. Creation of a threatening environment.</li> <li>3. Substantial disruption of the orderly operation of the school.</li> </ol> <p><b>Bullying</b>, as defined in this policy, includes cyberbullying.</p>
SC 1303.1-A	<p><b>School setting</b> means in the school, on school grounds, in school vehicles, at a designated bus stop or at any activity sponsored, supervised or sanctioned by the school.</p>
3. Authority SC 1303.1-A	<p>The Board prohibits all forms of bullying by district students.</p> <p>The Board encourages students who have been bullied to promptly report such incidents to the building principal or designee.</p>

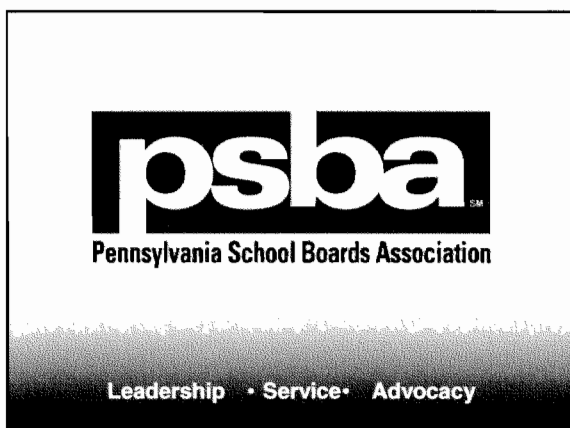
<p>4. Delegation of Responsibility</p> <p>SC 1303.1-A</p> <p>SC 1303.1-A</p> <p>SC 1303.1-A</p> <p>5. Guidelines SC 1303.1-A Title 22 Sec. 12.3 Pol. 218</p>	<p>The Board directs that complaints of bullying shall be investigated promptly, and corrective action shall be taken when allegations are verified. Confidentiality of all parties shall be maintained, consistent with the district’s legal and investigative obligations. No reprisals or retaliation shall occur as a result of good faith reports of bullying.</p> <p>Each student shall be responsible to respect the rights of others and to ensure an atmosphere free from bullying.</p> <p>The Superintendent or designee shall develop administrative regulations to implement this policy.</p> <p>The Superintendent or designee shall ensure that this policy and administrative regulations are reviewed annually with students.</p> <p>The Superintendent or designee, in cooperation with other appropriate administrators, shall review this policy every three (3) years and recommend necessary revisions to the Board.</p> <p>District administration shall annually provide the following information with the Safe School Report:</p> <ol style="list-style-type: none"> <li>1. Board’s Bullying Policy.</li> <li>2. Report of bullying incidents.</li> <li>3. Information on the development and implementation of any bullying prevention, intervention or education programs.</li> </ol> <p>The Code of Student Conduct, which shall contain this policy, shall be disseminated annually to students.</p> <p>This policy shall be accessible in every classroom. The policy shall be posted in a prominent location within each school building and on the district web site, if available.</p>
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<p>SC 1302-A, 1303.1-A Pol. 236</p>	<p><u>Education</u></p> <p>The district may develop and implement bullying prevention and intervention programs. Such programs shall provide district staff and students with appropriate training for effectively responding to, intervening in and reporting incidents of bullying.</p>
<p>SC 1303.1-A Pol. 218, 233</p>	<p><u>Consequences For Violations</u></p> <p>A student who violates this policy shall be subject to appropriate disciplinary action consistent with the Code of Student Conduct, which may include:</p> <ul style="list-style-type: none"><li>{ } Counseling within the school.</li><li>{ } Parental conference.</li><li>{ } Loss of school privileges.</li><li>{ } Transfer to another school building, classroom or school bus.</li><li>{ } Exclusion from school-sponsored activities.</li><li>{ } Detention.</li><li>{ } Suspension.</li><li>{ } Expulsion.</li><li>{ } Counseling/Therapy outside of school.</li><li>{ } Referral to law enforcement officials.</li></ul> <p>References:</p> <p>School Code – 24 P.S. Sec. 1302-A, 1303.1-A</p> <p>State Board of Education Regulations – 22 PA Code Sec. 12.3</p> <p>Board Policy – 000, 218, 233, 236, 248</p> <p style="text-align: right;"><b>PSBA New 7/08</b></p>




## **Ten Questions Public School Systems Should Be Asking About Bullying Prevention**

1. Has your public school system taken steps to identify specific “bullying” problems within your district?
2. Has your school system adopted measures to identify and target specific locations where bullying is more likely to occur in school?
3. Has your school system formed a group consisting of administrators, teachers, counselors and other school leaders to coordinate bullying prevention activities?
4. Has your school system adopted a policy to address bullying in compliance with the Pennsylvania School Code?
5. Do your schools have a procedure in place to report incidences of bullying that includes school staff, teachers and administrators?
6. Has your school system taken steps to ensure that students and parents/guardians are on notice about how to report bullying?
7. Do your schools provide training for teachers, administrators and other school staff on identifying, reporting, and investigating suspected bullying?
8. Do your schools educate students on the negative effects of bullying and provide students with strategies for dealing with bullying?
9. Does your school system have a plan in place to ensure that bullying prevention strategies are reviewed and continue to be carried out?
10. Has your school system consulted with the solicitor or other qualified counsel about practices that might reduce the liability risks associated with bullying?



## Bullying: Requirements, Reality & Risk Management

Safe Schools Conference  
May 2011  
Harrisburg, PA


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### Presenters

**Don Eodice, Director of Casualty Claims,  
School Claims Service**


**Sean Fields, PSBA Sr. Associate Counsel**


**Davelyn Smeltzer, PSBA Director of  
Policy Services**

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### CAVEATS


Although every attempt has been made to give accurate information, this presentation is not a substitute for specific legal advice from your local attorney



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### Topics


- OCR “Dear Colleague” letter on bullying
- Pa. School Code Policy Requirements
- Ten Questions for School Systems
- Informing Your Insurance Carrier

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### OCR “Dear Colleague” letter

Bullying includes discrimination based on:

- Race , Color, Religion or National Origin –Title VI
- Sex -Title IX
- Disability -Section 504

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## OCR “Dear Colleague” letter

A student’s civil rights may be violated when peer harassment based on race, color, national origin, sex, or disability creates a hostile environment and the harassment is encouraged, tolerated, not adequately addressed or ignored by school employees.

## Liability Triggers

1. Actual knowledge of sexual harassment
2. Deliberate indifference to sexual harassment
3. Harassment is so severe, pervasive, or objectively offensive that the effect is to deny the victims equal access to an education program or activity

## What is “Bullying”?

- Physical and verbal bullying,
- Threatening emails, social media, etc.
- Non-verbal gestures
- Purposeful isolation and shunning

*Source: Olweus Foundation*

## What is Bullying?

### Other Characteristics

- Intentional
- Repeated
- Imbalance of power exists between the victim and aggressor

*Source: Olweus Foundation*

## Bullying Legislation


- Omnibus Bill – Act 61 of 2008
  - PA School Code – 24 P.S. 13-1303.1-A
  - Adopt Bullying Policy by January 1, 2009
- Previously established policies must “reasonably fulfill” the requirements of law.

## Definition

- **Bullying** – *an intentional electronic, written, verbal or physical act or series of acts directed at another student or students which occur in a school setting that is severe, persistent or pervasive and that has the effect of substantially interfering with a student’s education; creating a threatening environment; or substantially disrupting the orderly operation of the school.*

### Definition

electronic = cyberbullying



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### Definition

- School setting – *in the school, on school grounds, in school vehicles, at a designated bus stop or at any activity sponsored, supervised or sanctioned by the school.*

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### Definition

- Optional provision – *acts of bullying that occur outside of the school setting...*



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### Policy Requirements

- Designate staff to receive complaints.
- List disciplinary consequences.
- Incorporate policy into Code of Conduct.

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### Other Requirements

- Review policy/reporting procedure with students annually.
- Accessible policy in classroom.
- Post policy on web site.
- Post policy in prominent location.
- Policy review every three years.

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### Safe Schools Report

- Article XIII-A – Safe Schools
- Annual reporting requirements:
  - Copy of policy.
  - Programs: prevention, intervention, education.
  - Identify bullying incidents.

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## Ten Questions School Systems Should Be Asking

- Identification
- Implementation
- Reporting
- Training
- Review

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### Identification

1. Has your school system taken steps to identify specific “bullying” problems within your district?

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### Identification

2. Has your school system adopted measures to identify and target specific locations where bullying is more likely to occur in school?

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### Implementation

3. Has your school system formed a group consisting of administrators, teachers, counselors and other school leaders to coordinate bullying prevention activities?

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### Implementation

4. Has your school system adopted a policy to address bullying in compliance with the Pennsylvania School Code?

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### Reporting

5. Do your schools have a procedure in place to report incidences of bullying that includes school staff, teachers and administrators?

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## Reporting

6. Has your school system taken steps to ensure that students and parents/guardians are on notice about how to report bullying?

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## Training

7. Do your schools provide training for teachers, administrators and other school staff on identifying, reporting, and investigating suspected bullying?

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## Training

8. Do your schools educate students on the negative effects of bullying and provide students with strategies for dealing with bullying?

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## Review

9. Does your school system have a plan in place to ensure that bullying prevention strategies are reviewed and continue to be carried out?

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## Review

10. Has your school system consulted with the solicitor or other qualified counsel about practices that might reduce the liability risks associated with bullying?

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## Informing Your Insurance Carrier

What your insurance carrier needs to know to help your school system prevent and defend against legal claims.

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## To Report or not Report...

- Reporting requirements vary, BUT:
- When in doubt, report it as a claim.
- Especially, when you receive anything in writing.



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31

- If Bullying is occurring, reach out to all the parents. Then offer to conduct evaluations or take other steps to attempt to address their concerns.



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- A belief that school personnel failed to exercise basic human concern serves to alienate the school personnel from the parents. This makes it easier for the parents feel justified in filing a suit.



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- Conduct a thorough investigation pursuant to your written policy. Complete your investigation even if there is police involvement.
- Civil rights liability often rests on whether the reaction to the alleged violation by the school is reasonable, prompt and thorough.



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- For Special Ed students, if there is an interruption in their program call an IEP team meeting and discuss the problem. When in doubt evaluate.



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(800) 932-0588 [www.psba.org](http://www.psba.org)

Leadership • Service • Advocacy

However, a void existed to help districts identify their stumbling blocks, as very few Pennsylvania organizations offer assessments and out-of-state consultants are pricey, Kennedy said.

"One of our organizational goals is to provide valued, cost-effective, results-oriented services to our clients, so we began offering this as a service to schools in Montgomery County," she said. "Soon after, districts from outside our county began contacting us to provide the service."

An assessment generally takes about one month and begins with Kennedy discussing guiding questions that should be answered by the assessment. A six- to eight-member team of veteran education experts, assembled after guiding questions are determined, reviews all documents such as plans, budgets, policies and other sources that may aid in a final recommendation. On-site visits occur over two days and team members interview representatives from all affected groups such as teachers, students and school directors among others.

An oral report is given before the team departs and the superintendent receives a final, written report within

a month. Oftentimes, districts use this to develop a long-term technology plan, Kennedy said.

"The report is structured upon the guiding questions created by the key district administrators," she said. "Strengths are highlighted as well as areas for improvements which list recommendations and resources."

In many districts, the same areas for improvements arise and one of the easiest things to repair is free, Kennedy added.

"I have learned that there is no such thing as too much communication. The more you can involve staff and community, the more support you will receive in return," she said. "A successful technology program is one in which the technology supports instruction. Technology decisions should be based on student and teacher needs, not on the computer platform or what is easiest for IT to support."

For more information, contact Gail Kennedy, director of technology and information services, at (610) 755-9352 or [gkennedy@mciu.org](mailto:gkennedy@mciu.org).



## Leighton Area partners with students to stop school violence

In years past, bullying was more obvious. Fights took place in the school yard during recess and shoving happened in the hallways. But in recent years, as social networking tools and text messaging pervasiveness has grown, bullying has intensified.

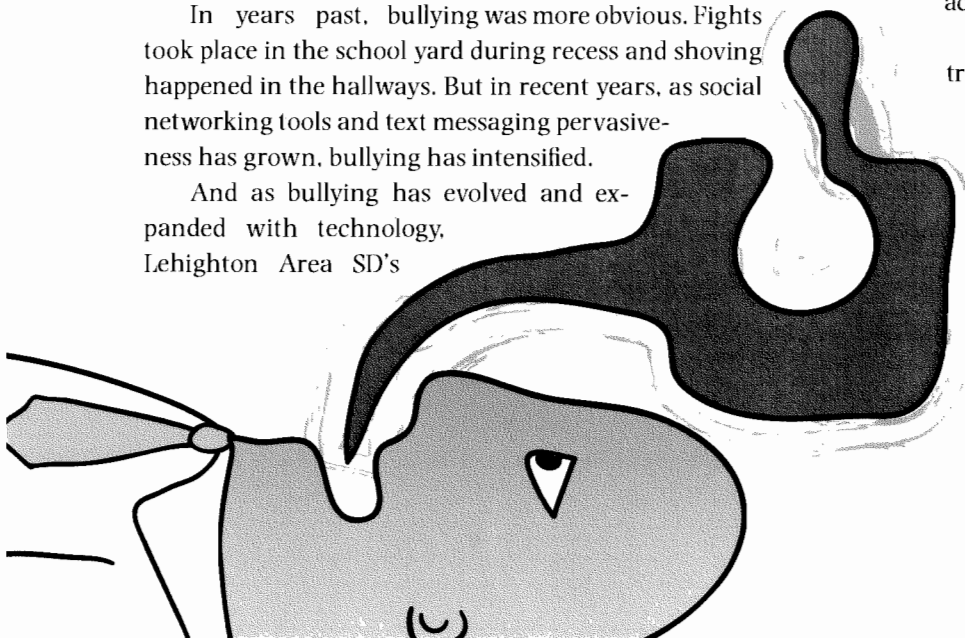
And as bullying has evolved and expanded with technology, Leighton Area SD's

approach to curtailing the intimidating behaviors has changed, too.

Leighton Area became one of more than 650 schools across the continent to implement the Safe Schools Ambassadors program last spring. The program empowers student leaders from diverse groups and cliques on campus and equips them with needed nonviolent communication and intervention skills to halt bullying among classmates, according to the program's website.

Harnessing the power of a school district's largest demographic to advance change as advocated by the program seemed to be an effective approach to decreasing bullying in the district high school, said Cody Schuler, Leighton High School math teacher. Another teacher noted a problem and actively they sought a solution.

"(Kelly Keffer) had come to me and told me bullying was on the rise at the high school with little to no acceptance of gender orientation and





Leighton Area High School students and staff undergo special training sessions to prepare for the implementation of the Safe Schools Ambassadors program that combats bullying in the district.

With all the  
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general acceptance of others," he said. "(Bullying) also appeared (to be) on the rise at the middle school especially cyberbullying."

With a little research, creative grant writing and administrative support, the program was underway with a low key and subtle approach starting with schoolwide surveys seeking information on who were the most influential student leaders in the building. Interested influential students wrote an essay and were interviewed and staff tried to select a representative of each group or clique in the school, Schuler said.

A total of 40 students and 12 staff members underwent training that taught each group seven methods – balancing, supporting, reasoning, distracting, directing, listening and getting help – for handling bullies. After training, students slowly became more comfortable taking action, Schuler said.


"We don't really want students to be out there wearing badges and saying 'You need to stop in the name of SSA.' It should be more of a subtle, realistic approach," he said.

This laid-back style has garnered vast improvements at other districts, according

to the program's website. Improvements include reduced bullying, violence and social mistreatment, improved grades, attendance and dropout rates, reduced administrative time on discipline and diminished vandalism, maintenance and repair costs among other benefits.

Leighton Area hopes to experience all those results and though fairly new in the district, school climate is making positive strides. So much so that the program is being implemented in the middle school, Schuler said.

"With all the new ways to talk...people are becoming more insensitive with how what they say affects others. Even if one person a day stands up to a bully, I think that is beneficial," he said. "Especially with all of the recent suicides that have been occurring among young people across the country, I think that we underestimate how saying one nice thing to someone or standing up for a person just one time can really benefit them and our society."

For more information, contact Gloria Bowman, coordinator of curriculum/instruction/grant writing, at (610) 377-4490, ext. 1540, or [gbowman@leighton.org](mailto:gbowman@leighton.org). 



## Legislation requires policy on bullying/cyberbullying



**Davelyn S. Smeltzer**  
Senior Policy Consultant

**Bullying can take many forms and can include many different behaviors.**

The state's recent Omnibus School Code Bill, Act 61 of 2008, includes the much-anticipated bullying legislation.

By Jan. 1, 2009, each school entity is required to adopt a policy or amend its existing policy related to bullying. No school entity will be required to establish a new policy if a current bullying policy exists that reasonably fulfills the requirements of the law.

Bullying can take many forms and can include many different behaviors, including, but not limited to, intimidation, humiliation, ridicule, defamation and threat of incitement to violence.

The law defines "bullying" as an intentional electronic, written, verbal or physical act or a series of acts directed at another student or students, which occurs in a school setting, is severe, persistent or pervasive and has the effect of doing any of the following:

1. Substantially interfering with a student's education.
2. Creating a threatening environment.
3. Substantially disrupting the orderly operation of the school.

The law includes a provision that allows schools to adopt a board policy that defines bullying to include acts that **occur outside of the school setting**, provided that all other terms of the statutory definition are met.

"School setting" is defined as in the school, on school grounds, in school vehicles, at a designated bus stop or at any activity sponsored, supervised or sanctioned by the school.

The definition of bullying was designed to include the concept of cyberbullying. To support this concept, all Internet and computer-use policies should state clearly that bullying/cyberbullying is prohibited.

Students need to feel supported by a school environment where bullying will not be tolerated. Victims or individuals with knowledge of a bullying situation should be encouraged to

come forward and report incidents promptly to the designated employee.

Act 61 requires that the policy and procedure for reporting complaints be reviewed with students within 90 days of adoption and annually thereafter.


It is widely recognized that bullying creates an atmosphere of intimidation and fear, detracts from the safe environment necessary for student learning and may lead to more serious violence. To promote and maintain a safe school environment, school administrators need to be properly trained on how to investigate and respond to bullying incidents.

Disciplinary consequences may vary depending on the severity of the bullying incident. Act 61 requires the bullying policy to delineate possible disciplinary consequences. In some cases, before assigning discipline, the administrator may want to consult with the school solicitor.

The designated administrator shall ensure that all incidents of bullying are included in the annual report sent to the Office of Safe Schools.

In order for a policy to be followed, it needs to be disseminated and accessible to appropriate stakeholders. Act 61 requires bullying policies to be posted on the school's publicly accessible Web site, if available. The policy also is required to be posted at a prominent location within each school building where such notices usually are posted and made available in every classroom.

In addition, Act 61 requires the bullying policy to be *incorporated into* the Code of Student Conduct.

To properly maintain any board policy, it is important to regularly monitor the policy, evaluate its success and revise it as necessary. Act 61 requires the bullying policy to be reviewed every three years. 

*From our Staff* is a column that focuses on different PSBA services each issue.

Cyberbullying is a  
digital extension  
of traditional bullying.

# Schools face

# difficult challenges from cyberbullies

By Steve Robinson

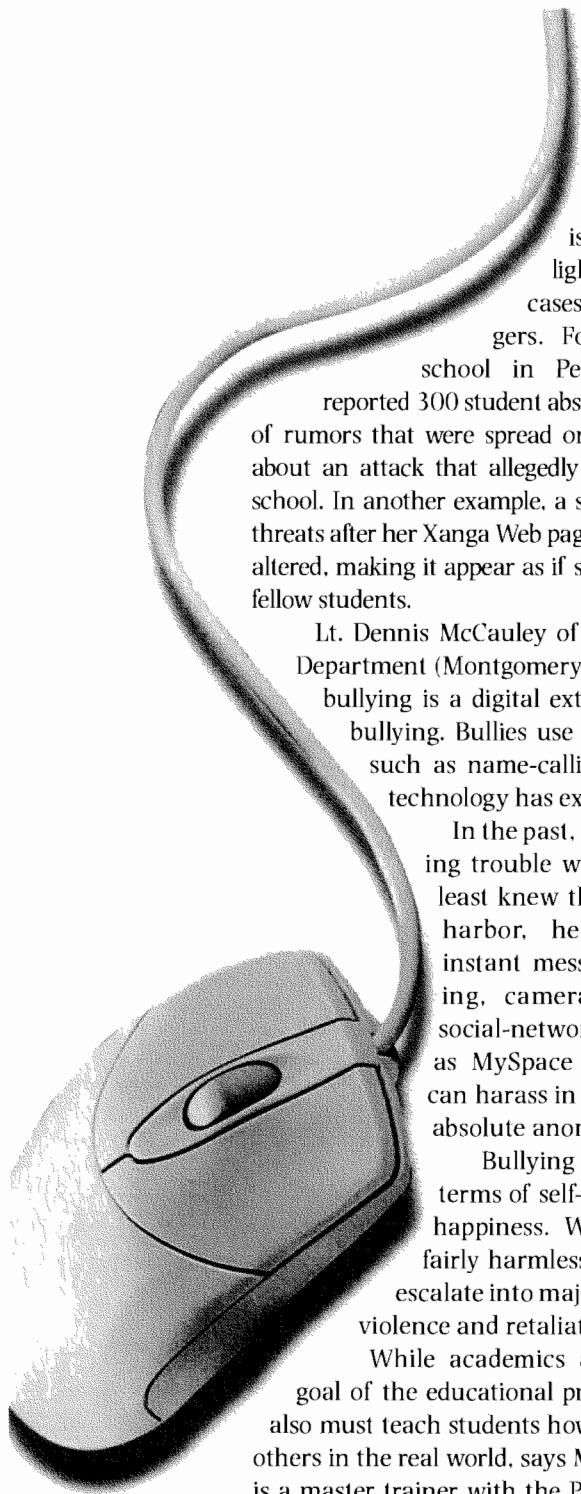


**Y**ears ago, bullies lurked on the playgrounds. Their favorite strategies were name-calling and taunting. They preyed on the weak to build their own false sense of power. Much of this is still true today, but technology has given bullies new tools to torment their victims 24/7.

Bullying and its counterpart cyberbullying negatively impact schools by undermining academics, increasing absenteeism and causing thousands of students to live in fear.

Results of a recent poll, commissioned by Fight Crime: Invest in Kids, shows how widespread bullying is. One-third of all teens (ages 12-17) and one-sixth of children (ages 6-11) report having had mean, threatening or embarrassing things said about them online, according to the survey.

*Steve Robinson is director of publications at PSBA.*



Bullying certainly is nothing to be taken lightly. There are many cases illustrating its dangers. For example, a high school in Pennsylvania recently reported 300 student absences one day because of rumors that were spread online the night before about an attack that allegedly was to take place in school. In another example, a student received death threats after her Xanga Web page was hacked into and altered, making it appear as if she was making fun of fellow students.

Lt. Dennis McCauley of the Abington Police Department (Montgomery Co.) says that cyberbullying is a digital extension of traditional bullying. Bullies use the same techniques such as name-calling or gossiping, but technology has extended their reach.

In the past, if students were having trouble with bullying, they at least knew that home was a safe harbor, he says. Now with instant messaging, text messaging, camera cell phones and social-networking Web sites such as MySpace and Xanga, bullies can harass in the victims' home in absolute anonymity.

Bullying is very destructive in terms of self-esteem and personal happiness. What may seem like fairly harmless bullying can escalate into major incidents of violence and retaliation.

While academics are the main goal of the educational process, schools also must teach students how to cope with others in the real world, says McCauley, who is a master trainer with the Protecting Kids Online program. Getting bullying under control is a big part of this process.

Fortunately, there are many resources available to schools to combat bullying, including those located on the PKO Web site at [www.center-school.org/pko](http://www.center-school.org/pko).

PKO is an awareness program designed to educate parents, caregivers, teachers and children about Internet safety. Law enforcement officers present this program to educate audiences about

laws, personal responsibilities and safeguards to be taken against online victimization.

Protecting Kids Online presentations are provided free of charge to schools and community-based organizations through a grant-funded partnership among the PA Commission on Crime and Delinquency, PA State Police, PDE and the Center for Schools and Communities.

### **Olweus takes school-wide approach**

Another program that is proving effective is the Olweus Bullying Prevention Program (pronounced Ol-VEY-us). Created by Dr. Dan Olweus, the program is a comprehensive, school-wide approach for use in elementary, middle or junior high schools. Its goals are to reduce and prevent bullying problems among schoolchildren and to improve peer relations at school.

The Center for the Study and Prevention of Violence at the University of Colorado has named the Olweus Program one of its Blueprint Model Programs. In 1996, using funding from the Colorado Division of Criminal Justice, Centers for Disease Control and Prevention and the PA Commission on Crime and Delinquency, CSPV designed and launched a national violence-prevention initiative to identify violence-prevention programs that are effective.

Pennsylvania has taken the lead promoting Olweus by having the largest cadres of certified trainers among any state, according to Mary Dolan, safe schools coordinator for the Center for Safe Schools.

Parents also  
have a role  
in fighting  
bullying.



Schools can start the process of implementing the Olweus techniques by finding a certified trainer in their area through the center's Web site at [www.center-school.org/bullyingprevention](http://www.center-school.org/bullyingprevention).



# Web Resources

## Blueprints for Violence Prevention

[www.colorado.edu/cspv/blueprints](http://www.colorado.edu/cspv/blueprints)

## Bullying Prevention

[www.center-school.org/bullyingprevention](http://www.center-school.org/bullyingprevention)

## Center for Schools and Communities

[www.center-school.org](http://www.center-school.org)

## Olweus Bullying Prevention Program

[www.clemson.edu/olweus](http://www.clemson.edu/olweus)

## Pennsylvania Commission on Crime and Delinquency

[www.pccd.state.pa.us/pccd](http://www.pccd.state.pa.us/pccd)

## Protecting Kids Online

[www.center-school.org/pko](http://www.center-school.org/pko)

## Safe Schools Initiative – PDE

[www.pde.state.pa.us/svcs\\_students](http://www.pde.state.pa.us/svcs_students)

## U.S. Department of Education – Safe and Drug-Free School Program

[www.ed.gov/about/offices/list/osdfs](http://www.ed.gov/about/offices/list/osdfs)

Laurel Highlands Middle School in Laurel Highlands SD (Fayette Co.) implemented the Olweus approach this year. The program teaches school officials that bullying is not just the problem of the building principal or assistant. Everyone must get involved in order to get bullying under control. For Laurel Highlands Middle School, that meant an all-day training in August before school started for administrators, security staff, teachers, food-service employees, office secretaries and bus drivers.

Next, school officials surveyed students to identify hot spots in the schools where bullying typically takes place and came up with solutions to address the problem.

“Our survey was a big wake-up call for us,” says Principal Mary Macar.

One of the biggest surprises was the amount of bullying taking place that was going unreported. Macar says that 88% of students did not report bullying to a teacher, and 80% never told their parents.

As a result, Laurel Highlands made a big push for students to tell adults about bullying. They created bullying forms and placed them throughout the school and allowed students to turn them in anonymously.

Students encouraged other students to report bullying incidents through a public service video they created and aired on the morning television announcements.

“Once these commercials starting running,” Macar says, “we saw a big change in the climate.”

School officials also let students know what would happen in the event of bullying. They developed a bullying prevention rubric and posted it throughout the school. The first time there is a problem, the student gets a written warning and the parents are called; the second time, there is afterschool detention and the parents are called; the third time, both the student and parents must meet with the bullying prevention committee.

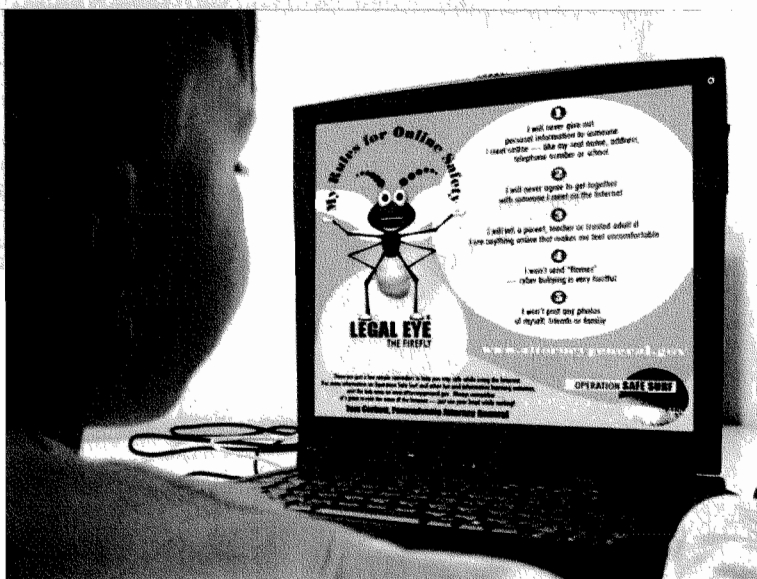
“Our kids have taken ownership of the program,” Macar says. “Now they know that they can report a problem, they know something will be done, and they know there are consequences.”

## Creating a culture of caring

Parkland SD (Lehigh Co.) also uses the Olweus Bullying Prevention Program. Superintendent Louise Donohue says that it comes down to people and creating an atmosphere of caring among students and staff.

“It sounds simplistic, but if you create a climate where people know one another, you are less likely to have problems,” Donohue says.

Parkland, a district with 9,100 students, attempts to minimize its size by adding a personal touch. Donohue says that every student has one or



two adults, whether a teacher, administrator or staff member, whom he or she can go to with a problem.

When there are incidents within the school, class meetings are held so that students can talk within smaller groups while still providing an opportunity to talk about issues and concerns in a structured setting. Only once every student feels comfortable will the class move back into normal instruction time.

Parents also have a role in fighting bullying, says Robert Thornburg, director of student services at Parkland. Parents need to be educated about the dangers of cyberbullying. Like most schools, Parkland has blocking software that does not allow students to access social networking sites on school computers. However, cyberbullying that may take place off school grounds still can have a major impact on the school environment and not leave school boards and officials with much authority to discipline the bullies.

As a blueprint program, Olweus is a framework for bullying prevention, says Dolan. The

essential elements of the program will be there, but it may look slightly different in each school.

Ericka Jackson, the bullying prevention coordinator for SD of Philadelphia and a certified Olweus trainer, used to think that implementation of the program in an urban versus a suburban or rural setting would be different, but she has since changed her mind.

"I've realized that there aren't major differences. The behaviors are the same," she says. "The differences may come in the way bullying is manifested and the resources available."

Jackson says her school may tailor lessons to make them culturally acceptable in an urban setting. Something may come across as out of place to inner-city children, so they must make the lessons relevant to them.

Parental involvement is always a challenge, says Jackson. One way she overcomes this is to take her

'Students should feel comfortable, safe and happy in school.'

programs to the parents. Instead of holding a program at the school, she may hold it at the recreation center of the housing project or at a local church.

Implementing Olweus or other bullying prevention programs is not free, but most schools find that implementing the program does not need to be costly. The SD of Philadelphia funds its program, in part, through grants from the PA Commission on Crime and Delinquency and the Department of Education. Dolan says many schools receive state funding through PDE's Safe Schools Initiative and federal funding through the Safe and Drug-Free Schools program.

Grants typically are used to pay for program materials or release time for teacher training.

For Donohue, controlling bullying is essential if schools are to deliver on their main mission: educating students. Schools should not look at bullying prevention efforts as taking away resources from academics, but instead enhancing them.

"Students should feel comfortable, safe and happy in school," Donohue says. "Bullying does not create an environment where students can learn to their best ability."

When tackling the bullying issue, school boards and officials should look at it broadly and realize that these efforts may have widespread positive influences throughout a school and district beyond their intended purposes. **B**

## Operation Safe Surf aims to curb Internet predators and cyberbullying

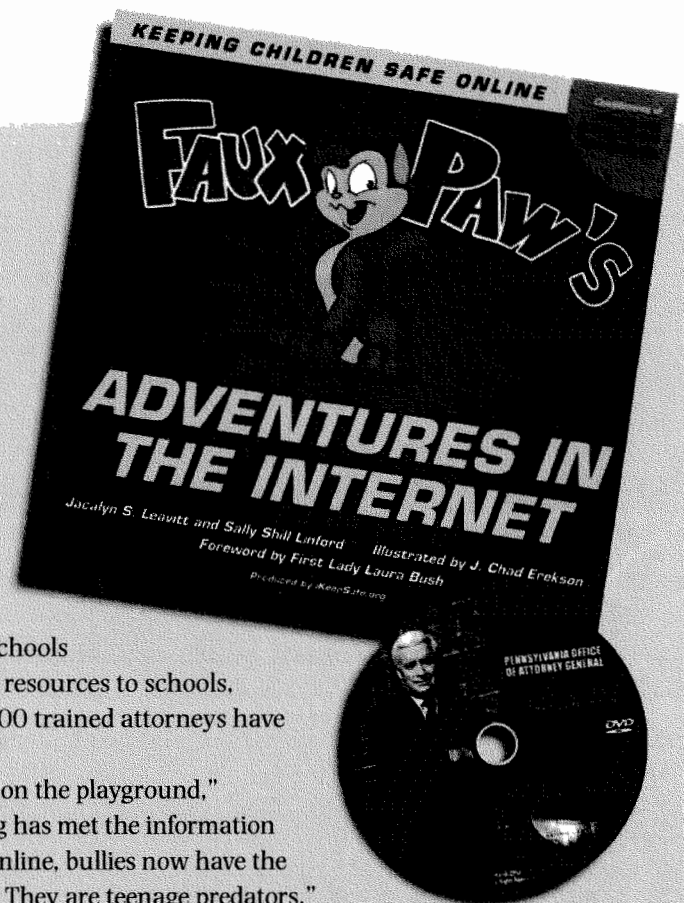
Internet safety is rapidly becoming one of the biggest concerns of parents and schools. As part of its efforts to protect kids online, the PA Attorney General's Office has kicked off a new Internet safety program call Operation Safe Surf.

The program is designed to help educate kids, parents and schools about the importance of being safe online by offering many free resources to schools, including speakers who give presentations at schools. To date, 300 trained attorneys have spoken to more than 15,000 people about Internet safety.

"Bullying has gone far beyond a whisper in the hall or a push on the playground," Attorney General Tom Corbett says. "Like everything else, bullying has met the information superhighway. With nearly three-quarters of this country's kids online, bullies now have the Internet at their fingertips to electronically assault other children. They are teenage predators."

The Attorney General's Office has partnered with a number of national leaders on Internet safety to provide resources and curriculum to both schools and parents. In addition to DVDs, a storybook appropriate for young children is available. In the book, Faux Paw the Techno Cat leads children through an adventure that teaches them proper safety techniques for the Internet.

To learn more about Operation Safe Surf, curriculum or getting a speaker from the program into your school, visit the Attorney General's Web site at [www.attorneygeneral.gov/kidsparents.aspx?id=1559](http://www.attorneygeneral.gov/kidsparents.aspx?id=1559).



Section 2  
Minnesota School Boards Association

Adopted: \_\_\_\_\_

MSBA/MASA Model Policy 413

Orig. 1995

Revised: \_\_\_\_\_

Rev. 2010

## 413 HARASSMENT AND VIOLENCE

*[Note: State law requires that school districts adopt a sexual, religious, and racial harassment and violence policy that conforms with the Minnesota Human Rights Act, Minn. Stat. Ch. 363A. This policy complies with this statutory requirement but, in addition, addresses other classifications protected by state and/or federal law. While the recommendation is that school districts incorporate the other protected classifications, in addition to sex, religion, and race, into this policy, they are not required to do so. The Minnesota Department of Education (MDE) will maintain and make available Model Policy 413 – Harassment and Violence in accordance with Minn. Stat. § 121A.03. Each school board must submit a copy of the policy the board has adopted to the Commissioner of MDE.]*

### I. PURPOSE

The purpose of this policy is to maintain a learning and working environment that is free from harassment and violence on the basis of race, color, creed, religion, national origin, sex, age, marital status, familial status, status with regard to public assistance, sexual orientation, or disability.

### II. GENERAL STATEMENT OF POLICY

- A. The policy of the school district is to maintain a learning and working environment that is free from harassment and violence on the basis of race, color, creed, religion, national origin, sex, age, marital status, familial status, status with regard to public assistance, sexual orientation, or disability. The school district prohibits any form of harassment or violence on the basis of race, color, creed, religion, national origin, sex, age, marital status, familial status, status with regard to public assistance, sexual orientation, or disability.
- B. A violation of this policy occurs when any pupil, teacher, administrator, or other school personnel of the school district harasses a pupil, teacher, administrator, or other school personnel or group of pupils, teachers, administrators, or other school personnel through conduct or communication based on a person's race, color, creed, religion, national origin, sex, age, marital status, familial status, status with regard to public assistance, sexual orientation, or disability, as defined by this policy. (For purposes of this policy, school personnel includes school board members, school employees, agents, volunteers, contractors, or persons subject to the supervision and control of the district.)
- C. A violation of this policy occurs when any pupil, teacher, administrator, or other school personnel of the school district inflicts, threatens to inflict, or attempts to inflict violence upon any pupil, teacher, administrator, or other school personnel

or group of pupils, teachers, administrators, or other school personnel based on a person's race, color, creed, religion, national origin, sex, age, marital status, familial status, status with regard to public assistance, sexual orientation, or disability.

- D. The school district will act to investigate all complaints, either formal or informal, verbal or written, of harassment or violence based on a person's race, color, creed, religion, national origin, sex, age, marital status, familial status, status with regard to public assistance, sexual orientation, or disability, and to discipline or take appropriate action against any pupil, teacher, administrator, or other school personnel who is found to have violated this policy.

### III. DEFINITIONS

- A. "Assault" is:
1. an act done with intent to cause fear in another of immediate bodily harm or death;
  2. the intentional infliction of or attempt to inflict bodily harm upon another; or
  3. the threat to do bodily harm to another with present ability to carry out the threat.
- B. "Harassment" prohibited by this policy consists of physical or verbal conduct, including, but not limited to, electronic communications, relating to an individual's or group of individuals' race, color, creed, religion, national origin, sex, age, marital status, familial status, status with regard to public assistance, sexual orientation, or disability when the conduct:
1. has the purpose or effect of creating an intimidating, hostile, or offensive working or academic environment;
  2. has the purpose or effect of substantially or unreasonably interfering with an individual's work or academic performance; or
  3. otherwise adversely affects an individual's employment or academic opportunities.
- C. "Immediately" means as soon as possible but in no event longer than 24 hours.
- D. Protected Classifications; Definitions
1. "Age" means the person is over the age of 25 years.
  2. "Disability" means any condition or characteristic that renders a person a disabled person. A disabled person is any person who:

- a. has a physical, sensory, or mental impairment which materially limits one or more major life activities;
  - b. has a record of such an impairment; or
  - c. is regarded as having such an impairment.
3. “Familial status” means the condition of one or more minors being domiciled with:
  - a. their parent or parents or the minor’s legal guardian; or
  - b. the designee of the parent or parents or guardian with the written permission of the parent or parents or guardian. The protections afforded against harassment on the basis of family status apply to any person who is pregnant or is in the process of securing legal custody of an individual who has not attained the age of majority.
4. “Marital status” means whether a person is single, married, remarried, divorced, separated, or a surviving spouse and, in employment cases, includes protection against harassment on the basis of the identity, situation, actions, or beliefs of a spouse or former spouse.
5. “National origin” means the place of birth of an individual or of any of the individual’s lineal ancestors.
6. “Sex” includes, but is not limited to, pregnancy, childbirth, and disabilities related to pregnancy or childbirth.
7. “Sexual orientation” means having or being perceived as having an emotional, physical, or sexual attachment to another person without regard to the sex of that person or having or being perceived as having an orientation for such attachment, or having or being perceived as having a self-image or identity not traditionally associated with one’s biological maleness or femaleness. “Sexual orientation” does not include a physical or sexual attachment to children by an adult.
8. “Status with regard to public assistance” means the condition of being a recipient of federal, state, or local assistance, including medical assistance, or of being a tenant receiving federal, state, or local subsidies, including rental assistance or rent supplements.

E. Sexual Harassment; Definition

1. Sexual harassment consists of unwelcome sexual advances, requests for sexual favors, sexually motivated physical conduct or other verbal or physical conduct or communication of a sexual nature when:

- a. submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining employment or an education; or
  - b. submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's employment or education; or
  - c. that conduct or communication has the purpose or effect of substantially or unreasonably interfering with an individual's employment or education, or creating an intimidating, hostile, or offensive employment or educational environment.
2. Sexual harassment may include, but is not limited to:
- a. unwelcome verbal harassment or abuse;
  - b. unwelcome pressure for sexual activity;
  - c. unwelcome, sexually motivated, or inappropriate patting, pinching, or physical contact, other than necessary restraint of pupil(s) by teachers, administrators, or other school personnel to avoid physical harm to persons or property;
  - d. unwelcome sexual behavior or words, including demands for sexual favors, accompanied by implied or overt threats concerning an individual's employment or educational status;
  - e. unwelcome sexual behavior or words, including demands for sexual favors, accompanied by implied or overt promises of preferential treatment with regard to an individual's employment or educational status; or
  - f. unwelcome behavior or words directed at an individual because of gender.

F. Sexual Violence; Definition

1. Sexual violence is a physical act of aggression or force or the threat thereof which involves the touching of another's intimate parts, or forcing a person to touch any person's intimate parts. Intimate parts, as defined in Minn. Stat. § 609.341, includes the primary genital area, groin, inner thigh, buttocks, or breast, as well as the clothing covering these areas.
2. Sexual violence may include, but is not limited to:
  - a. touching, patting, grabbing, or pinching another person's intimate



parts, whether that person is of the same sex or the opposite sex;

- b. coercing, forcing, or attempting to coerce or force the touching of anyone's intimate parts;
- c. coercing, forcing, or attempting to coerce or force sexual intercourse or a sexual act on another; or
- d. threatening to force or coerce sexual acts, including the touching of intimate parts or intercourse, on another.

G. Violence; Definition

Violence prohibited by this policy is a physical act of aggression or assault upon another or group of individuals because of, or in a manner reasonably related to, race, color, creed, religion, national origin, sex, age, marital status, familial status, status with regard to public assistance, sexual orientation, or disability.

#### IV. REPORTING PROCEDURES

- A. Any person who believes he or she has been the victim of harassment or violence on the basis of race, color, creed, religion, national origin, sex, age, marital status, familial status, status with regard to public assistance, sexual orientation, or disability by a pupil, teacher, administrator, or other school personnel of the school district, or any person with knowledge or belief of conduct which may constitute harassment or violence prohibited by this policy toward a pupil, teacher, administrator, or other school personnel or group of pupils, teachers, administrators, or other school personnel should report the alleged acts immediately to an appropriate school district official designated by this policy. The school district encourages the reporting party or complainant to use the report form available from the principal of each building or available from the school district office, but oral reports shall be considered complaints as well. Nothing in this policy shall prevent any person from reporting harassment or violence directly to a school district human rights officer or to the superintendent.
- B. In Each School Building. The building principal, the principal's designee, or the building supervisor (hereinafter building report taker) is the person responsible for receiving oral or written reports of harassment or violence prohibited by this policy at the building level. Any adult school district personnel who receives a report of harassment or violence prohibited by this policy shall inform the building report taker immediately. If the complaint involves the building report taker, the complaint shall be made or filed directly with the superintendent or the school district human rights officer by the reporting party or complainant. School district personnel who fail to inform the building report taker of a report of harassment or violence in a timely manner may be subject to disciplinary action.
- C. Upon receipt of a report, the building report taker must notify the school district human rights officer immediately, without screening or investigating the report.

The building report taker may request, but may not insist upon, a written complaint. A written statement of the facts alleged will be forwarded as soon as practicable by the building report taker to the human rights officer. If the report was given verbally, the building report taker shall personally reduce it to written form within 24 hours and forward it to the human rights officer. Failure to forward any harassment or violence report or complaint as provided herein may result in disciplinary action against the building report taker.

- D. In the District. The school board hereby designates \_\_\_\_\_ as the school district human rights officer(s) to receive reports or complaints of harassment or violence prohibited by this policy. If the complaint involves a human rights officer, the complaint shall be filed directly with the superintendent.<sup>1</sup>
- E. The school district shall conspicuously post the name of the human rights officer(s), including mailing addresses and telephone numbers.
- F. Submission of a good faith complaint or report of harassment or violence prohibited by this policy will not affect the complainant or reporter's future employment, grades, or work assignments.
- G. Use of formal reporting forms is not mandatory.
- H. Reports of harassment or violence prohibited by this policy are classified as private educational and/or personnel data and/or confidential investigative data and will not be disclosed except as permitted by law. The school district will respect the privacy of the complainant(s), the individual(s) against whom the complaint is filed, and the witnesses as much as possible, consistent with the school district's legal obligations to investigate, to take appropriate action, and to comply with any discovery or disclosure obligations.

## V. INVESTIGATION

- A. By authority of the school district, the human rights officer, upon receipt of a report or complaint alleging harassment or violence prohibited by this policy, shall immediately undertake or authorize an investigation. The investigation may be conducted by school district officials or by a third party designated by the school district.
- B. The investigation may consist of personal interviews with the complainant, the individual(s) against whom the complaint is filed, and others who may have knowledge of the alleged incident(s) or circumstances giving rise to the complaint. The investigation may also consist of any other methods and documents deemed pertinent by the investigator.
- C. In determining whether alleged conduct constitutes a violation of this policy, the

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<sup>1</sup> In some school districts the superintendent may be the human rights officer. If so, an alternative individual should be designated by the school board.

school district should consider the surrounding circumstances, the nature of the behavior, past incidents or past or continuing patterns of behavior, the relationships between the parties involved, and the context in which the alleged incidents occurred. Whether a particular action or incident constitutes a violation of this policy requires a determination based on all the facts and surrounding circumstances.

- D. In addition, the school district may take immediate steps, at its discretion, to protect the complainant, pupils, teachers, administrators, or other school personnel pending completion of an investigation of alleged harassment or violence prohibited by this policy.
- E. The investigation will be completed as soon as practicable. The school district human rights officer shall make a written report to the superintendent upon completion of the investigation. If the complaint involves the superintendent, the report may be filed directly with the school board. The report shall include a determination of whether the allegations have been substantiated as factual and whether they appear to be violations of this policy.

## **VI. SCHOOL DISTRICT ACTION**

- A. Upon completion of the investigation, the school district will take appropriate action. Such action may include, but is not limited to, warning, suspension, exclusion, expulsion, transfer, remediation, termination, or discharge. School district action taken for violation of this policy will be consistent with requirements of applicable collective bargaining agreements, Minnesota and federal law, and school district policies.
- B. The result of the school district's investigation of each complaint filed under these procedures will be reported in writing to the complainant by the school district in accordance with state and federal law regarding data or records privacy.

## **VII. REPRISAL**

The school district will discipline or take appropriate action against any pupil, teacher, administrator, or other school personnel who retaliates against any person who makes a good faith report of alleged harassment or violence prohibited by this policy or any person who testifies, assists, or participates in an investigation, or who testifies, assists, or participates in a proceeding or hearing relating to such harassment or violence. Retaliation includes, but is not limited to, any form of intimidation, reprisal, harassment, or intentional disparate treatment.

## **VIII. RIGHT TO ALTERNATIVE COMPLAINT PROCEDURES**

These procedures do not deny the right of any individual to pursue other avenues of recourse which may include filing charges with the Minnesota Department of Human Rights, initiating civil action, or seeking redress under state criminal statutes and/or federal law.

**IX. HARASSMENT OR VIOLENCE AS ABUSE**

- A. Under certain circumstances, alleged harassment or violence may also be possible abuse under Minnesota law. If so, the duties of mandatory reporting under Minn. Stat. § 626.556 may be applicable.
- B. Nothing in this policy will prohibit the school district from taking immediate action to protect victims of alleged harassment, violence, or abuse.

**X. DISSEMINATION OF POLICY AND TRAINING**

- A. This policy shall be conspicuously posted throughout each school building in areas accessible to pupils and staff members.
- B. This policy shall be given to each school district employee and independent contractor at the time of entering into the person’s employment contract.
- C. This policy shall appear in the student handbook.
- D. The school district will develop a method of discussing this policy with students and employees.
- E. The school district may implement violence prevention and character development education programs to prevent and reduce policy violations. Such programs may offer instruction on character education including, but not limited to, character qualities such as attentiveness, truthfulness, respect for authority, diligence, gratefulness, self-discipline, patience, forgiveness, respect for others, peacemaking, and resourcefulness.
- F. This policy shall be reviewed at least annually for compliance with state and federal law.

**Legal References:** Minn. Stat. § 120B.232 (Character Development Education)  
Minn. Stat. § 121A.03, Subd. 2 (Sexual, Religious, and Racial Harassment and Violence Policy)  
Minn. Stat. Ch. 363A (Minnesota Human Rights Act)  
Minn. Stat. § 609.341 (Definitions)  
Minn. Stat. § 626.556 *et seq.* (Reporting of Maltreatment of Minors)  
20 U.S.C. §§ 1681-1688 (Title IX of the Education Amendments of 1972)  
29 U.S.C. § 621 *et seq.* (Age Discrimination in Employment Act)  
29 U.S.C. § 794 (Rehabilitation Act of 1973, § 504)  
42 U.S.C. § 1983 (Civil Action for Deprivation of Rights)  
42 U.S.C. § 2000d *et seq.* (Title VI of the Civil Rights Act of 1964)  
42 U.S.C. § 2000e *et seq.* (Title VII of the Civil Rights Act)  
42 U.S.C. § 12101 *et seq.* (Americans with Disabilities Act)  
*Puller v. Indep. Sch. Dist. No. 701*, 528 N.W.2d 273 (Minn. Ct. App.

1998)

***Cross References:*** MSBA/MASA Model Policy 102 (Equal Educational Opportunity)  
MSBA/MASA Model Policy 401 (Equal Employment Opportunity)  
MSBA/MASA Model Policy 402 (Disability Nondiscrimination Policy)  
MSBA/MASA Model Policy 403 (Discipline, Suspension, and Dismissal of School District Employees)  
MSBA/MASA Model Policy 406 (Public and Private Personnel Data)  
MSBA/MASA Model Policy 414 (Mandated Reporting of Child Neglect or Physical or Sexual Abuse)  
MSBA/MASA Model Policy 415 (Mandated Reporting of Maltreatment of Vulnerable Adults)  
MSBA/MASA Model Policy 506 (Student Discipline)  
MSBA/MASA Model Policy 515 (Protection and Privacy of Pupil Records)  
MSBA/MASA Model Policy 521 (Student Disability Nondiscrimination)  
MSBA/MASA Model Policy 522 (Student Sex Nondiscrimination)  
MSBA/MASA Model Policy 524 (Internet Acceptable Use and Safety Policy)  
MSBA/MASA Model Policy 525 (Violence Prevention)  
MSBA/MASA Model Policy 528 (Student Parental, Family, and Marital Status Nondiscrimination)

INDEPENDENT SCHOOL DISTRICT NO. \_\_\_\_\_  
HARASSMENT AND VIOLENCE REPORT FORM

General Statement of Policy Prohibiting Harassment and Violence

Independent School District No. \_\_\_ maintains a firm policy prohibiting all forms of discrimination. Harassment or violence against students or employees or groups of students or employees on the basis of race, color, creed, religion, national origin, sex, age, marital status, familial status, status with regard to public assistance, sexual orientation, or disability is strictly prohibited. All persons are to be treated with respect and dignity. Harassment or violence on the basis of race, color, creed, religion, national origin, sex, age, marital status, familial status, status with regard to public assistance, sexual orientation, or disability by any pupil, teacher, administrator, or other school personnel, which create an intimidating, hostile, or offensive environment will not be tolerated under any circumstances.

Complainant \_\_\_\_\_  
Home Address \_\_\_\_\_  
Work Address \_\_\_\_\_  
Home Phone \_\_\_\_\_ Work Phone \_\_\_\_\_

Date of Alleged Incident(s) \_\_\_\_\_

Basis of Alleged Harassment/Violence - circle as appropriate: race \ color \ creed \ religion \ national origin \ sex \ age \ marital status \ familial status \ status with regard to public assistance \ sexual orientation \ disability

Name of person you believe harassed or was violent toward you or another person or group.  
\_\_\_\_\_

If the alleged harassment or violence was toward another person or group, identify that person or group.  
\_\_\_\_\_  
\_\_\_\_\_

Describe the incident(s) as clearly as possible, including such things as: what force, if any, was used; any verbal statements (i.e., threats, requests, demands, etc.); what, if any, physical contact was involved; etc. (Attach additional pages if necessary.) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Where and when did the incident(s) occur? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

List any witnesses that were present \_\_\_\_\_  
\_\_\_\_\_

This complaint is filed based on my honest belief that \_\_\_\_\_ has harassed or has been violent to me or to another person or group. I hereby certify that the information I have provided in this complaint is true, correct, and complete to the best of my knowledge and belief.

\_\_\_\_\_  
(Complainant Signature)

\_\_\_\_\_  
(Date)

Received by \_\_\_\_\_

\_\_\_\_\_  
(Date)

Adopted: \_\_\_\_\_

MSBA/MASA Model Policy 514

Orig. 2003

Revised: \_\_\_\_\_

Rev. 2010

## **514 BULLYING PROHIBITION POLICY**

*[Note: School districts are required by statute to have a policy addressing bullying.]*

### **I. PURPOSE**

A safe and civil environment is needed for students to learn and attain high academic standards and to promote healthy human relationships. Bullying, like other violent or disruptive behavior, is conduct that interferes with students' ability to learn and teachers' ability to educate students in a safe environment. The school district cannot monitor the activities of students at all times and eliminate all incidents of bullying between students, particularly when students are not under the direct supervision of school personnel. However, to the extent such conduct affects the educational environment of the school district and the rights and welfare of its students and is within the control of the school district in its normal operations, it is the school district's intent to prevent bullying and to take action to investigate, respond, remediate, and discipline those acts of bullying which have not been successfully prevented. The purpose of this policy is to assist the school district in its goal of preventing and responding to acts of bullying, intimidation, violence, and other similar disruptive behavior.

### **II. GENERAL STATEMENT OF POLICY**

- A. An act of bullying, by either an individual student or a group of students, is expressly prohibited on school district property or at school-related functions. This policy applies not only to students who directly engage in an act of bullying but also to students who, by their indirect behavior, condone or support another student's act of bullying. This policy also applies to any student whose conduct at any time or in any place constitutes bullying that interferes with or obstructs the mission or operations of the school district or the safety or welfare of the student, other students, or employees. The misuse of technology including, but not limited to, teasing, intimidating, defaming, threatening, or terrorizing another student, teacher, administrator, volunteer, contractor, or other employee of the school district by sending or posting e-mail messages, instant messages, text messages, digital pictures or images, or website postings, including blogs, also may constitute an act of bullying regardless of whether such acts are committed on or off school district property and/or with or without the use of school district resources.
- B. No teacher, administrator, volunteer, contractor, or other employee of the school district shall permit, condone, or tolerate bullying.
- C. Apparent permission or consent by a student being bullied does not lessen the prohibitions contained in this policy.



- D. Retaliation against a victim, good faith reporter, or a witness of bullying is prohibited.
- E. False accusations or reports of bullying against another student are prohibited.
- F. A person who engages in an act of bullying, reprisal, or false reporting of bullying or permits, condones, or tolerates bullying shall be subject to discipline for that act in accordance with school district's policies and procedures. The school district may take into account the following factors:
  - 1. The developmental and maturity levels of the parties involved;
  - 2. The levels of harm, surrounding circumstances, and nature of the behavior;
  - 3. Past incidences or past or continuing patterns of behavior;
  - 4. The relationship between the parties involved; and
  - 5. The context in which the alleged incidents occurred.

Consequences for students who commit prohibited acts of bullying may range from positive behavioral interventions up to and including suspension and/or expulsion. Consequences for employees who permit, condone, or tolerate bullying or engage in an act of reprisal or intentional false reporting of bullying may result in disciplinary action up to and including termination or discharge. Consequences for other individuals engaging in prohibited acts of bullying may include, but not be limited to, exclusion from school district property and events and/or termination of services and/or contracts.

- G. The school district will act to investigate all complaints of bullying and will discipline or take appropriate action against any student, teacher, administrator, volunteer, contractor, or other employee of the school district who is found to have violated this policy.

***[Note: As the purpose of the policy is to ensure the safety and well-being of students, school districts should review those individuals in their district who may have responsibility for its students, whether formal or informal, to ensure that this purpose is met. Accordingly, school districts may wish to exclude or add certain individuals as being subject to its policy. For example, if a school district is providing visitors with extensive contact with students, the school district may wish to include visitors as individuals subject to the policy to ensure the access the school district has permitted is not being abused. Alternatively, a school district may wish to remove contractors from the policy if the individuals with whom it contracts have little or no contact with students to avoid unnecessary application of the policy.]***

### III. DEFINITIONS

For purposes of this policy, the definitions included in this section apply.

- A. “Bullying” means any written or verbal expression, physical act or gesture, or pattern thereof, by a student that is intended to cause or is perceived as causing distress to a student or a group of students and which substantially interferes with another student’s or students’ educational benefits, opportunities, or performance. Bullying includes, but is not limited to, conduct by a student against another student or a group of students that a reasonable person under the circumstances knows or should know has the effect of:
  - 1. harming a student or a group of students;
  - 2. damaging a student’s or a group of students’ property;
  - 3. placing a student or a group of students in reasonable fear of harm to person or property;
  - 4. creating a hostile educational environment for a student or a group of students; or
  - 5. intimidating a student or a group of students.
- B. “Immediately” means as soon as possible but in no event longer than 24 hours.
- C. “On school district property or at school-related functions” means all school district buildings, school grounds, and school property or property immediately adjacent to school grounds, school bus stops, school buses, school vehicles, school contracted vehicles, or any other vehicles approved for school district purposes, the area of entrance or departure from school grounds, premises, or events, and all school-related functions, school-sponsored activities, events, or trips. School district property also may mean a student’s walking route to or from school for purposes of attending school or school-related functions, activities, or events. While prohibiting bullying at these locations and events, the school district does not represent that it will provide supervision or assume liability at these locations and events.

#### **IV. REPORTING PROCEDURE**

- A. Any person who believes he or she has been the victim of bullying or any person with knowledge or belief of conduct that may constitute bullying shall report the alleged acts immediately to an appropriate school district official designated by this policy. A person may report bullying anonymously. However, the school district’s ability to take action against an alleged perpetrator based solely on an anonymous report may be limited.
- B. The school district encourages the reporting party or complainant to use the report form available from the principal of each building or available from the school

district office, but oral reports shall be considered complaints as well.

- C. The building principal, the principal's designee, or the building supervisor (hereinafter building report taker) is the person responsible for receiving reports of bullying at the building level. Any person may report bullying directly to a school district human rights officer or the superintendent. If the complaint involves the building report taker, the complaint shall be made or filed directly with the superintendent or the school district human rights officer by the reporting party or complainant.
- D. A teacher, school administrator, volunteer, contractor, or other school employee shall be particularly alert to possible situations, circumstances, or events that might include bullying. Any such person who receives a report of, observes, or has other knowledge or belief of conduct that may constitute bullying shall inform the building report taker immediately. School district personnel who fail to inform the building report taker of conduct that may constitute bullying in a timely manner may be subject to disciplinary action.
- E. Reports of bullying are classified as private educational and/or personnel data and/or confidential investigative data and will not be disclosed except as permitted by law.
- F. Submission of a good faith complaint or report of bullying will not affect the complainant's or reporter's future employment, grades, or work assignments, or educational or work environment.
- G. The school district will respect the privacy of the complainant(s), the individual(s) against whom the complaint is filed, and the witnesses as much as possible, consistent with the school district's obligation to investigate, take appropriate action, and comply with any legal disclosure obligations.

## **V. SCHOOL DISTRICT ACTION**

- A. Upon receipt of a complaint or report of bullying, the school district shall undertake or authorize an investigation by school district officials or a third party designated by the school district.
- B. The school district may take immediate steps, at its discretion, to protect the complainant, reporter, students, or others pending completion of an investigation of bullying, consistent with applicable law.
- C. Upon completion of the investigation, the school district will take appropriate action. Such action may include, but is not limited to, warning, suspension, exclusion, expulsion, transfer, remediation, termination, or discharge. Disciplinary consequences will be sufficiently severe to try to deter violations and to appropriately discipline prohibited behavior. School district action taken for violation of this policy will be consistent with the requirements of applicable collective bargaining agreements; applicable statutory authority, including the

Minnesota Pupil Fair Dismissal Act; school district policies; and regulations.

- D. The school district is not authorized to disclose to a victim private educational or personnel data regarding an alleged perpetrator who is a student or employee of the school district. School officials will notify the parent(s) or guardian(s) of students involved in a bullying incident and the remedial action taken, to the extent permitted by law, based on a confirmed report.

## **VI. REPRISAL**

The school district will discipline or take appropriate action against any student, teacher, administrator, volunteer, contractor, or other employee of the school district who retaliates against any person who makes a good faith report of alleged bullying or against any person who testifies, assists, or participates in an investigation, or against any person who testifies, assists, or participates in a proceeding or hearing relating to such bullying. Retaliation includes, but is not limited to, any form of intimidation, reprisal, harassment, or intentional disparate treatment.

## **VII. TRAINING AND EDUCATION**

- A. The school district annually will provide information and any applicable training to school district staff regarding this policy.
- B. The school district annually will provide education and information to students regarding bullying, including information regarding this school district policy prohibiting bullying, the harmful effects of bullying, and other applicable initiatives to prevent bullying.
- C. The administration of the school district is directed to implement programs and other initiatives to prevent bullying, to respond to bullying in a manner that does not stigmatize the victim, and to make resources or referrals to resources available to victims of bullying.
- D. The school district may implement violence prevention and character development education programs to prevent and reduce policy violations. Such programs may offer instruction on character education including, but not limited to, character qualities such as attentiveness, truthfulness, respect for authority, diligence, gratefulness, self-discipline, patience, forgiveness, respect for others, peacemaking, and resourcefulness.

## **VIII. NOTICE**

The school district will give annual notice of this policy to students, parents or guardians, and staff, and this policy shall appear in the student handbook.

**Legal References:** Minn. Stat. § 120B.232 (Character Development Education)  
Minn. Stat. § 121A.03 (Sexual, Religious and Racial Harassment and

Violence)  
Minn. Stat. § 121A.0695 (School Board Policy; Prohibiting Intimidation and Bullying)  
Minn. Stat. §§ 121A.40-121A.56 (Pupil Fair Dismissal Act)  
Minn. Stat. § 121A.69 (Hazing Policy)

***Cross References:*** MSBA/MASA Model Policy 403 (Discipline, Suspension, and Dismissal of School District Employees)  
MSBA/MASA Model Policy 413 (Harassment and Violence)  
MSBA/MASA Model Policy 414 (Mandated Reporting of Child Neglect or Physical or Sexual Abuse)  
MSBA/MASA Model Policy 415 (Mandated Reporting of Maltreatment of Vulnerable Adults)  
MSBA/MASA Model Policy 423 (Employee-Student Relationships)  
MSBA/MASA Model Policy 501 (School Weapons Policy)  
MSBA/MASA Model Policy 506 (Student Discipline)  
MSBA/MASA Model Policy 507 (Corporal Punishment)  
MSBA/MASA Model Policy 515 (Protection and Privacy of Pupil Records)  
MSBA/MASA Model Policy 521 (Student Disability Nondiscrimination)  
MSBA/MASA Model Policy 522 (Student Sex Nondiscrimination)  
MSBA/MASA Model Policy 525 (Violence Prevention)  
MSBA/MASA Model Policy 526 (Hazing Prohibition)  
MSBA/MASA Model Policy 529 (Staff Notification of Violent Behavior by Students)  
MSBA/MASA Model Policy 709 (Student Transportation Safety Policy)  
MSBA/MASA Model Policy 711 (Video Recording on School Buses)  
MSBA/MASA Model Policy 712 (Video Surveillance Other Than on Buses)

Section 3  
Texas Association of School Boards

1 By: \_\_\_\_\_ .B. No. \_\_\_\_\_

2 Substitute the following for \_\_\_\_ .B. No. \_\_\_\_:

3 By: \_\_\_\_\_ C.S. \_\_\_\_ .B. No. \_\_\_\_\_

4

5 A BILL TO BE ENTITLED

6 AN ACT

7 relating to bullying in public schools.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

9 SECTION 1. Section 21.451(d), Education Code, is amended  
10 to read as follows:

11 (d) The staff development:

12 (1) may include training in:

13 (A) technology;

14 (B) conflict resolution; ~~and~~

15 (C) discipline strategies, including classroom  
16 management, district discipline policies, and the student code  
17 of conduct adopted under Section 37.001 and Chapter 37; and

18 (D) preventing, identifying, responding to, and  
19 reporting incidents of bullying; and

20 (2) subject to Subsection (e), must include training  
21 based on scientifically based research, as defined by Section  
22 9101, No Child Left Behind Act of 2001 (20 U.S.C. Section 7801),  
23 that:

24 (A) relates to instruction of students with  
25 disabilities; and

26 (B) is designed for educators who work primarily  
27 outside the area of special education.

1 SECTION 2. The heading to Section 25.0342, Education Code,  
2 is amended to read as follows:

3 Sec. 25.0342. TRANSFER OF STUDENTS WHO ARE VICTIMS OF OR  
4 HAVE ENGAGED IN BULLYING.

5 SECTION 3. Section 25.0342, Education Code, is amended by  
6 amending Subsection (a) and adding Subsections (b-1) and (b-2)  
7 to read as follows:

8 (a) In this section, "bullying" has the meaning assigned  
9 by Section 37.0832 [~~means engaging in written or verbal~~  
10 ~~expression or physical conduct that a school district board of~~  
11 ~~trustees or the board's designee determines.~~

12 [~~(1) will have the effect of physically harming a~~  
13 ~~student, damaging a student's property, or placing a student in~~  
14 ~~reasonable fear of harm to the student's person or of damage to~~  
15 ~~the student's property; or~~

16 [~~(2) is sufficiently severe, persistent, or pervasive~~  
17 ~~enough that the action or threat creates an intimidating,~~  
18 ~~threatening, or abusive educational environment for a student].~~

19 (b-1) The board of trustees of a school district may  
20 transfer the student who engaged in bullying to:

21 (1) another classroom at the campus to which the  
22 victim was assigned at the time the bullying occurred; or

23 (2) a campus in the district other than the campus to  
24 which the victim was assigned at the time the bullying occurred.

25 (b-2) Section 37.004 applies to a transfer under  
26 Subsection (b-1) of a student with a disability who receives  
27 special education services.



1 SECTION 4. Section 28.002, Education Code, is amended by  
2 adding Subsection (s) to read as follows:

3 (s) In this subsection, "bullying" has the meaning  
4 assigned by Section 37.0832 and "harassment" has the meaning  
5 assigned by Section 37.001. In addition to any other essential  
6 knowledge and skills the State Board of Education adopts for the  
7 health curriculum under Subsection (a)(2)(B), the board shall  
8 adopt for the health curriculum, in consultation with the Texas  
9 School Safety Center, essential knowledge and skills that  
10 include evidence-based practices that will effectively address  
11 awareness, prevention, identification, self-defense in response  
12 to, and resolution of and intervention in bullying and  
13 harassment.

14 SECTION 5. Section 37.001(b), Education Code, is amended  
15 to read as follows:

16 (b) In this section:

17 (1) "Bullying" has the meaning assigned by Section  
18 37.0832.

19 (2) "Harassment" means threatening to cause harm or  
20 bodily injury to another student, engaging in sexually  
21 intimidating conduct, causing physical damage to the property of  
22 another student, subjecting another student to physical  
23 confinement or restraint, or maliciously taking any action that  
24 substantially harms another student's physical or emotional  
25 health or safety.

26 (3) [+2] "Hit list" means a list of people targeted  
27 to be harmed, using:

1 (A) a firearm, as defined by Section 46.01(3),  
2 Penal Code;

3 (B) a knife, as defined by Section 46.01(7),  
4 Penal Code; or

5 (C) any other object to be used with intent to  
6 cause bodily harm.

7 SECTION 6. Section 37.083(a), Education Code, is amended  
8 to read as follows:

9 (a) Each school district shall adopt and implement a  
10 discipline management program to be included in the district  
11 improvement plan under Section 11.252. The program must provide  
12 for prevention of and education concerning unwanted physical or  
13 verbal aggression and [7] sexual harassment [~~7, and other forms~~  
14 ~~of bullying~~] in school, on school grounds, and in school  
15 vehicles.

16 SECTION 7. Subchapter C, Chapter 37, Education Code, is  
17 amended by adding Section 37.0832 to read as follows:

18 Sec. 37.0832. BULLYING PREVENTION POLICIES AND PROCEDURES.

19 (a) In this section, "bullying" means engaging in written or  
20 verbal expression, expression through electronic means, or  
21 physical conduct that occurs on school property, at a school-  
22 sponsored or school-related activity, or in a vehicle operated  
23 by the district and:

24 (1) that has the effect or will have the effect of  
25 physically harming a student, damaging a student's property, or  
26 placing a student in reasonable fear of harm to the student's  
27 person or of damage to the student's property or that is

1 sufficiently severe, persistent, and pervasive enough that the  
2 action or threat creates an intimidating, threatening, or  
3 abusive educational environment for a student;

4 (2) that exploits an imbalance of power between the  
5 student perpetrator and the student victim through written or  
6 verbal expression or physical conduct; and

7 (3) that interferes with a student's education or  
8 substantially disrupts the operation of a school.

9 (b) The board of trustees of each school district shall  
10 adopt a policy, including any necessary procedures, concerning  
11 bullying that:

12 (1) prohibits the bullying of a student;

13 (2) prohibits retaliation against any person,  
14 including a victim, a witness, or another person, who in good  
15 faith provides information concerning an incident of bullying;

16 (3) establishes a procedure for providing notice of  
17 an incident of bullying to a parent or guardian of the victim  
18 and a parent or guardian of the bully within a reasonable amount  
19 of time after the incident;

20 (4) establishes the actions a student should take to  
21 obtain assistance and intervention in response to bullying;

22 (5) sets out the available counseling options for a  
23 student who is a victim of or a witness to bullying or who  
24 engages in bullying;

25 (6) establishes procedures for reporting an incident  
26 of bullying, investigating a reported incident of bullying, and  
27 determining whether the reported incident of bullying occurred;

1 and

2 (7) prohibits the imposition of a disciplinary  
3 measure on a student who after an investigation is found to be a  
4 victim of bullying on the basis of that student's use of  
5 reasonable self-defense in response to the bullying.

6 (8) Discipline of a student with disabilities under  
7 this section must comply with requirements under the federal  
8 Individuals with Disabilities Education Act.

9 (c) The policy and any necessary procedures adopted under  
10 Subsection (b) must be included:

11 (1) annually, in the student and employee school  
12 district handbooks; and

13 (2) in the district improvement plan under Section  
14 11.252.

15 (d) The procedure for reporting bullying established under  
16 Subsection (b) must be posted on the district's Internet website  
17 to the extent practicable.

18 SECTION 8. This Act applies beginning with the 2012-2013  
19 school year.

20 SECTION 9. This Act takes effect immediately if it  
21 receives a vote of two-thirds of all the members elected to each  
22 house, as provided by Section 39, Article III, Texas  
23 Constitution. If this Act does not receive the vote necessary  
24 for immediate effect, this Act takes effect September 1, 2011.

The District may develop and implement a sexual harassment policy to be included in the District improvement plan. The District shall adopt and implement a dating violence policy to be included in the District improvement plan. *Education Code 37.083, 37.0831* [See BQ]

Sexual abuse of a student by an employee, when there is a connection between the physical sexual activity and the employee's duties and obligations as a District employee, violates a student's constitutional right to bodily integrity. Sexual abuse may include fondling, sexual assault, or sexual intercourse. *U.S. Const. Amend. 14; Doe v. Taylor ISD, 15 F.3d 443 (5th Cir. 1994)*

Sexual harassment of students may constitute discrimination on the basis of sex in violation of Title IX. *20 U.S.C. 1681; 34 CFR 106.11; Franklin v. Gwinnett County Schools, 503 U.S. 60 (1992)* [See FB regarding Title IX]

DEFINITION OF  
SEXUAL HARASSMENT

Sexual harassment of students is conduct that is so severe, pervasive, and objectively offensive that it can be said to deprive the victim of access to the educational opportunities or benefits provided by the school. Sexual harassment does not include simple acts of teasing and name-calling among school children, however, even when the comments target differences in gender. *Davis v. Monroe County Bd. of Educ., 526 U.S. 629 (1999)*

EMPLOYEE- STUDENT  
SEXUAL HARASSMENT

A District official who has authority to address alleged harassment by employees on the District's behalf shall take corrective measures to address the harassment or abuse. *Gebser v. Lago Vista ISD, 118 S.Ct. 1989 524 U.S. 274 (1998); Doe v. Taylor ISD, 15 F.3d 443 (5th Cir. 1994)*

STUDENT-STUDENT  
SEXUAL HARASSMENT

The District must reasonably respond to known student-on-student harassment where the harasser is under the District's disciplinary authority. *Davis v. Monroe County Bd. of Educ., 526 U.S. 629 (1999)*

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**Note:** This policy addresses discrimination, harassment, and retaliation involving District students. For provisions regarding discrimination, harassment, and retaliation involving District employees, see DIA. For reporting requirements related to child abuse and neglect, see FFG. For provisions regarding bullying, see FFI.

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STATEMENT OF  
NONDISCRIMINATION

The District prohibits discrimination, including harassment, against any student on the basis of race, color, religion, gender, national origin, disability, or any other basis prohibited by law. The District prohibits dating violence, as defined by this policy. Retaliation against anyone involved in the complaint process is a violation of District policy.

DISCRIMINATION

Discrimination against a student is defined as conduct directed at a student on the basis of race, color, religion, gender, national origin, disability, or on any other basis prohibited by law, that adversely affects the student.

PROHIBITED  
HARASSMENT

Prohibited harassment of a student is defined as physical, verbal, or nonverbal conduct based on the student's race, color, religion, gender, national origin, disability, or any other basis prohibited by law that is so severe, persistent, or pervasive that the conduct:

1. Affects a student's ability to participate in or benefit from an educational program or activity, or creates an intimidating, threatening, hostile, or offensive educational environment;
2. Has the purpose or effect of substantially or unreasonably interfering with the student's academic performance; or
3. Otherwise adversely affects the student's educational opportunities.

Prohibited harassment includes dating violence as defined by this policy.

EXAMPLES

Examples of prohibited harassment may include offensive or derogatory language directed at another person's religious beliefs or practices, accent, skin color, or need for accommodation; threatening or intimidating conduct; offensive jokes, name calling, slurs, or rumors; physical aggression or assault; display of graffiti or printed material promoting racial, ethnic, or other negative stereotypes; or other kinds of aggressive conduct such as theft or damage to property.

SEXUAL HARASSMENT  
BY AN EMPLOYEE

Sexual harassment of a student by a District employee includes both welcome and unwelcome sexual advances; requests for sex-

ual favors; sexually motivated physical, verbal, or nonverbal conduct; or other conduct or communication of a sexual nature when:

1. A District employee causes the student to believe that the student must submit to the conduct in order to participate in a school program or activity, or that the employee will make an educational decision based on whether or not the student submits to the conduct; or
2. The conduct is so severe, persistent, or pervasive that it:
  - a. Affects the student's ability to participate in or benefit from an educational program or activity, or otherwise adversely affects the student's educational opportunities; or
  - b. Creates an intimidating, threatening, hostile, or abusive educational environment.

Romantic or inappropriate social relationships between students and District employees are prohibited. Any sexual relationship between a student and a District employee is always prohibited, even if consensual. [See DF]

BY OTHERS

Sexual harassment of a student, including harassment committed by another student, includes unwelcome sexual advances; requests for sexual favors; or sexually motivated physical, verbal, or nonverbal conduct when the conduct is so severe, persistent, or pervasive that it:

1. Affects a student's ability to participate in or benefit from an educational program or activity, or creates an intimidating, threatening, hostile, or offensive educational environment;
2. Has the purpose or effect of substantially or unreasonably interfering with the student's academic performance; or
3. Otherwise adversely affects the student's educational opportunities.

EXAMPLES

Examples of sexual harassment of a student may include sexual advances; touching intimate body parts or coercing physical contact that is sexual in nature; jokes or conversations of a sexual nature; and other sexually motivated conduct, communications, or contact.

Necessary or permissible physical contact such as assisting a child by taking the child's hand, comforting a child with a hug, or other physical contact not reasonably construed as sexual in nature is not sexual harassment.

DATING VIOLENCE	Dating violence occurs when one partner in a dating relationship, either past or current, intentionally uses physical, sexual, verbal, or emotional abuse to harm, threaten, intimidate, or control the other partner.
EXAMPLES	<p>Examples of dating violence against a student may include physical or sexual assaults, name-calling, put-downs, threats to hurt the student or the student's family members or members of the student's household, destroying property belonging to the student, threats to commit suicide or homicide if the student ends the relationship, attempts to isolate the student from friends and family, stalking, or encouraging others to engage in these behaviors.</p> <p>For purposes of this policy, dating violence is considered prohibited harassment if the conduct is so severe, persistent, or pervasive that the conduct:</p> <ol style="list-style-type: none"><li>1. Affects a student's ability to participate in or benefit from an educational program or activity, or creates an intimidating, threatening, hostile, or offensive educational environment;</li><li>2. Has the purpose or effect of substantially or unreasonably interfering with the student's academic performance; or</li><li>3. Otherwise adversely affects the student's educational opportunities.</li></ol>
RETALIATION	<p>The District prohibits retaliation against a student alleged to have experienced discrimination or harassment, including dating violence, or another student who, in good faith, makes a report, serves as a witness, or otherwise participates in an investigation.</p> <p>A student who intentionally makes a false claim, offers false statements, or refuses to cooperate with a District investigation regarding discrimination or harassment, including dating violence, is subject to appropriate discipline.</p>
EXAMPLES	Examples of retaliation include threats, unjustified punishments, or unwarranted grade reductions. Unlawful retaliation does not include petty slights or annoyances, such as negative comments that are justified by a student's performance in the classroom.
PROHIBITED CONDUCT	In this policy, the term "prohibited conduct" includes discrimination, harassment, dating violence, and retaliation as defined by this policy, even if the behavior does not rise to the level of unlawful conduct.
REPORTING PROCEDURES	Any student who believes that he or she has experienced prohibited conduct or believes that another student has experienced



prohibited conduct should immediately report the alleged acts to a teacher, counselor, principal, or other District employee.

Alternatively, a student may report prohibited conduct directly to one of the District officials below:

DEFINITION OF  
DISTRICT  
OFFICIALS

For the purposes of this policy, District officials are the Title IX coordinator, the ADA/Section 504 coordinator, and the Superintendent.

TITLE IX  
COORDINATOR

Reports of discrimination based on sex, including sexual harassment, may be directed to the Title IX coordinator. The District designates the following person to coordinate its efforts to comply with Title IX of the Education Amendments of 1972, as amended:

Name: [S T9 (students) name]

Position: [S T9 (students) pos]

Address: [S T9 (students) adr]

Telephone: [S T9 (students) tel]

ADA / SECTION  
504  
COORDINATOR

Reports of discrimination based on disability may be directed to the ADA/Section 504 coordinator. The District designates the following person to coordinate its efforts to comply with Title II of the Americans with Disabilities Act of 1990, as amended, which incorporates and expands upon the requirements of Section 504 of the Rehabilitation Act of 1973, as amended:

Name: [S ADA/Sec 504 (students) name]

Position: [S ADA/Sec 504 (students) pos]

Address: [S ADA/Sec 504 (students) adr]

Telephone: [S ADA/Sec 504 (students) tel]

SUPERINTENDENT

The Superintendent shall serve as coordinator for purposes of District compliance with all other antidiscrimination laws.

ALTERNATIVE  
REPORTING  
PROCEDURES

A student shall not be required to report prohibited conduct to the person alleged to have committed the conduct. Reports concerning prohibited conduct, including reports against the Title IX coordinator or ADA/Section 504 coordinator, may be directed to the Superintendent.

A report against the Superintendent may be made directly to the Board. If a report is made directly to the Board, the Board shall appoint an appropriate person to conduct an investigation.

TIMELY REPORTING

Reports of prohibited conduct shall be made as soon as possible after the alleged act or knowledge of the alleged act. A failure to

	<p>promptly report may impair the District's ability to investigate and address the prohibited conduct.</p>
NOTICE OF REPORT	<p>Any District employee who receives notice that a student has or may have experienced prohibited conduct shall immediately notify the appropriate District official listed above and take any other steps required by this policy.</p>
NOTICE TO PARENTS	<p>The District official or designee shall promptly notify the parents of any student alleged to have experienced prohibited conduct by a District employee or another adult.</p>
INVESTIGATION OF THE REPORT	<p>The District may request, but shall not insist upon, a written report. If a report is made orally, the District official shall reduce the report to written form.</p> <p>Upon receipt or notice of a report, the District official shall determine whether the allegations, if proven, would constitute prohibited conduct as defined by this policy. If so, the District official shall immediately authorize or undertake an investigation, regardless of whether a criminal or regulatory investigation regarding the same or similar allegations is pending.</p> <p>If appropriate, the District shall promptly take interim action calculated to prevent prohibited conduct during the course of an investigation.</p> <p>The investigation may be conducted by the District official or a designee, such as the campus principal, or by a third party designated by the District, such as an attorney. When appropriate, the campus principal shall be involved in or informed of the investigation.</p> <p>The investigation may consist of personal interviews with the person making the report, the person against whom the report is filed, and others with knowledge of the circumstances surrounding the allegations. The investigation may also include analysis of other information or documents related to the allegations.</p>
CONCLUDING THE INVESTIGATION	<p>Absent extenuating circumstances, the investigation should be completed within ten District business days from the date of the report; however, the investigator shall take additional time if necessary to complete a thorough investigation.</p> <p>The investigator shall prepare a written report of the investigation. The report shall be filed with the District official overseeing the investigation.</p>
DISTRICT ACTION	<p>If the results of an investigation indicate that prohibited conduct occurred, the District shall promptly respond by taking appropriate</p>

disciplinary or corrective action reasonably calculated to address the conduct.

The District may take action based on the results of an investigation, even if the conduct did not rise to the level of prohibited or unlawful conduct.

CONFIDENTIALITY

To the greatest extent possible, the District shall respect the privacy of the complainant, persons against whom a report is filed, and witnesses. Limited disclosures may be necessary in order to conduct a thorough investigation and comply with applicable law.

APPEAL

A student who is dissatisfied with the outcome of the investigation may appeal through FNG(LOCAL), beginning at the appropriate level. A student shall be informed of his or her right to file a complaint with the United States Department of Education Office for Civil Rights.

RECORDS RETENTION

Retention of records shall be in accordance with FB(LOCAL) and CPC(LOCAL).

ACCESS TO POLICY

Information regarding this policy shall be distributed annually to District employees and included in the student handbook. Copies of the policy shall be readily available at each campus and the District's administrative offices.

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	<p><b>Note:</b> This policy addresses bullying of District students. For provisions regarding discrimination, harassment, and retaliation involving District students, see FFH. For reporting requirements related to child abuse and neglect, see FFG.</p>
BULLYING PROHIBITED	The District prohibits bullying as defined by this policy. Retaliation against anyone involved in the complaint process is a violation of District policy.
DEFINITION	<p>Bullying occurs when a student or group of students engages in written or verbal expression or physical conduct that:</p> <ol style="list-style-type: none"><li>1. Will have the effect of physically harming a student, damaging a student's property, or placing a student in reasonable fear of harm to the student's person or of damage to the student's property; or</li><li>2. Is sufficiently severe, persistent, or pervasive that the action or threat creates an intimidating, threatening, or abusive educational environment for a student.</li></ol>
EXAMPLES	Bullying of a student may include hazing, threats, taunting, teasing, confinement, assault, demands for money, destruction of property, theft of valued possessions, name calling, rumor spreading, and ostracism.
TIMELY REPORTING	Reports of bullying shall be made as soon as possible after the alleged act or knowledge of the alleged act. A failure to promptly report may impair the District's ability to investigate and address the prohibited conduct.
REPORTING PROCEDURES	Any student who believes that he or she has experienced bullying or believes that another student has experienced bullying should immediately report the alleged acts to a teacher, counselor, principal, or other District employee. A report may be made orally or in writing.
NOTICE OF REPORT	Any District employee who receives notice that a student has or may have experienced bullying shall immediately notify the campus principal or designee.
INVESTIGATION OF REPORT	<p>If a report is made orally, the campus principal or designee shall reduce the report to written form.</p> <p>The campus principal or designee shall determine whether the allegations in the report, if proven, would constitute prohibited conduct as defined by policy FFH, and if so proceed under that policy instead.</p>

	<p>The campus principal or designee shall conduct an appropriate investigation based on the allegations in the report. The campus principal or designee shall promptly take interim action calculated to prevent bullying during the course of an investigation, if appropriate.</p>
CONCLUDING THE INVESTIGATION	<p>Absent extenuating circumstances, the investigation should be completed within ten District business days from the date of the report; however, the campus principal or designee shall take additional time if necessary to complete a thorough investigation.</p> <p>The campus principal or designee shall prepare a written report of the investigation, including a determination of whether bullying occurred, and send a copy to the Superintendent or designee.</p>
DISTRICT ACTION	<p>If the results of an investigation indicate that bullying occurred, the District shall promptly respond by taking appropriate disciplinary or corrective action reasonably calculated to address the conduct in accordance with the District's Student Code of Conduct. [For information on student transfers due to bullying, see FDB.]</p> <p>The District may take action based on the results of an investigation, even if the District concludes that the conduct did not rise to the level of bullying under this policy.</p>
CONFIDENTIALITY	<p>To the greatest extent possible, the District shall respect the privacy of the complainant, persons against whom a report is filed, and witnesses. Limited disclosures may be necessary in order to conduct a thorough investigation.</p>
APPEAL	<p>A student who is dissatisfied with the outcome of the investigation may appeal through FNG(LOCAL), beginning at the appropriate level.</p>
RECORDS RETENTION	<p>Retention of records shall be in accordance with CPC(LOCAL).</p>
ACCESS TO POLICY	<p>Information regarding this policy shall be distributed annually to District employees and included in the student handbook. Copies of the policy shall be readily available at each campus and the District's administrative offices.</p>

## **Bullying: Identification & Prevention**

Bullying is a pervasive problem in schools. According to the most recent study conducted by the National Center for Education Statistics, during the 2007-08 school year, 21 percent of students ages 12-18 reported having been bullied at school during the year; 18 percent reported being the subject of rumors; 11 percent said that they were pushed, shoved, tripped, or spit on; 6 percent said they were threatened with harm; 5 percent said they were excluded from activities on purpose; and 4 percent each said that someone tried to make them do things they did not want to do or that their property was destroyed on purpose. Indicators of School Crime and Safety: 2010, U.S. Department of Education, [nces.ed.gov/programs/crimeindicators/crimeindicators2010](http://nces.ed.gov/programs/crimeindicators/crimeindicators2010).

To effectively address bullying in schools, a district must understand how to identify bullying when it occurs and establish appropriate practices to lessen the amount and severity of incidents and to address incidents that do occur.

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### **What is Bullying?**

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The Texas Education Code defines bullying as:

engaging in written or verbal expression or physical conduct that a school district board of trustees or the board's designee determines: (1) will have the effect of physically harming a student, damaging a student's property, or placing a student in reasonable fear of harm to the student's person or of damage to the student's property; or (2) is sufficiently severe, persistent, or pervasive enough that the action or threat creates an intimidating, threatening, or abusive educational environment for a student.

Tex. Educ. Code § 25.0341(a).

Bullying may be in the form of physical conduct or written or verbal expression, such as hazing, threats, taunting, intimidation, rumor-spreading, demands for money, confinement, assault, and ostracism. Bullying does not include mere horseplay, however.

Districts address bullying in policy FFI(LOCAL).

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### **Are Bullying and Harassment the Same Concepts?**

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The terms *bullying* and *harassment* are often used interchangeably. However, harassment is most commonly used to refer to discrimination based on a legally protected characteristic. Several laws target such discrimination:

- Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681 - 1688, prohibits discrimination on the basis of sex by an educational program or activity receiving federal funds.
- Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d - 2000d-7, prohibits discrimination on the basis of race, color, or national origin in any educational program or activity that receives federal funds.
- Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, prohibits discrimination on the basis of disability in programs or activities receiving federal financial assistance.
- The Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12131 - 12134 prohibits discrimination on the basis of disability by public entities.
- The Fourteenth Amendment of the U.S. Constitution guarantees individuals equal protection of the law. Plaintiffs may sue the government for violations of the Fourteenth Amendment through Section 1983, 42 U.S.C. § 1983.
- The Texas Equal Rights Amendment, Texas Constitution article I, section 3a, prohibits discrimination on the basis of sex, race, color, religion, or national origin.
- Texas Civil Practice and Remedies Code chapter 106 prohibits discrimination on the basis of race, religion, color, sex, or national origin.

Because harassment based on a protected characteristic is specifically addressed under the law, a district should consider such claims under the district's policies FFH(LEGAL) and (LOCAL).

**Sexual harassment:** Student-to-student sexual harassment includes unwelcome verbal, physical, or visual conduct of a sexual nature that is severe and pervasive. Such harassment can include words, gestures, requests for sexual favors, or any other unwelcome sexual conduct. Harassment is unwelcome if the student did not invite the attention or considers the attention undesirable or offensive. See TASB Policy FFH(LOCAL).

**Racial and other harassment:** Racial and other harassment is defined as physical, verbal, or nonverbal conduct based on the student's race, color, national origin, disability, or religion that is so severe, persistent, or pervasive that the conduct: (1) affects a student's ability to participate in or benefit from an educational program or activity or creates an intimidating, threatening, hostile, or offensive educational environment; (2) has the purpose or effect of substantially or unreasonably interfering with the student's academic performance; or (3) otherwise adversely affects the student's educational opportunities. See TASB Policy FFH(LOCAL).

**Dating violence:** Another form of prohibited harassment is dating violence. The district must adopt and implement a dating violence policy and include that policy in the district's improvement plan that defines dating violence and address safety planning, enforcement of protective orders, school-based alternatives to protective orders, training for teachers and administrators, counseling for affected students, and awareness education for students and parents. Tex. Educ. Code § 37.0831. Dating violence is also addressed in your district's policies FFH(LEGAL) and (LOCAL).

The Texas Family Code defines *dating violence* as:

an act by an individual that is against another individual with whom that person has or has had a dating relationship and that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the individual in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself.

Tex. Fam. Code § 71.0021(a).

The Texas Family Code defines *dating relationship* as:

a relationship between individuals who have or have had a continuing relationship of a romantic or intimate nature. The existence of such a relationship shall be determined based on consideration of:

- (1) the length of the relationship;
- (2) the nature of the relationship; and
- (3) the frequency and type of interaction between the persons involved in the relationship.

Tex. Fam. Code § 71.0021(b).

A *dating relationship* does not include a “casual acquaintanceship or ordinary fraternization in a business or social context.” Tex. Fam. Code § 71.0021(c).

Any student, male or female, homosexual or heterosexual, can be the victim of dating violence. Dating violence can take the form of threats of harm or suicide, if the victim does not do what the partner wants; assault; insults; name-calling; isolation from family and friends; requiring the victim to spend most or all the victim’s time with the partner; frequent calls or texts to ask what the victim is doing and who the victim is with; controlling behavior; and forced sexual acts and unwanted touching.

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## Who May Be a Bully?

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Bullies are often larger, stronger, older, or more popular than the target, creating a seeming imbalance of power that the bullies capitalize upon. Rana Sampson, Office of Comm. Oriented Policing Servs., U.S. Dept. of Justice, *Bullying in Schools*, at [www.cops.usdoj.gov/files/ric/CDROMs/GangCrime/pubs/BullyinginSchools.pdf](http://www.cops.usdoj.gov/files/ric/CDROMs/GangCrime/pubs/BullyinginSchools.pdf). Bullies often are aggressive, are easy to anger, feel a sense of entitlement, lack empathy, or feel socially isolated. Sometimes the bully is, by all appearances, a successful student and a good kid but chooses to bully another student to assert his or her social status.



Although studies indicate that boys bully more than girls, girls can be bullies as well. Often girls' methods are different from boys', focusing on disrupting social relationships through gossip, isolation, silent treatment, and exclusion. Rana Sampson, Office of Comm. Oriented Policing Servs., U.S. Dept. of Justice, *Bullying in Schools*, at [www.cops.usdoj.gov/files/ric/CDROMs/GangCrime/pubs/BullyinginSchools.pdf](http://www.cops.usdoj.gov/files/ric/CDROMs/GangCrime/pubs/BullyinginSchools.pdf).

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## **Who May Be a Target?**

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The majority of targets, also known as *victims*, are shy, do not taunt others, and withdraw instead of defending themselves against the bullies. Such targets are deemed passive. Other targets are more likely to retaliate against a bully and are generally aggressive toward their classmates. Those targets are referred to as reactive. Tara L. Kuther, *Understanding Bullying*, at [www.pta.org/archive\\_article\\_details\\_1117637268750.html](http://www.pta.org/archive_article_details_1117637268750.html).

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## **Where Does Bullying Usually Take Place?**

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Bullying normally occurs in places where there is little adult supervision so that the bully will not be caught, such as in the cafeteria line. Due to the potential for anonymity and a large audience, bullies are also using the Internet to harass their targets. Rana Sampson, Office of Comm. Oriented Policing Servs., U.S. Dept. of Justice, *Bullying in Schools* (2002), at [www.cops.usdoj.gov/files/ric/CDROMs/GangCrime/pubs/BullyinginSchools.pdf](http://www.cops.usdoj.gov/files/ric/CDROMs/GangCrime/pubs/BullyinginSchools.pdf).

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## **What is Cyberbullying?**

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Cyberbullying is a form of bullying. Bullies engaging in cyberbullying use the Internet, text messaging, and similar technology to target their targets. These methods, which give an illusion of anonymity, encourage bullying by those who would normally not engage in such behavior. They also allow a bully to avoid direct confrontation with the target.

Cyberbullying can occur on or off campus. If your class uses computers, pay attention to the warning signs, such as students who quickly change screens when you walk by or students who seem disturbed while reading an item on their computer screen. Bullying acts that occur using campus resources are subject to your district's acceptable use policy and regulation, found at policies CQ(LOCAL), (REGULATION), and (EXHIBIT), and the student code of conduct.

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## What Are the Effects of Bullying on Students?

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If their behavior is not addressed, bullies may fail to develop coping and communication skills necessary to function as successful adults. The bullies may fail to develop the ability to manage their emotions or to maintain healthy relationships with others. They may also exhibit frequent criminal behavior as adults. U.S. Department of Education, Exploring the Nature and Prevention of Bullying, [www.ed.gov/admins/lead/safety/training/bullying/index.html](http://www.ed.gov/admins/lead/safety/training/bullying/index.html).

Targets can suffer from a number of psychological and physical maladies such as depression, social anxiety, and health problems, even into adulthood. U.S. Department of Education, Exploring the Nature and Prevention of Bullying, [www.ed.gov/admins/lead/safety/training/bullying/index.html](http://www.ed.gov/admins/lead/safety/training/bullying/index.html).

Because of the special nature of the dating relationship, victims of dating violence frequently feel isolated and unable to talk to family and friends about their situation or to ask for help. They internalize the abuse, feeling that it is their fault or that they are helpless to stop the abuse. Meanwhile, they often are protective of their partners and do not want to do anything that may cause their partners harm. As a result, they may stay in a relationship as the violence and abuse escalates. They are more likely to experience depression and health problems, and their school performance may suffer.

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## Can the District be Held Liable for Student Bullying?

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### State Law Claims

When a student is subjected to bullying, the student's parents may file a lawsuit. As with many lawsuits, the parents will probably sue many different parties and allege a variety of causes of action. For example, parents may allege that the negligent supervision by the school district's employees caused their child's injuries. The common law doctrine of governmental immunity protects school districts from these types of negligence claims. *Garza v. Edinburg Consol. Indep. Sch. Dist.*, 576 S.W.2d 916 (Tex. Civ. App.—Corpus Christi 1979, no writ).

### Harassment Based on a Protected Characteristic

A district may be liable under federal or state law for student bullying if the bullying involves harassment based on a protected characteristic.

**Liability under Title IX for sexual harassment:** The U.S. Supreme Court has determined that a school district may be liable for monetary damages if: (1) its deliberate indifference causes students to undergo harassment or makes them vulnerable to it, and (2) the harassment takes place in a context subject to the school district's control. A school district may be liable under Title IX,

therefore, only if its response or lack of response to harassment is clearly unreasonable in light of the known circumstances. *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629 (1999).

Harassment directed against a member of the same sex may be actionable under Title IX. *Theno v. Tonganoxie Unified Sch. Dist.*, 377 F. Supp. 2d 952 (D. Kan. 2005) (mem.) (gender stereotyping); *Ray v. Antioch Unified Sch. Dist.*, 107 F. Supp. 2d 1165 (N.D. Cal. 2000) (perceived sexuality).

**Liability under Title VI for racial and other harassment:** Only an intended beneficiary of, or a participant in, a federally funded program who has suffered from intentional discrimination prohibited by the statute may bring a Title VI action against a fund recipient. 42 U.S.C. § 2000d; *Alexander v. Sandoval*, 532 U.S. 275 (2001).

**Liability under state law for sexual, racial, and other harassment:** A district may be held liable under the Texas Equal Rights Amendment, Texas Constitution article I, section 3a, for discrimination on the basis of sex, race, color, religion, or national origin. However, such claims are rarely asserted without a corresponding federal law.

### Federal Section 1983 Claims

Students and their parents may also sue school districts for violations of federal law. These claims are typically brought under 42 U.S.C. § 1983 (Section 1983). Under Section 1983, an individual may bring a claim against a person who is acting under color of state law and who has deprived the individual of rights protected by the U.S. Constitution or federal law. Under Section 1983, local governments, school districts, and school district employees are all persons who may be sued. *Monell v. Dept. of Social Serv. of City of N.Y.*, 436 U.S. 658 (1978).

To be actionable under Section 1983, a harmful action must be committed under color of state law—meaning with governmental authority. For a governmental entity to be liable under Section 1983, the entity must act through an official policy, custom, or practice. *Monell v. Dept. of Social Serv. of City of N.Y.*, 436 U.S. 658 (1978). For an individual governmental official or employee to be liable, the individual must himself act to deprive a citizen of a protected right or he must inadequately supervise a subordinate who violates a citizen’s rights under color of state law. *Doe v. Taylor Indep. Sch. Dist.*, 15 F.3d 443 (5th Cir. 1994) (en banc).

To state a claim under Section 1983, a plaintiff must allege that he or she has suffered the deprivation of a federal constitutional or statutory right. An alleged deprivation of one of several constitutional rights may serve as the basis for a Section 1983 suit:

- **First Amendment:** freedom of religion, freedom of speech, and the right to petition for redress of grievances
- **Fourth Amendment:** freedom from unreasonable search or seizure
- **Eighth Amendment:** freedom from cruel and unusual punishments
- **Thirteenth Amendment:** freedom from slavery and involuntary servitude

- **Fourteenth Amendment:** right to due process and equal protection of the laws

In a cause of action arising out of student bullying, parents can allege the district was deliberately indifferent to the student's health and safety. Specifically, the parents would allege that the school district, acting under the color of state law, violated the student's Fourteenth Amendment due process rights to life, liberty, health, safety, and bodily integrity.

In general, school districts and school officials have no specific duty to protect students from constitutional harm by third parties. Two exceptions to this general rule exist.

**Special relationship:** Governmental entities generally have a legal duty to protect citizens when a special relationship exists between the government and the citizens. *DeShaney v. Winnebago Cty. Dept. of Social Serv.*, 489 U.S. 189 (1989). A special relationship arises only when an individual is involuntarily in the care and custody of the government. *Walton v. Alexander*, 44 F.3d 1297 (5th Cir. 1995); *Priester v. Lowndes County*, 354 F.3d 414 (5th Cir. 2004). Compulsory attendance laws do not create a special relationship. *Doe v. Hillsboro Indep. Sch. Dist.*, 113 F.3d 1412 (5th Cir. 1997) (en banc); *Maldonado v. Josey*, 975 F.2d 727 (10th Cir. 1992), cert. denied, 507 U.S. 914 (1993).

Federal courts with jurisdiction in Texas have refused to hold school districts liable for constitutional claims based on harassment because school districts do not have a special relationship with the students. *Garza v. Galena Park Indep. Sch. Dist.*, 914 F. Supp. 1437 (S.D. Tex. 1994); *Esmeralda v. Partin*, 864 F. Supp. 626 (S.D. Tex. 1994); *Bowles v. Floresville Indep. Sch. Dist.*, 84 F.3d 432 (5th Cir. 1996).

**State-created danger theory:** The second exception to the general rule is called the *state-created danger theory*. This theory has only been accepted in a handful of jurisdictions and, currently, has not been expressly adopted by courts in the Fifth Circuit Court of Appeals which has jurisdiction over Texas. *Rios v. City of Del Rio*, No. 444 F.3d 417 (5th Cir. 2006). Under the state-created danger theory, the government must protect individuals from harm if the government itself creates a threat to individuals' rights. Because some other jurisdictions recognize this cause of action, and because it is often alleged by plaintiffs in this jurisdiction, it is important for school districts to be aware of the potential for liability.

A school district or its administrators may have liability for the actions that expose students to a state-created danger. A state-created danger arises only if the district or administrators create an environment that is dangerous, the district has actual knowledge that the environment is dangerous, and the district uses its authority to create an opportunity for a harm that would not otherwise have existed. *Doe v. Hillsboro Indep. Sch. Dist.*, 113 F.3d 1412 (5th Cir. 1997) (en banc) (addressing the state-created danger theory in the context of a crime committed by a third party); see also *Breen v. Texas A&M Univ.*, 485 F.3d 325 (5th Cir. 2007) modified on reh'g, 494 F.3d 516 (5th Cir. 2007) (per curiam) (discussing the claim of state-created danger in the context of injuries incurred in the Texas A&M bonfire tragedy).

While claims under Section 1983 based on deprivation of bodily integrity or state-created danger are possible, no similar claim has been successful in Texas. However, school officials should know of the potential risks and take precautions accordingly. Additionally, recent court opinions have focused on the districts' relationships with students in special education programs where schools have heightened responsibilities. *Teague v. Texas City Indep. Sch. Dist.*, No. 05-41492, 2006 WL 1716291 (5th Cir. June 16, 2006).

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## **Can Individual Employees Be Held Liable for Student Bullying?**

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### **State Law Negligence Claims**

School district employees are often named as defendants in a variety of lawsuits. District employees can be sued in both their official capacities as well as their individual capacities. When district employees are sued in their official capacities for acts performed within the scope of their employment, the claims are equivalent to the claims made against the governmental entity. These lawsuits are considered exclusively against the school district and do not jeopardize employee's personal financial resources.

Employees sued in their individual capacities must defend and explain their personal conduct in the particular incident. Under Texas state law, employees facing potential individual liability for their own negligence may have common law and statutory immunities. Employees are protected by common law official immunity when they act: (1) in good faith; (2) within the scope of their authority; and (3) in the performance of discretionary duties. *Ballantyne v. Champion Builders, Inc.*, 144 S.W.3d 417 (Tex. 2004). If an employee meets all three parts of this test, the employee will not be held personally liable for tort claims.

In addition, the Texas Education Code provides professional employees with state statutory immunity for claims made against them in their individual capacity. Tex. Educ. Code § 22.0511. This provision protects district employees from individual liability "for any act that is incident to or within the scope of the duties of the employee's position of employment and that involves the exercise of judgment or discretion on the part of the employee . . . ." Tex. Educ. Code § 22.0511(a). At times, however, district employees will not have statutory protection. Statutory immunity is not available for causes of action arising out of the operation of motor driven vehicles or discipline involving the excessive use of force. Tex. Educ. Code § 22.0511.

The Texas Civil Practice and Remedies Code contains a separate provision that limits damages for claims against school district officials sued in their individual capacities. School district officials and employees are not personally liable for damages in excess of \$100,000 arising from personal injury, death, property damage, or deprivation of a right, privilege, or immunity if the damages are a result of an act or omission by the employee in the course and scope of employment, and if the employee is covered by an insurance or indemnification agreement. Tex.

Civ. Prac. & Rem. Code § 108.002.

## State Law Hazing Offense

The Texas Education Code contains the criminal offense of hazing. A district employee commits an offense if the person engages in hazing; solicits, encourages, directs, aids, or attempts to aid another in engaging in hazing; recklessly permits hazing to occur; or has firsthand knowledge of the planning of a specific hazing incident involving a student, or has firsthand knowledge that a specific hazing incident has occurred, and knowingly fails to report that knowledge in writing to the appropriate district official. Tex. Educ. Code § 37.152. State law immunities do not apply to this offense.

## Federal Section 1983 Claims

Plaintiffs alleging a violation of constitutional law under 42 U.S.C. § 1983 (Section 1983) often name both the school district and district employees in their individual capacities as defendants. Under Section 1983, an individual has a claim against any person who is “acting under color of state law” and who has deprived the individual of rights protected by the U.S. Constitution or federal law. *Doe v. Taylor Indep. Sch. Dist.*, 15 F.3d 443 (5th Cir. 1994) (en banc). While governmental entities do not have immunities available to them under Section 1983, individual employees can escape liability if they successfully assert that they were acting in good faith.

State law immunities do not apply to claims brought under federal law. Instead, a separate federal immunity doctrine, qualified immunity, can protect governmental actors sued for violations of federal rights. Qualified immunity shields “government officials performing discretionary functions” from liability for civil damages “insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *Harlow v. Fitzgerald*, 457 U.S. 800 (1982). So long as school officials act reasonably, within the scope of their responsibilities, without violating clearly established rights, they will not be held liable. *Harlow v. Fitzgerald*, 457 U.S. 800 (1982).

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## What Should a District Do to Address Bullying?

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Districts should appropriately address bullying as early as possible to prevent or otherwise lessen the negative impact such acts may have on the learning environment. Preventative measures may also help the district avoid events that may result in district liability.

### **1. Assess bullying on campus, and evaluate district practices that address bullying.**

The district should develop a clear understanding of the nature and prevalence of bullying on district campuses. One way is to provide students an anonymous questionnaire. The district should also assess district anti-bullying policies and practices to determine if they are effective and how they may be improved.



## **2. Comply with state bullying prevention laws.**

Texas Education Code section 37.001 requires districts to prohibit bullying as part of the district's student code of conduct and to ensure that employees enforce the prohibitions. Texas Education Code section 25.0341 requires a district to transfer an alleged bullying target on request of a student's parent. The statute requires that the board or the board's designee verify that the student was in fact a bullying target prior to granting the transfer. An effective way to address the statutory requirements is to adopt a bullying policy or procedure.

## **3. Adopt a bullying policy or procedure.**

A written bullying policy or procedure can help districts manage risk and liability. Such a policy shows that districts are taking steps to address bullying to create a safe and effective learning environment. A detailed bullying policy and associated procedures provide the district with a comprehensive method to address incidents consistently and give staff direction on how to respond appropriately if they suspect bullying has occurred. Although Texas does not have a law explicitly requiring districts to adopt anti-bullying policies, several experts and authorities recommend that districts establish school rules and policies as a best practice to address bullying. U.S. Department of Health and Human Services Health Resources and Services Administration, Best Practices in Bullying Prevention & Intervention, <http://www.stopbullyingnow.hrsa.gov/adults/tip-sheets/tip-sheet-23.aspx>. Olweus Bullying Prevention Program, [www.clemson.edu/olweus/content.html](http://www.clemson.edu/olweus/content.html).

One effective way to structure a bullying policy would be to mirror the model described in the U.S. Department of Education Office for Civil Rights guidelines Protecting Students from Harassment and Hate Crime, available at [www.ed.gov/offices/OCR/archives/Harassment/harassment.pdf](http://www.ed.gov/offices/OCR/archives/Harassment/harassment.pdf). Though the guidelines target harassment, they provide a useful template because the procedural and other concerns facing harassment complaints are similar to those found in the bullying context. Recommended TASB Policy FFI(LOCAL) includes many of the guidelines' principles.

Note that some bullying reports are considered harassment based on protected characteristics like race, sex, disability, and religion, acts addressed in student harassment policies.

Your district should also adopt detailed computer use policies and procedures to provide the district with an effective method to address cyberbullying that occurs using district resources.

For district policies and procedures to be successful, districts must communicate those policies to employees and students, for example, through the employee and student handbooks.

## **4. Implement a bullying prevention program.**

The district should employ a program intended to lessen bullying by implementing procedures

designed to prevent the behavior. Studies show that students respond to a comprehensive

program that is incorporated into their regular school day and social interactions. A suggested program is the Olweus Bullying Prevention Program, endorsed by the United States Substance Abuse and Mental Health Services Administration and the Office of Juvenile Justice Delinquency Prevention. The program attempts to lessen bullying by reducing the opportunities for and rewards of bullying through school-wide, classroom-level, and individual-level interventions. The program requires a plan for increased supervision of students, regular class meetings about bullying and peer relations, and individual meetings with bullies and targets. For more information regarding the program, see [www.clemson.edu/olweus](http://www.clemson.edu/olweus).

**5. Train all district staff and students.**

Train everyone, including administrators, teachers, paraprofessional and auxiliary staff, especially bus drivers, to recognize and report bullying. Train staff who work with young students to recognize the physical and behavioral signs of bullying as children may be particularly hesitant to report abuse for fear of retaliation or because they think they deserve to be bullied or think that adults will not sufficiently understand the situation to properly address it. Train employees soon after hiring, and retrain all staff on a regular basis, such as every year or every other year.

Teach students to recognize and report bullying as well. Conduct the trainings when necessary and appropriate.

Document your training efforts, and keep a record of what materials were used and who attended.

**6. Monitor all places where bullying may occur.**

Because bullies rarely bully other students near staff, districts should post added personnel in locations where bullying is suspected or reported to have occurred to discourage future incidents.

**7. Investigate all complaints and suspicious conduct.**

Districts should investigate complaints thoroughly and document the investigation efforts. Districts should treat all allegations seriously so that students will feel comfortable reporting.

**8. Maintain confidentiality.**

Students often fear that if other students find out they have complained about bullying, they will be retaliated against. To encourage students to report, districts must reassure them that their reports will be confidential to the extent possible. Additionally, during the course of bullying investigations conducted by school officials, student complaints and their detailed statements become a part of the students' education records, subject to the confidentiality requirements of Family Educational Rights and Privacy Act (FERPA). See 20 U.S.C. § 1232g.

## 9. Develop effective responses for both targets and bullies.

### Responses for Targets

Districts should provide necessary support and services for targets such as counseling. Districts should also provide for student transfers.

Under the Texas Education Code, a parent of a target or a person with authority to act on behalf of a student who is a target may request that the district transfer the student to another classroom or campus. The board or its designee must transfer the student after verifying that the student is a bullying target. The board may consider past student behavior when identifying a bully. The determination is final and may not be appealed. The district is not required to provide transportation to students who transfer campuses under this statute. Tex. Educ. Code § 25.0341.

### Responses for Bullies

**Discipline generally:** The district should discipline all students who engage in bullying behavior consistently and fairly. Consideration should be given to the seriousness of the offense, the frequency of the misconduct, the student's attitude, and the potential effect of the misconduct on the school environment. Consistency can be achieved by closely following the district's student code of conduct.

Appropriate discipline may include verbal warnings, reprimands, counseling, bullying training, separation from the target, suspension, or other sanctions consistent with the student code of conduct.

The district's student code of conduct must prohibit bullying, harassment, and making hit lists and ensure that its employees enforce the prohibitions. The student code of conduct must also provide age-appropriate options for preventing and intervening in student discipline problems, including bullying, harassment, and making hit lists. Tex. Educ. Code § 37.001(a)(7)–(8). An admission, review, and dismissal committee must review the conduct of a special education student before the student may be disciplined for bullying, harassment, or making hit lists. Tex. Educ. Code § 37.001(b-1).

At times, a specific sanction may be required because the behavior constitutes an offense under state law. For example, a student shall be removed from class and placed in DAEP (disciplinary alternative education program) if the student engages in conduct that contains the elements of assault resulting in bodily injury on or within 300 feet of school property, as measured from any point on the school's real property boundary line, or while attending a school-sponsored or school-related activity on or off of school property. Tex. Educ. Code § 37.006(a)(2).

Districts may also add to the list of offenses listed in the student code of conduct that warrant removal to DAEP. See Tex. Educ. Code § 37.001(a). If a district adds to the list of offenses, the district should also add the appropriate definitions of the offenses in the student code of conduct.

The student code of conduct should specifically notify students and parents of the prohibited

behavior. Several additional behaviors may be prohibited:

- Directing profanity, vulgar language, or obscene gestures toward other students or district employees
- Fighting or scuffling
- Hazing
- Name-calling, using ethnic or racial slurs, or derogatory statements that could disrupt the school program or incite violence
- Engaging in any misbehavior that gives school officials reasonable cause to believe that such conduct will substantially disrupt the school program or incite violence
- Engaging in inappropriate verbal, physical, or sexual contact
- Using the Internet to threaten students, employees, or cause disruption to the educational program
- Sending or posting messages that are abusive, obscene, sexually oriented, threatening, harassing, damaging to another's reputation, or illegal
- Engaging in verbal or written exchanges that threaten the safety of another student, a school employee, or school property
- Possessing published or electronic material that is designed to promote or encourage illegal behavior or could threaten school safety

**Discipline for off-campus conduct:** At times, a district may seek to impose school discipline for off-campus conduct without specific authority under state law. See Tex. Educ. Code § 37.001(a). Such disciplinary action is appropriate as long as the district has provided ample notice of the circumstances under which it will assert disciplinary jurisdiction and the conduct has a sufficient connection to the school environment.

Common circumstances under which schools seek to impose school discipline for off-campus activities include misbehavior at official school bus stops and misbehavior at local businesses or on local roadways during off-campus lunch hours. Whether it is appropriate for a school district to extend its jurisdiction to cover such off-campus locations or activities depends on a combination of factors, including:

- whether the district has provided students and parents advance notice of its intent to impose school discipline at these times and places,
- whether the off-campus conduct would have a direct disruptive effect on school discipline or school operations, and
- whether the conduct poses a threat to the safety of other students, the student engaging in the activity, school staff, or school property.

**First Amendment concerns:** Prior to taking action to address harassment or bullying, consider the First Amendment implications of the discipline imposed. Students may be disciplined for speech or conduct that occurs on school property if it materially and substantially interferes with school operations. Students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” However, the Supreme Court has expressed a “need for affirming the comprehensive authority of the States and of school officials, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools.” A district cannot discriminate based on a student’s viewpoint absent material and substantial disruption. *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969).

Vulgar, lewd, obscene, and plainly offensive speech that occurs on school property is not protected and may be prohibited regardless of whether it causes a substantial disruption. *Bethel Sch. Dist. v. Fraser*, 478 U.S. 675 (1986).

A true threat is not protected by the First Amendment. The Fifth Circuit Court of Appeals defines a true threat as occurring when an “objectively reasonable person would interpret the speech as a ‘serious expression of intent to cause a present or future harm.’ ” *Porter v. Ascension Parish Sch. Bd.*, 393 F.3d 608 (5th Cir. 2004).

**Discipline for cyberbullying:** Web sites created and maintained on campus may be subject to the district’s acceptable use policy and the student code of conduct.

Districts may have jurisdiction to discipline for messages students post on Web sites developed and maintained wholly off-campus that cause a material or substantial disruption to the educational process. *J.S. v. Bethlehem Area Sch. Dist.*, 757 A.2d 412 (Pa. Commw. 2000), *aff’d*, 807 A.2d 847 (Pa. 2002). Districts do not, however, have jurisdiction to discipline for messages posted on such Web sites if they do not cause a disruption. *Beussink v. Woodland R-IV Sch. Dist.*, 30 F. Supp. 2d 1175 (E.D. Mo. 1998).

## **10. Report Child Abuse to CPS.**

If a professional school employee has cause to believe that a child has been or may be abused or neglected or is a target of indecency with a child, that person shall make a report to any local or state law enforcement agency or the Child Protective Services division of the Texas Department of Protective and Regulatory Services not later than 48 hours after the hour the person first suspects that the child has been or may be abused or neglected or is a target of indecency with a child. Tex. Fam. Code § 261.101(b).

## **11. Coordinate bullying prevention efforts with parents.**

District efforts can be even more effective if parents are involved and engaged in bullying prevention practices. Districts should keep parents informed about campus conditions and how they may assist the district’s efforts on campus as well as encourage parents to develop practices

that they may put in effect at home.



**12. Reassess district policies and procedures regularly.**

The methods bullies use to bully other students will evolve over time, and the district's policies and procedures need to be updated accordingly.

## Additional Resources

- Texas Association of School Boards, *Bullying and Harassment in Schools* Training DVD Package, available at [www.tasb.org/store](http://www.tasb.org/store).
- TASB Legal Services, *Helpful Tips to Address Bullying on Campus*, [http://www.tasb.org/services/legal/esource/students/documents/hints\\_for\\_bullying\\_o.pdf](http://www.tasb.org/services/legal/esource/students/documents/hints_for_bullying_o.pdf).
- Find Youth Info, Bullying Prevention and Response, [www.bullyinginfo.org](http://www.bullyinginfo.org).
- Rana Sampson, Office of Community Oriented Policing Services., U.S. Department of Justice, Bullying in Schools, [www.cops.usdoj.gov/files/ric/CDROMs/GangCrime/pubs/BullyinginSchools.pdf](http://www.cops.usdoj.gov/files/ric/CDROMs/GangCrime/pubs/BullyinginSchools.pdf).
- U.S. Department of Education, Exploring the Nature and Prevention of Bullying, [www.ed.gov/admins/lead/safety/training/bullying/index.html](http://www.ed.gov/admins/lead/safety/training/bullying/index.html).
- U.S. Department of Health and Human Services, Health Resources and Services Administration, Stop Bullying Now! Campaign, [stopbullyingnow.hrsa.gov/index.asp](http://stopbullyingnow.hrsa.gov/index.asp).
- Olweus Bullying Prevention Program, [www.clemson.edu/olweus/content.html](http://www.clemson.edu/olweus/content.html).
- The National Center for Targets of Crime, Dating Violence Resource Center, [www.ncvc.org/ncvc/main.aspx?dbID=DB\\_DatingViolenceResourceCenter101](http://www.ncvc.org/ncvc/main.aspx?dbID=DB_DatingViolenceResourceCenter101).
- Office of the Texas Attorney General, What Can We Do About Child Abuse?, [www.oag.state.tx.us/AG\\_Publications/pdfs/child\\_abuse.pdf](http://www.oag.state.tx.us/AG_Publications/pdfs/child_abuse.pdf).
- Texas Governor’s Office, *A Guide to Addressing Dating Violence in Texas Schools*, [governor.state.tx.us/files/women/program.pdf](http://governor.state.tx.us/files/women/program.pdf).
- Safeplace, Expect Respect Program: Bullying Prevention, <http://www.safeplace.org/page.aspx?pid=340>.

For more resources, see TASB School Law eSource at [schoolawesource.tasb.org](http://schoolawesource.tasb.org)

*This document is provided for educational purposes only and contains information to facilitate a general understanding of the law. It is neither an exhaustive treatment of the law on this subject nor is it intended to substitute for the advice of an attorney. It is important for the recipient to consult with the district’s own attorney in order to apply these legal principles to specific fact situations.*

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*Published January 2011.*

# **Social Networking**

**Region 9 Regional Advisory Committee (RAC) Meeting  
February 16, 2011**

**Presented by Amy Magee, Senior Attorney  
Texas Association of School Boards  
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Texas Association of School Boards  
Legal Services

## **Social Networking Legal Services**

The advent of social networking has provided students and employees a new avenue to connect with friends and the world at large. Common sites such as Facebook, MySpace, LinkedIn, YouTube, and Twitter allow people to not only communicate their thoughts at an instant but to share with others how they see themselves through images, games, and commentary. Most young people today do not know life without the existence of the Internet, computers, and other technology and expect to have access to the benefits they offer at all times. The social landscape has changed, and districts should be prepared to address the many new opportunities and challenges that have arisen as a result.

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### **Hiring Decisions and Social Media**

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#### **Can a district employee use the Internet to investigate applicants?**

The temptation to use the Web to check out an applicant may be great. The Web can provide a wealth of information about a particular candidate that can benefit the hiring process. For example, it may help the district verify the application information. However, the information may instead make the process more complicated because it may illegally taint the search if not handled properly. Before you search the Internet for a candidate, consider several legal and practical implications of using online information in hiring.

#### **Fourth Amendment Search Concerns**

The district may search for information about applicants that is available in the public domain. Individuals have the right under the Fourth Amendment to the U.S. Constitution to be free from unreasonable searches and seizures. For a search to be unreasonable, a person must exhibit an actual expectation of privacy and that expectation must be objectively reasonable. *Katz v. United States*, 389 U.S. 347 (1967). Because much of the information on the Internet is available to whoever chooses to access it, the individual arguably does not have a reasonable expectation of privacy that will trigger constitutional protections and restrict the district from conducting the search.

Information protected behind passwords or available only to a person's family and friends is likely intended by an applicant to be private and therefore a search for that information is arguably unreasonable. Accordingly, the district should not ask an applicant to provide user names and passwords so that the district may access those private sites.

In addition to the search constraints created by the Fourth Amendment, the district should be aware of the restrictions placed by the terms of service agreements for the particular Web sites that the district accesses. Some Web sites restrict users from asking for another user's login information, for example.

### **Designate the Investigator**

The employee who will be making the decision whether to hire an applicant should not conduct the online search. An online search may reveal information about the applicant, such as race, religious beliefs, or disabilities, that should not influence employment decisions. Once the employee sees the information online, the information may influence the employee's decision making, despite the employee's best intentions otherwise. Instead, if an online search is going to be conducted, the employee should designate another individual to conduct the search, such as an employee in the district's human resources department.

### **Determine If the Information Is Relevant**

Before sharing information with the decision maker, the employee conducting the search should attempt to verify if the person described in the search result is in fact the applicant. The employee will need to tailor the search based on the applicant's resume, taking into account information like the applicant's location or current employer. It is also possible that someone else posted information under the applicant's name or posted photographs of the applicant that the applicant intended to be private. If the information cannot be verified by the employee, then the information should be ignored or verified by asking the applicant directly.

### *Discrimination*

Federal and state antidiscrimination laws restrict an employer's ability to gather information relating to an applicant's race, color, national origin, sex, religion, age, and disability. An employer may not conduct a medical examination or make inquiries as to whether an applicant has a disability or as to the nature or severity of disability until an offer of employment has been made, and then only if all entering employees in the same job category are subject to such an examination regardless of disability. 42 U.S.C. § 12112(d)(2), (3); 29 C.F.R. § 1630.14. Similar restrictions apply to inquiries that relate to an applicant's gender, religion, national origin, and age. 29 C.F.R. §§ 1604.7 (gender); 1605.3 (religion); 1606.6 (national origin); 1625.4(b) (age). For this reason, most employment lawyers advise decision makers not to investigate applicants' personal lives to avoid the inference that information gathered about protected characteristics consciously or subconsciously influenced hiring decisions. This is of special concern in the context of Internet searches because of the risk of inadvertently discovering information about an applicant's protected characteristics.

Once the designated employee conducting the search determines that the information belongs to the applicant, the employee should decide whether the information is actually relevant to the job. The employee should weed out information that may lead to illegal discrimination under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2000e-17, and the Texas Commission on Human Rights Act, Texas Labor Code chapter 21, (race, color, disability, national origin, sex, and religion), the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12101-12213, the Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621-634, and other federal and state laws.

For example, if the HR employee sees that the applicant is blogging about his struggles with multiple sclerosis, the information may influence whether the employee thinks the applicant can handle the job. Failure to hire a qualified individual because of his disability constitutes discrimination in violation of the ADA. Similarly, an applicant's note on her Facebook page that she is a member of the Church of Scientology must not influence the hiring process because that could constitute illegal discrimination based on the applicant's religion in violation of Title VII. Both discoveries should not be shared with the decision maker.

### *First Amendment Concerns*

The employee conducting the search should also exclude information protected by the First Amendment to the U.S. Constitution. The First Amendment protects certain speech by citizens. To determine whether the First Amendment applies, the employee must first determine if the speech is made on a matter of public concern. *Pickering v. Bd. of Educ. of Twp. High Sch. Dist.* 205, 391 U.S. 563 (1968). If the speech is public concern speech, the district must balance that speech with the district's interest in maintaining the efficiency of its operations. However, when an applicant speaks on a matter that is of private, not public, interest, the applicant will not be entitled to First Amendment protection. Whether the speech is a matter of public concern should be determined by the content, form, and context of a given statement. *Connick v. Myers*, 461 U.S. 138 (1983).

For example, if an applicant weighs in on the merits of a candidate for the state legislature, the applicant is engaging in political speech on a matter of public concern. The district would have to express a compelling governmental interest that outweighs the person's right to speak before considering the comments in the hiring process. If, however, the person is expressing dissatisfaction with his current employer because of how he perceived the employer treated him, that speech is likely a personal matter and not one of public concern, even if the information is posted publicly. The comments are unlikely to be protected by the First Amendment.

Other information that will likely not be protected by the First Amendment are items that seem to contradict information included in the applicant's resume or information that indicates the applicant was insubordinate or did not follow directives while at a prior job. In the case of a teacher, the employee may also choose to consider photographs or posts showing the applicant engaged in illegal or immoral conduct, such as posing naked or engaging in illegal drug use or excessive use of alcohol. This conduct may be considered if the conduct would negatively impact the applicant's effectiveness in the classroom.

### *Defamation*

The employee conducting the search should guard against sharing false information about the candidate with another person, or the employee may be subject to a defamation action. Defamation is defined by common law as a false statement about another person that is shared with a third party without a legal excuse and that damages that person's reputation and exposes that person to public hatred, contempt, ridicule, or financial injury. *Fiber Systems Intern., Inc. v. Roehrs*, 470 F.3d 1150 (5th Cir. 2006); *Einhorn v. LaChance*, 823 S.W.2d 405 (Tex. App.—Houston [1st Dist.] 1992). Defamation may be communicated orally, known as slander, or in

writing, referred to as libel. *Robertson v. Southwestern Bell Yellow Pages, Inc.*, 190 S.W.3d 899 (Tex. App—Dallas 2006). A person may also bring a cause of action for libel under Texas Civil Practice and Remedies Code chapter 73. To lessen the chance of a defamation claim being brought against the employee, the employee should only share information in compliance with the district's search procedures.

### **Adopt Search Procedures**

If, considering these risks and limitations, the district still wishes to conduct online searches, TASB Legal Services recommends that the district adopt a procedure to include with the district's other hiring procedures that reflects the principles described above. The procedures should designate an individual or department, like human resources, to conduct the search. The procedures may require that searches be conducted for all positions, certain stated positions, or a particular position on request, but the searches must be conducted consistently on all applicants in the designated category.

The procedures may also address other factors. Does the district, using the applicant's full name and any aliases, want to search only particular sites or does the district want to use a search engine like Google? What types of information will be deemed relevant for a particular position—specific factors or factors more generally related to the stated job description? How will the information be reported to the decision maker—a standard report form? How will the information be used by the decision maker? Will the district notify the applicant of the information discovered during the search and will the district take into account any of the applicant's comments about the information? Once determined, the answers to these questions should be included in the procedures.

The district should consider notifying all of the candidates at the beginning of the process that the district will be searching for any relevant information online. The district should include in the procedures methods to maintain the confidentiality of the information gathered so that the applicant has no basis for a claim of defamation against an employee who shares detrimental information with a third party.

Ensuring these procedures are followed will give the district the opportunity to access online information while avoiding many legal risks. If these procedures sound like too much to manage, consider prohibiting the employees involved in your district's hiring process from using online searches to gather information about applicants.

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## **Employee Social Networking Generally**

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### **Can a district discipline an employee based upon information included on the employee's personal Web site?**

Employees are not immune to the lure of social networking. Many employees see Web sites and tweets as their own personal domain and manner of expression and may post lewd pictures, profane comments, drug and alcohol images, and other commentary that they think will make a

good impression on their social circle. However, the posts may negatively impact their effectiveness in the classroom.

#### **Fourth Amendment Search Concerns**

Like applicants for employment, district employees are protected by the Fourth Amendment to the U.S. Constitution from unreasonable searches. The U.S. Supreme Court has recognized, however, that the special needs of the public workplace may limit an employee's legitimate expectation of privacy. *City of Ontario, Cal. v. Quon*, 130 S. Ct. 2619 (2010). For a search to be unreasonable, the person must exhibit an actual expectation of privacy and that expectation must be objectively reasonable. *Katz v. United States*, 389 U.S. 347 (1967).

If an administrator hears that an employee posted an inappropriate statement or comment on the Internet, the administrator likely will want to search for the posting. Because much of the information on the Internet is available to whoever chooses to access it, the individual arguably does not have a reasonable expectation of privacy that will trigger constitutional protections and restrict the district from conducting the search. But, like in the case of applicants, information protected by passwords and accessible only to certain people is private and therefore a search for that information is arguably unreasonable. Accordingly, the district should not ask the employee to provide user names and passwords so that the district may access those private sites.

At times, a district may seek evidence that an employee is visiting social networking sites during work hours using district technology. Before conducting the search, the district should determine if the employee has a reasonable expectation of privacy in the employee's social networking activities conducted with the use of district technology. One way a district may reduce, and possibly eliminate, the expectation of privacy is to include in its acceptable use policies notice that the district may search employees' computers. See TASB Policy CQ(LOCAL)(REGULATION)(EXHIBIT). If the employee's privacy rights are not implicated, then the district may conduct the search. If the employee does have a legitimate expectation of privacy, then the district may conduct the search if the district has reasonable grounds to believe the search was necessary for a non-investigatory, work-related purpose or necessary as part of an investigation into alleged work-related misconduct. The scope of the search must also be reasonable. *City of Ontario, Cal. v. Quon*, 130 S. Ct. 2619 (2010); *O'Connor v. Ortega*, 480 U.S. 709 (1987).

#### **First Amendment Speech Concerns**

District employees do not shed all of their First Amendment rights simply by working with the district. However, their capacity as employees will subject employees to restrictions not applied to other citizens.

The level of protection an employee's speech enjoys depends on whether the speech is part of the employee's official duties, speech on a matter of public concern, or speech on a matter of private concern. A public employer may regulate employee speech that is made pursuant to the employee's job duties. *Garcetti v. Ceballos*, 547 U.S. 410 (2006). This restriction may be similarly applied to speech that is merely related to the employee's job duties. *Williams v. Dallas Indep. Sch. Dist.*, 480 F. 3d 689 (5th Cir. 2007). If the speech is not part of the employee's job



duties, but relates to a matter of public concern, a public employer must balance the employee's right to free speech with the employer's interest in maintaining the efficiency of its operations. *Pickering v. Bd. of Educ. of Twp. High Sch. Dist. 205*, 391 U.S. 563 (1968). Whether the speech is a matter of public concern should be determined by the content, form, and context of a given statement. If the speech involves a matter that is of private, not public, interest, the employee will not be entitled to First Amendment protection. *Connick v. Myers*, 461 U.S. 138 (1983).

Districts must therefore determine whether the employee's posts are posted as an employee in relation to the employee's job duties. If so, the district may discipline as it sees fit. If not, the district must determine if the posts were spoken by the employee as a citizen on a matter of public concern. If so, the district must apply the *Pickering* balancing test to determine if the district's governmental interests outweigh the employee's interest in the speech. If the district's interests do outweigh the employee's interest, then the district may discipline the employee. The district may also discipline the employee if the matter is not of public concern.

### **Can a district regulate employee social networking through policy?**

The use of electronic media to communicate does not change the applicability of the basic rules of professional conduct. See TASB Policy DH(LOCAL). Districts can regulate employee use of electronic media to the same extent as any other form of employee communication. If an employee's communication violates state or federal law or interferes with the employee's ability to effectively perform his or her job, a district may have grounds for action.

A district's ability to regulate employee communication is not unlimited, however. Some restrictions could violate employee rights. For example, a restriction that prevents an employee from communicating with members of his or her own family could violate the right to freedom of association under the First Amendment to the U. S. Constitution. Similarly, a content-based restriction that limits an employee's ability to speak on matters of public concern could violate an employee's First Amendment right to free speech. U.S. Const. amend I.

When developing a social networking policy, the district should define *electronic media*, distinguish between personal and work use, consider the required retention rules, and address communications with students. The final item is discussed at Employee Social Networking with Students, below. TASB provides sample language for inclusion in each district's policy DH(LOCAL) to define *electronic media* and set parameters for administration to follow when developing more detailed guidance in the employee handbook. TASB also provides model employee handbook language through the HR Services member library.

### **Define Electronic Media**

Consider what activities the district wants to regulate. The TASB sample materials define electronic media to include all forms of social media, such as:

- Text messaging
- Instant messaging

- Electronic mail (e-mail)
- Web logs (blogs)
- Electronic forums (e.g., chat rooms)
- Video-sharing Web sites (e.g., YouTube)
- Editorial comments posted on the Internet
- Social network sites (e.g., Facebook, MySpace, Twitter, and LinkedIn)

The TASB sample materials also include all forms of telecommunication in the definition of electronic media. Telecommunication encompasses landlines, cell phones, and Web-based voice communication applications (e.g., Skype). See TASB Policy DH(LOCAL).

**From TASB Policy DH(LOCAL):**

**ELECTRONIC MEDIA** Electronic media includes all forms of social media, such as text messaging, instant messaging, electronic mail (e-mail), web logs (blogs), electronic forums (chat rooms), video-sharing Web sites, editorial comments posted on the Internet, and social network sites. Electronic media also includes all forms of telecommunication, such as landlines, cell phones, and Web-based applications.

**Address Personal Use of Social Media**

To minimize potential impact on employee rights, electronic media guidelines should distinguish between personal and professional use. A district has little reason to regulate an employee's personal use of electronic media if that use is strictly private, does not violate state or federal law, and does not interfere with the employee's ability to effectively perform his or her job. However, when an employee publicly uses electronic media—such as posting an editorial comment on a newspaper's Web page defending disciplinary action against a student—the district may have a legitimate interest in the employee's activities. The commissioner of education has long recognized that educators are role models for students. See, e.g., *Moten v. Dallas Indep. Sch. Dist.*, Tex. Comm'r of Educ. Decision No. 131-R2-399 (May 13, 1999) (upholding termination where teacher was convicted of aggravated assault of his spouse); *Morris v. Carthage Indep. Sch. Dist.*, Tex. Comm'r of Educ. Decision No. 263-R2-495 (Jan. 7, 1997) (upholding termination where teacher admitted to shoplifting, although no criminal charges were filed). Similarly, courts have held that the position of teacher, by its very nature, requires a degree of public trust not found in many other positions of public employment. See, e.g., *Melzer v. Bd. of Educ. of City Sch. Dist. of City of New York*, 336 F.3d 185 (2d Cir. 2003) (upholding termination of teacher based on his association with the North American Man/Boy Love Association).

Consider providing guidelines for personal use of electronic media, consistent with employee rights. A district's interest in regulating employee use is highest when the employee is at work, performing professional duties, or using district equipment. For example, a district can prohibit employees from using district computers to update their social network pages. Similarly, the use of cell phones during instructional time can be banned.

The TASB sample materials state that employees will be held to the same professional standards in their public use of electronic media as they are for any other public conduct. The sample materials also state that an employee is responsible for the content on any social network site the employee maintains and for choosing privacy settings appropriate to the content. Finally, the materials restate that employees must comply with federal and state law, local policy, and the Code of Ethics and Standard Practices for Texas Educators, regardless of whether the employee is using private or public equipment.

**From TASB Policy DH(LOCAL):**

PERSONAL USE	Employees shall be held to the same professional standards in their public use of electronic media as they are for any other public conduct. If an employee's use of electronic media violates state or federal law or District policy, or interferes with the employee's ability to effectively perform his or her job duties, the employee is subject to disciplinary action, up to and including termination of employment.
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**From the TASB Model Employee Handbook:**

As role models for the district's students, employees are responsible for their public conduct even when they are not acting as district employees. Employees will be held to the same professional standards in their public use of electronic media as they are for any other public conduct. If an employee's use of electronic media interferes with the employee's ability to effectively perform his or her job duties, the employee is subject to disciplinary action, up to and including termination of employment. If an employee wishes to use a social network site or similar media for personal purposes, the employee is responsible for the content on the employee's page, including content added by the employee, the employee's friends, or members of the public who can access the employee's page, and for Web links on the employee's page. The employee is also responsible for maintaining privacy settings appropriate to the content.

An employee who uses electronic media for personal purposes shall observe the following:

- The employee may not set up or update the employee's personal social network page(s) using the district's computers, network, or equipment.
- The employee shall not use the district's logo or other copyrighted material of the district without express, written consent.

- The employee continues to be subject to applicable state and federal laws, local policies, administrative regulations, and the Code of Ethics and Standard Practices for Texas Educators, even when communicating regarding personal and private matters, regardless of whether the employee is using private or public equipment, on or off campus. These restrictions include:
  - Confidentiality of student records. [See Policy FL]
  - Confidentiality of health or personnel information concerning colleagues, unless disclosure serves lawful professional purposes or is required by law. [See Policy DH (EXHIBIT)]
  - Confidentiality of district records, including educator evaluations and private e-mail addresses. [See Policy GBA]
  - Copyright law. [See Policy EFE]
  - Prohibition against harming others by knowingly making false statements about a colleague or the school system. [See Policy DH (EXHIBIT)]

Note that when these activities are engaged in using district equipment, the applicable acceptable use policies also apply. See TASB Policies CQ(LEGAL)(LOCAL)(REGULATION)(EXHIBIT).

### **Records Retention**

Text messages, emails, voicemails, photographs, and other written or recorded communications that are created by or received by an employee in relation to the employee's job duties are governmental records subject to the applicable records retention rules. Tex. Loc. Gov't. Code § 201.003(8). See TASB Policy CPC(LEGAL). Because it is a criminal offense to destroy public information, government records should only be destroyed in accordance with the appropriate records retention schedule. Tex. Loc. Gov't Code § 202.001. To ensure that the district is complying with these requirements, the district should have in place a system by which the employees properly store any written or recorded communications using social media for deletion at the appropriate time.

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## **Employee Social Networking with Students**

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### **What steps should a district take if it learns that an employee has engaged in inappropriate communications and relationships with students?**

Employees who wish to pursue intimate relationships with students seldom brazenly approach a student to initiate a relationship. They instead engage in grooming the student to ease the student into a relationship. The employee may attempt to act as a mentor or friend to a student and in that capacity make seemingly innocent comments about the students appearance or demeanor that become increasingly sexual over time as the employee escalates the interactions to initiate a physical relationship. The availability of social networking sites, text messaging, e-mails, and other media has increased the opportunities for employees to engage in grooming behavior. Such behavior, even in the early stages, can constitute sexual harassment.

Sexual harassment of a student by an employee includes any welcome or unwelcome sexual advances, requests for sexual favors, and other verbal, physical, or visual conduct of a sexual nature. Sexual harassment can be words, or actions, or both. Sexual harassment can happen when a school employee offers a student a benefit, such as a good grade, or threatens the student with punishment, such as a bad grade, based on the student's response to the employee's advances. Sexual harassment can also include activities such as engaging in sexually oriented conversations for the purposes of personal sexual gratification, telephoning a student at home or elsewhere to solicit inappropriate social relationships, or physical contact reasonably construed as sexual in nature. 20 U.S.C. § 1681(a); *Franklin v. Gwinnett County Pub. Sch.*, 503 U.S. 60 (1992). See TASB Policy FFH(LOCAL).

Sexual words and actions are always prohibited between employees and students, regardless of whether the student consents to or even encourages the employee's behavior. Courts will not consider a sexual relationship between an employee and a student to be consensual even if the student is over the age of 18. Tex. Penal Code § 21.12. The Code of Ethics and Standards of Practice for Texas Educators also prohibits certified employees from engaging in or soliciting sexual conduct or romantic relationships with students. 19 Tex. Admin. Code §§ 247.2, .14.

Because of the implications of any allegation of inappropriate relations between an employee and a student, districts should take all allegations seriously and devote appropriate resources to investigating the claims. If the district determines that an employee's communications with a student violated policy or law, the district should take appropriate corrective action in proportion to the offense. Corrective action may include, depending on the circumstances, reprimanding the employee and directing the employee not to make inappropriate comments to students; suspending the employee pending investigation; or termination of employment.

Termination of a Texas Education Code chapter 21 contract requires a finding of good cause. The commissioner of education has upheld the good cause termination of educators engaging in inappropriate touching of and comments to students. *Templeton v. East Central Indep. Sch. Dist.*, Tex. Comm'r of Educ. Decision No. 462-R2-795 (Feb. 1, 2002). The commissioner has also upheld the good cause termination of employees who have not touched students but who have made multiple inappropriate comments to students, including a teacher who regularly flirted with two students who hung around her classroom and a teacher who suggested a sex book to students and asked a female student if he could see her outside of school. *Pope v. Perrin-Whitt Consol. Indep. Sch. Dist.*, Tex. Comm'r of Educ. Decision No. 145-R2-397 (May 14, 1997); *Alex v. Brownsville Indep. Sch. Dist.*, Tex. Comm'r of Educ. Decision No. 420-R2-695 (Nov. 4, 1996). *But see Gallegos v. Harlandale Indep. Sch. Dist.*, Tex. Comm'r of Educ. Decision No. 077-R2-1296 (Apr. 30, 1998) (granting teacher's appeal of good cause termination because the witnesses were not credible and at worst, the teacher blew kisses to students, referenced a student's experience in the criminal justice system, and told a student he would not allow his child to wear as short a skirt as she was wearing).

An employee's grooming of a student through social media could indicate that sexual activity or another form child abuse is or may be occurring, triggering the statutory child abuse reporting requirements. The first requirement applies to professional employees. If a professional employee has cause to believe that a child has been or may be abused or neglected, the employee must make

a report to any local or state law enforcement agency or the Child Protective Services division of the Texas Department of Protective and Regulatory Services within 48 hours of suspecting the incident. A *professional* is a person who is licensed or certified by the state or who is an employee of a facility licensed, certified, or operated by the state and who, in the normal course of official duties or duties for which a license or certification is required, has direct contact with children. A professional may not delegate to or rely on another person to make the report. In addition, any person who believes that a child's physical or mental health or welfare has been adversely affected by abuse or neglect must immediately make a report to Child Protective Services, local law enforcement, or another appropriate entity as required by Texas Family Code chapter 261, subchapter B. Tex. Fam. Code §§ 261.101(a)-(b), 103. See TASB Policy FFG(LEGAL).

A person acting in good faith who reports or assists in the investigation of a report of alleged child abuse is immune from any civil or criminal liability that might otherwise be incurred or imposed. Also, the district may not suspend or terminate the employment of, or otherwise discriminate against, a professional who makes a good faith report of abuse or neglect. Tex. Fam. Code § 261.106. See TASB Policy FFG(LEGAL).

In addition to the reporting requirement in the Texas Family Code, the Texas Education Code requires the superintendent to notify the State Board for Educator Certification (SBEC) if an educator is terminated because of abuse of a minor or because the employee solicited or engaged in sexual conduct or a romantic relationship with a student. The superintendent must notify SBEC by filing a report not later than the seventh day after learning about the alleged incident of misconduct that formed the basis for termination. The notification must be in the format prescribed in the statute. Tex. Educ. Code § 21.006. Texas Education Code section 21.006 includes an authorization for SBEC to create rules necessary to implement the section. These rules can be found in the Texas Administrative Code. 19 Tex. Admin. Code § 249.14. See also TASB Policies DF(LEGAL) and DH(LEGAL). Please note that settlements with departing employees do not supersede the duty to report misconduct resulting in a resignation under specified circumstances.

Once notified, SBEC will investigate the matter with high priority. 19 Tex. Admin. Code § 249.14(g)(1). SBEC is authorized to take a number of actions if there is evidence that the person is unworthy to instruct or to supervise the youth of this state or the person has violated a provision of the educators' code of ethics. SBEC may permanently revoke or cancel a teaching certificate. 19 Tex. Admin. Code § 249.15. An educator is not eligible for employment under a Chapter 21 contract if SBEC revokes his or her certification. Tex. Educ. Code § 21.003.

Depending on the circumstances, it may be appropriate for the district to report allegations of criminal behavior to local law enforcement for possible criminal charges. A teacher who engages in a sexual relationship with a student could be found criminally liable for the crimes of rape and assault. Also, Texas criminal law specifically prohibits an improper relationship between an educator and a student. Tex. Penal Code § 21.12. SBEC is required to revoke the certificate of an educator who is convicted of an offense requiring registration as a sex offender if the victim is under age 18. Tex. Educ. Code § 21.058. SBEC will then report the revocation to the district that employed the person at the time of revocation. The district must immediately remove the person from campus to prevent any student contact and, as soon as practicable, terminate his or her employment. Tex. Educ. Code § 21.058; see also TASB Policy DF(LEGAL).

### **What should an employee consider when communicating with students for educational purposes?**

Students want to communicate with and receive guidance from their teachers. Because technology allows for easy communication, they expect to be able to communicate with their teachers at any time they wish and receive an immediate response. For example, they may want to e-mail their teachers from home with a question about their homework, and they expect a response before school the next day.

Such communications will raise particular legal and practical concerns that employees should consider. For example, because personally-identifiable student information may be involved in the communications, districts and teachers should guard against the release of student educational records through any Web site or other electronic media without consent in violation of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, 34 C.F.R. part 99. See TASB Policy FL(LEGAL). The written communications are also subject to the records retention rules as described at Employee Social Networking Generally, above.

### **What can a district do to facilitate communication between students and teachers without encouraging inappropriate relationships?**

Districts may choose to adopt and implement sound local procedures and practices to give employees appropriate ground rules for electronic communication with students and to serve as a basis for disciplinary action should an issue arise. Districts may also choose to assume greater control over communications by establishing Web sites, e-mail accounts, or other methods that employees must use to communicate with students.

### **District Policy**

In addition to the general policy language addressing social media that a district should consider implementing as described at Employee Social Networking Generally, above, a district should consider restrictions on employee use of electronic media with students. Differences often exist between what administration and employees consider appropriate methods for communicating with students. Some districts have banned all electronic communication with students, only to find that this approach is not workable. Clear guidelines, communicated in advance, help to head off misunderstandings and most abuses. The TASB sample materials provide a starting point for regulating the “who, what, when, where, and how” of communicating with students through electronic media.

**Specify which employees will be allowed to communicate with students through electronic media.** The TASB sample materials permit only certified and licensed employees, and employees who are authorized in writing by the superintendent, to use electronic media with students. The sample materials provide that all other staff—uncertified administrators, secretaries, bus drivers, janitors, cafeteria workers, etc.—are prohibited from communicating with students by telephone, text messaging, email, Internet, or any other electronic means.

The sample materials recognize two important exceptions. First, the prohibition applies only to communication with students who are currently-enrolled in the district. Second, the materials recognize an exception for family and social relationships. This allows an employee to communicate electronically with relatives, the children of friends, friends of the employee's children, and members or participants in the same civic, social, recreational, or religious organizations.

A related consideration is whether to further restrict which employees may use text messaging to communicate with students. Districts are often uncomfortable with the use of text messaging because of the potential for misuse. The TASB sample materials restrict the use of text messaging to employees with responsibility over extracurricular activities. A broader—or narrower—prohibition on the use of text messaging may be appropriate for your district.

**From the TASB Model Employee Handbook:**

A certified or licensed employee, or any other employee designated in writing by the superintendent or a campus principal, may communicate through electronic media with students who are currently enrolled in the district. The employee must comply with the provisions outlined below. All other employees are prohibited from communicating with students who are enrolled in the district through electronic media.

An employee is not subject to these provisions to the extent the employee has a social or family relationship with a student. For example, an employee may have a relationship with a niece or nephew, a student who is the child of an adult friend, a student who is a friend of the employee's child, or a member or participant in the same civic, social, recreational, or religious organization.

The following definitions apply for the use of electronic media with students:

- *Electronic media* includes all forms of social media, such as text messaging, instant messaging, electronic mail (e-mail), Web logs (blogs), electronic forums (chat rooms), video-sharing Web sites (e.g., YouTube), editorial comments posted on the Internet, and social network sites (e.g., Facebook, MySpace, Twitter, LinkedIn). *Electronic media* also includes all forms of telecommunication such as landlines, cell phones, and Web-based applications.
- *Communicate* means to convey information and includes a one-way communication as well as a dialogue between two or more people. A public communication by an employee that is not targeted at students (e.g., a posting on the employee's personal social network page or a blog) is not a *communication*; however, the employee may be subject to district regulations on personal electronic communications. See *Personal Use of Electronic Media*, above. Unsolicited contact from a student through electronic means is not a *communication*.
- *Certified or licensed employee* means a person employed in a position requiring SBEC certification or a professional license, and whose job duties may require the employee to communicate electronically with students. The term includes classroom teachers, counselors, principals, librarians, paraprofessionals, nurses, educational diagnosticians, licensed therapists, and athletic trainers.



**Consider whether to restrict the topics of electronic communication.** Employees who use electronic media to develop romantic relationships often communicate with students about personal matters. The TASB sample materials limit electronic communication to matters within the scope of the employee’s professional responsibilities. For example, a teacher is limited to communicating about such matters as class work, homework, and tests. An employee with extracurricular responsibilities is limited to communicating about the extracurricular activity.

**From the TASB Model Employee Handbook:**

An employee who uses electronic media to communicate with students shall observe the following:

- The employee may use any form of electronic media except text messaging. Only a teacher, trainer, or other employee who has an extracurricular duty may use text messaging, and then only to communicate with students who participate in the extracurricular activity over which the employee has responsibility.
- The employee shall limit communications to matters within the scope of the employee’s professional responsibilities (e.g., for classroom teachers, matters relating to class work, homework, and tests; for an employee with an extracurricular duty, matters relating to the extracurricular activity).
- The employee continues to be subject to applicable state and federal laws, local policies, administrative regulations, and the Code of Ethics and Standard Practices for Texas Educators, including:
  - Compliance with the Public Information Act and the Family Educational Rights and Privacy Act (FERPA), including retention and confidentiality of student records. [See Policies CPC and FL]
  - Copyright law. [Policy EFE]
  - Prohibitions against soliciting or engaging in sexual conduct or a romantic relationship with a student. [See Policy DF]

**Consider time of day restrictions.** Late-night communication increases the risk of inappropriate contact. The TASB sample materials restrict the hours of day during which an authorized employee may communicate electronically with students. For example, a district might restrict employees from communicating between the hours of midnight and 5:00 a.m. This restriction protects both the employee and the student from eroding boundaries between private and school life.

**From the TASB Model Employee Handbook:**

- The employee shall not communicate directly with any student between the hours of \_\_\_\_\_ p.m. and \_\_\_\_\_ a.m. An employee may, however, make public posts to a social network site, blog, or similar application at any time.

**Consider a requirement to create a professional social network page.** Most experts agree—teachers should not friend their students on personal social network pages. The TASB sample materials require authorized employees who wish to communicate with students through a social network to maintain a separate page for professional communications. Employees are expressly prohibited from communicating with students through a personal social network page. For example, a teacher cannot friend a student on the teacher’s personal Facebook page. Better yet, consider a district-owned and operated social network page and restrict communications with students to that platform as described below at Classroom, Campus, and District Managed Social Media Tools.

**From the TASB Model Employee Handbook:**

- The employee is prohibited from knowingly communicating with students through a personal social network page; the employee must create a separate social network page (“professional page”) for the purpose of communicating with students. The employee must enable administration and parents to access the employee’s professional page.

**Emphasize openness.** Inappropriate communications are more likely to occur when interactions are secret. Open communication protects both the employee and the student. The TASB sample materials state that, upon request from administration, an employee must provide information identifying any electronic media the employee uses to communicate with students. Similarly, an employee who creates a professional social network page must grant parents and administrators access to the page. The TASB sample materials also allow parents and students to opt out of electronic communication: upon request, an employee must stop using social media to communicate with the student and/or parent.

**From the TASB Model Employee Handbook:**

- The employee is prohibited from knowingly communicating with students through a personal social network page; the employee must create a separate social network page (“professional page”) for the purpose of communicating with students. The employee must enable administration and parents to access the employee’s professional page.
- The employee does not have a right to privacy with respect to communications with students and parents.
- Upon request from administration, an employee will provide the phone number(s), social network site(s), or other information regarding the method(s) of electronic media the employee uses to communicate with any one or more currently-enrolled students.
- Upon written request from a parent or student, the employee shall discontinue communicating with the student through e-mail, text messaging, instant messaging, or any other form of one-to-one communication.

## **Classroom, Campus, and District Managed Social Media Tools**

To facilitate communications between students and teachers and communications between students in a safe, supervised environment, many districts have set up classroom Web sites and student e-mail accounts to allow student and teacher communications for instructional and social purposes. The extent to which districts may monitor the communications as well as what a district may include on the Web sites are regulated by federal law.

### *Electronic Communication Privacy Act*

The Electronic Communication Privacy Act (ECPA), 18 U.S.C. §§ 2510-22, protects the privacy of all electronic communications. Under the ECPA, a district will commit an offense if the district intercepts an electronic message in transit unless one of the parties to the communication consents. 18 U.S.C. § 2511(1), (2)(d).

### *Stored Wire and Electronic Communications and Transactional Records Access Act*

The Stored Wire and Electronic Communications and Transactional Records Access Act, 18 U.S.C. §§ 2701-12, prohibits access to stored electronic messages unless the person accessing the message is an electronic service provider. 18 U.S.C. § 2701. Therefore, if the district provides the Web site and e-mail system, then the district may access the stored messages in its system. *See Bohach v. City of Reno*, 932 F. Supp. 1232 (D. Nev. 1996) (holding that the city was the provider of the police officer's e-mail service and thus could access the stored messages). Although the Records Access Act provides districts a level of protection from the offense of accessing stored electronic messages on the districts' systems, a district should inform users that the district may access their personal messages. This notice is typically provided in district policy and often in an additional written notice to users.

### *Trademarked Material*

At times, employees may wish to use trademarked symbols or copyrighted material that do not belong to the district on a classroom or school Web Site. Symbols, like a professional team's mascot, colors, slogans, sounds, and like items, are typically protected by the Lanham Trademark Act, 15 U.S.C. §§ 1051-1142. The trademark holder may only sue to halt commercial use of a trademark. 15 U.S.C. § 1114. Use for purely educational purposes likely will not be considered commercial; however, to avoid any complaints, the employee should seek the permission of the trademark holder before using the symbol on the classroom Web site.

### *Copyrighted Material*

Original works created as tangible types of expression, such as books, music, motion pictures and other audiovisual works, and sound recordings, may be granted copyright protection. 17 U.S.C. § 102. The copyright owner controls the ability to copy the work as well as the public use and distribution of the work. 17 U.S.C. § 106. The grant of the copyright is automatic; the author need not register the work for it to be protected. 17 U.S.C. § 408(a). However, the copyright owner may not sue to protect the copyright until the work is registered. 17 U.S.C. § 411(a).

An individual may use copyrighted material in a reasonable manner without the permission of the copyright holder if the use qualifies as *fair use*. Fair use may include use for purposes of criticism, comment, teaching, or research. When determining whether use qualifies as fair use, courts will consider: the purpose and character of the use, including whether the use is for nonprofit educational purposes; the nature of the work; the amount and importance of the portion used in relation to the work as a whole; and the effect of the use upon the potential market for or value of the work. 17 U.S.C. § 107.

The historical note published with 17 U.S.C. § 107 provides fair use guidelines for school employees. The “Agreement on Guidelines for Classroom Copying in Not-for-Profit Educational Institutions” and “Guidelines for Educational Uses of Music” provide guidance for use of copyrighted print material and music. For example, the music guidelines suggest that the use of a song in a presentation should not exceed 10 percent of the whole work. *Guidelines for Educational Uses of Music*, 17 U.S.C. § 107 Note. Both documents are addressed in the U.S. Copyright Office document entitled, *Reproduction of Copyrighted Works by Educators and Librarians*, available at [www.copyright.gov/circs/circ21.pdf](http://www.copyright.gov/circs/circ21.pdf).

The guidelines for classroom copying and the guidelines for music use establish a minimum guaranteed fair use, not a maximum. Any determination regarding whether a use that exceeds the guidelines is a fair use rests with an appropriate court of law.

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## **Employee Social Networking with Other Employees**

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### **What steps should a district take if it learns that an employee is harassing another employee?**

Employees’ improper behavior is not limited to inappropriate communications and relationships with students. Some employees may also harass other employees, whether it be harassment based on the person’s sex or another protected characteristic through social media. For example, a supervisor may repeatedly email and text another employee to comment on that employee’s appearance and to proposition her, indicating that she could get a promotion if she begins a relationship with him.

Sexual harassment is prohibited by federal law, including the Fourteenth Amendment of the U.S. Constitution and Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e-2000e-17. Sexual harassment is also prohibited by state law, including the Texas Equal Rights Amendment, Texas Constitution article I, section 3a; Texas Civil Practice and Remedies Code chapter 106; the Texas Commission on Human Rights Act, Texas Labor Code chapter 21, subchapter B; and Texas Penal Code section 39.03.

Sexual harassment of an employee is defined as unwelcome sexual advances; requests for sexual favors; sexually motivated physical, verbal, or nonverbal conduct; or other conduct or communication of a sexual nature when:

- submission to the conduct is either explicitly or implicitly a condition of an employee’s employment, or when submission to or rejection of the conduct is the basis for an employment action affecting the employee; or

- the conduct is so severe, persistent, or pervasive that it has the purpose or effect of unreasonably interfering with the employee’s work performance, creates an intimidating, threatening, hostile, or offensive work environment, or otherwise adversely affects the employee’s performance, environment or employment opportunities.

29 C.F.R. § 1604.11; *Meritor Sav. Bank v. Vinson*, 477 U.S. 57 (1986); *Jones v. Flagship Int’l*, 793 F.2d 714 (5th Cir. 1986). See also TASB Policy DIA(LOCAL).

Federal and state laws also prohibit harassment and discrimination on the basis of the employee’s race, color, national origin, disability, religion, or age. Prohibited harassment includes physical, verbal, or nonverbal conduct related to these characteristics when the conduct is so severe, persistent, or pervasive that the conduct:

- Has the purpose or effect of unreasonably interfering with the employee’s work performance;
- Creates an intimidating, threatening, hostile, or offensive work environment; or
- Otherwise adversely affects the employee’s employment opportunities.

U.S. Const. amend 14; 42 U.S.C. § 2000e-2 (Title VII); 29 U.S.C. § 794 (Section 504); 42 U.S.C. § 12132 (ADA); 29 U.S.C. § 623 (ADEA); 42 U.S.C. § 1981 (Section 1981); Tex. Const. art. I, § 3a (Texas Equal Rights Amendment); Tex. Civ. Prac. & Rem. Code ch. 106; Tex. Lab. Code ch. 21, subch. B (Texas Commission on Human Rights Act); see TASB Policy DIA(LOCAL).

The district should take any claims of harassment made by an employee against another employee seriously and investigate the allegations. The U.S. Supreme Court has stated that there is no “mathematically precise test” to determine when conduct constitutes sexual harassment. *Harris v. Forklift Systems, Inc.*, 510 U.S. 17 (1993).

Generally if the allegations are based on teasing or offhand comments that are simply harmless differences in the way employees interact and not so objectively offensive that it changes an employee’s working conditions then the allegations will typically not be deemed harassment. However, severe, discriminatory verbal intimidation, ridicule, or insults may be harassment. Graphic sexual statements, such as dirty jokes or propositions, can create a hostile environment. In some cases, threats or unwanted physical contact can be so severe that one incident alone creates a hostile environment.

If the allegations are found to be true, the employee could be subject to discipline in the form of a reprimand, up to and including termination. The commissioner has found good cause when a teacher touched a teaching assistant’s thigh many times. *Adair v. Cumby Indep. Sch. Dist.*, Tex. Comm’r of Educ. Decision No. 029-R2-1200 (Jan. 30, 2001). The commissioner has also found good cause when an employee made several comments to female coworkers containing sexual innuendos in front of students and other employees. *Engelberg v. Hull-Daisetta Indep. Sch. Dist.*, Tex. Comm’r of Educ. Decision No. 296-R2-789 (June 28, 1991). However, the commissioner did not find good cause when a teacher’s behavior toward two coworkers was deemed “boorish” but not immoral, a former ground for terminating a continuing contract. *Guzman v. Harlandale Indep. Sch. Dist.*, Tex. Comm’r of Educ. Decision No. 485-R2-895 (Dec. 2, 1999).

Note that even behavior that is not deemed sexual harassment has resulted in a finding of good cause for termination of an employee. The commissioner has found good cause when the district determined that the employee's sexual behavior was consensual but it occurred while on-duty at a school activity. *Garza v. Edinburg Indep. Sch. Dist.*, Tex. Comm'r of Educ. Decision No. 306-R2-595 (Sept. 3, 1997).

Also keep in mind that retaliation against an employee alleged to have experienced harassment, a witness, or another person who makes a report or participates in an investigation is strictly prohibited. See TASB Policy DIA(LOCAL). A person who intentionally makes a false claim, offers false statements, or refuses to cooperate with a district investigation regarding prohibited harassment is subject to appropriate discipline, however.

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## **Student Social Networking**

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### **Can a district restrict cell phones and other handheld devices on campus?**

Students expect to have regular access to their cell phones other handheld devices to access the Internet and communicate with each other through social networking sites, text messaging, and other applications. Districts may wish to restrict their access to such devices to prevent disruptions to the educational environment.

Districts may restrict cell phones and other handheld devices on campus. For example, districts may choose to permit the devices to be brought on campus but restrict students from displaying, turning on, or using the devices. They may choose to prohibit possession during the school day or possession at school or school-related events. The prohibition should be clearly set out in the student handbook and, if the district wishes to discipline students for bringing or using the prohibited items on campus, the district should detail the prohibition in the student code of conduct. The TASB model student code of conduct provides sample language from which districts may choose, or the district may develop its own language.

The district may also opt to charge a fee to return a confiscated telecommunications device or to dispose of the device in certain circumstances. Texas Education Code section 37.082 permits a school board to adopt a policy permitting the disposal of a confiscated device in a reasonable manner if the student's parent and the company whose name and address appear on the device are given 30 days' notice of the intent to dispose of the device. The policy may also authorize the district to charge a student a fee not to exceed \$15 to release the device. Tex. Educ. Code § 37.082. The authorization for disposal and charging a fee should be included in FNCE(LOCAL) but the fee amount may be included in the student handbook.

Note that these provisions apply only to telecommunications devices like cell phones. The statute does not authorize the district to dispose of or charge a fee for release of other handheld devices like mp3 players and handheld gaming devices.

### **Can a district employ a cell phone jammer on campus?**

Students often ignore district prohibitions on possessing or using cell phones on campus, so districts may want to employ a cell phone jammer to prevent cell phone use. However, the Federal Communications Act of 1934, 47 U.S.C. § 302a, makes it an offense for a person to use a cell phone jammer. Districts are not exempt from the law. 47 U.S.C. § 302a.

### **Can a district discipline a student for cyberbullying?**

Bullying has long been an issue faced by district administrators. Over the past decade, bullying has taken a new form on the Internet, particularly through social networking sites. Termed *cyberbullying*, students hiding behind the perceived anonymity of the Web have posted cruel and harassing comments directed to or about their classmates and school employees. Students may use district technology or some off-campus source to post the messages or create the offensive Web sites, but the impact may extend to the campus environment. Districts will understandably want to discipline students for cyberbullying but the available options vary depending on the technology used and whether any First Amendment rights are implicated.

**Discipline Generally:** The district's student code of conduct must prohibit bullying, harassment, and making hit lists and ensure that its employees enforce the prohibitions. The student code of conduct must also provide age-appropriate options for preventing and intervening in student discipline problems, including bullying, harassment, and making hit lists. Tex. Educ. Code § 37.001(a)(7)-(8). An admission, review, and dismissal committee must review the conduct of a special education student before the student may be disciplined for bullying, harassment, or making hit lists. Tex. Educ. Code § 37.001(b-1).

Texas Penal Code section 33.07 details the offense of online harassment. A person commits online harassment if the person uses the name or persona of another person to create a Web site or post messages on a social networking site, like Facebook or MySpace, without the person's consent and with the intent to harm, defraud, intimidate or threaten any person. This version of the offense is a felony of the third degree. Tex. Penal Code § 33.07(a), (c).

A person also commits the offense of online harassment if a person sends an electronic communication, like an e-mail or text message, referencing a person's identifying information, including the person's domain name or phone number, without that person's consent, with the intent to cause the communication's recipient to reasonably believe the referenced person sent or authorized the communication, and with the intent to defraud any person. This version of the offense is a Class A misdemeanor, unless the person intended a response from emergency personnel, at which time it becomes a felony of the third degree. Tex. Penal Code § 33.07(b)-(c). If the offense constitutes a felony and occurs on-campus, the student must be placed in a disciplinary alternative education program (DAEP). Tex. Educ. Code § 37.006(a)(2).

**First Amendment Concerns:** Students may be disciplined for speech or conduct that occurs on or off school property if it materially and substantially interferes with school operations. Students do not shed their First Amendment free speech rights at school. However, the U.S. Supreme Court has affirmed the authority of school officials to prescribe and control conduct in

the schools, consistent with fundamental constitutional safeguards. A district cannot discipline a student in a way that discriminates against the student's viewpoint absent a reasonable belief that the student's communication will cause a material and substantial disruption of school operations. *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969).

Unsubstantiated fear of disturbance is not enough to overcome a student's free speech rights. *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969). A district must find an actual connection between the expression and potential disruption. *Sypniewski v. Warren Hills Reg'l Bd. of Educ.*, 307 F.3d 243 (3d Cir. 2002). Material and substantial disruption may be substantiated by evidence of disturbance. *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969).

Vulgar, lewd, obscene, and plainly offensive speech that occurs on school property is not protected and may be prohibited regardless of whether it causes a substantial disruption. *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675 (1986).

A true threat is also not protected by the First Amendment. The Fifth Circuit Court of Appeals defines a true threat as occurring when an "objectively reasonable person would interpret the speech as a 'serious expression of an intent to cause a present or future harm.'" *Porter v. Ascension Parish Sch. Bd.*, 393 F.3d 608, 616 (5th Cir. 2004). Additionally, the Fifth Circuit has held that speech advocating violence in school threatens the safety of students and is not protected by the First Amendment. *Ponce v. Socorro Indep. Sch. Dist.*, 508 F.3d 765 (5th Cir. 2007).

**Cyberbullying That Occurs On-Campus or Using District Technology:** As established in *Bethel School District No. 403 v. Fraser*, a student may be disciplined for vulgar, lewd, and plainly offensive speech occurring on campus. *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675 (1986). In addition, when district computers are involved, the district may discipline according to an applicable acceptable use policy. See TASB Policies CQ(LOCAL) and CQ(REGULATION).

**Cyberbullying That Occurs Using Private Computers, Off-Campus:** Districts may have jurisdiction to discipline for messages students post on Web sites developed and maintained wholly off-campus that cause a material or substantial disruption to the educational process. *E.g., J.S. v. Bethlehem Area Sch. Dist.*, 757 A.2d 412 (Pa. Commw. 2000), *aff'd*, 807 A.2d 847 (Pa. 2002) (concluding that a teacher's reasonable physical and emotional disturbance after viewing the threats on the Web site resulted in a substantial disruption to the educational environment). Districts do not, however, have jurisdiction to discipline for messages posted on

such Web sites if they do not cause a disruption. *E.g., Beussink v. Woodland R-IV Sch. Dist.*, 30 F. Supp. 2d 1175 (E.D. Mo. 1998) (concluding that the principal decided to discipline the student based upon his reaction to the content of the Web site, not based on actual evidence or a reasonable anticipation of disruption).



**What disciplinary placement is appropriate for students who engage in sexting by forwarding inappropriate pictures of themselves or classmates on their cell phones while at school?**

Students who engage in *sexting* by forwarding inappropriate pictures of themselves or their classmates, such as pictures of their classmates engaging in a state of undress, using their cell phones while on campus are subject to the district student code of conduct's prohibitions on the use of cell phones during the school day. The students may also be considered to have possessed or promoted child pornography.

**Possession of Child Pornography:** A student commits the offense of possession of child pornography if the student knowingly or intentionally possesses visual material that depicts a child who was younger than 18 years of age at the time the image was made and who was engaging in sexual conduct. The student must know that the material depicts such a child. Tex. Penal Code § 43.26(a).

**Promotion of Child Pornography:** A student commits the offense of promotion of child pornography if the student knowingly or intentionally promotes, or possesses with intent to promote, visual material that depicts a child who was younger than 18 years of age at the time the image was made and who was engaging in sexual conduct. The person must know that the material depicts such a child. Tex. Penal Code § 43.26(e).

**Definition of Sexual Conduct:** Sexual conduct includes not only sex acts but the lewd exhibition of the genitals, the anus, or any portion of the female breast below the top of the areola. Tex. Penal Code § 43.25(a)(2).

**Definition of Promote:** To promote means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit, or advertise, offer, or agree to do any of the above. Tex. Penal Code § 43.25(a)(5).

**DAEP:** Both offenses are felonies that require that the student be placed in a disciplinary alternative education program (DAEP). Tex. Penal Code § 43.26(d), (g); Tex. Educ. Code § 37.006(a)(2).

**Child Pornography Prevention Act of 1996:** The federal Child Pornography Prevention Act of 1996, 18 U.S.C. § 2252A, prohibits individuals from knowingly receiving or distributing child pornography, including by computer. 18 U.S.C. § 2252A.

**Searches:** A district may not search a student's cell phone unless the search is reasonable, meaning that the search must be justified at its inception and must be reasonably related in scope to the purpose of the search. To be justified at its inception, the district must have reasonable cause to believe that the student has committed, or is committing, an act that is subject to a disciplinary sanction. U.S. Const. amend. IV; Tex. Const. art. I, § 9; *New Jersey v. T.L.O.*, 469 U.S. 325 (1985).

A federal court has held that a student and his parents stated a cause of action for unreasonable search after a teacher and school administrator accessed the student's text messages and voicemails and called or instant messaged other students using the student's cell phone. The teacher, who confiscated the student's phone while enforcing the district's cell phone use policy, claimed that the student received a text alluding to marijuana while the phone was in her possession, thereby justifying her search as an investigation of illegal drug use at the school. The court concluded that the employees were using the phone to find evidence of other students' misconduct and had no reason to believe such a search would reveal that the student was violating school policy. *Klump v. Nazareth Area Sch. Dist.*, 425 F. Supp. 2d 622 (E.D. Pa. 2006).

Districts are also constrained by the Stored Wire and Electronic Communications and Transactional Records Access Act, 18 U.S.C. §§ 2701-12. As mentioned in the Employee Social Networking section, the Stored Communications Act prohibits access of messages in electronic storage unless the person accessing the message is an electronic service provider. 18 U.S.C. § 2701. The district would therefore only be able to access information on the phone that is not an *electronic communication* and information that is an *electronic communication* but that is stored on the phone and not only in the cell phone service provider's electronic storage.

*Electronic communication* is defined as "any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system that affects interstate or foreign commerce." 18 U.S.C. § 2510(12). Items that would likely not be considered an *electronic communication* are items like phone logs, contact lists, and photographs taken with the cell phone camera and stored on the phone for the user's reference and not transmitted electronically. Items that would be considered *electronic communications* are e-mails, voicemails, text messages, instant messages, and the like that have traveled over wi-fi or through the cell phone provider's network.

*Electronic storage* is defined as: "(A) any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof; and (B) any storage of such communication by an electronic communication service for purposes of backup protection of such communication." 18 U.S.C. § 2510(17). Courts distinguish between communications in *temporary, intermediate storage*, and those that are in *post-transmission storage*. Messages that have been sent to a person, but not yet opened, are in *temporary, intermediate storage* and are considered to be in *electronic storage* under the Act. See *Steve Jackson Games, Inc. v. United States Secret Service*, 36 F.3d 457 (5th Cir. 1994). For example, if a student was sent a gmail message, but the student had not yet opened the message, the message is in electronic storage on gmail. Electronic communications that are opened and stored separately from the provider are considered to be in *post-transmission storage*, not *electronic storage*. See *Fraser v. Nationwide Mut. Ins. Co.*, 352 F.3d 107 (3d Cir. 2004). Once the student opens the gmail message using the e-mail program on the student's phone, and the student stores the e-mail on the phone, then the message stored on the phone is arguably no longer in electronic storage. The district may then access the opened message stored on the phone.

To avoid any potential conflict with the Stored Communications Act, the district may seek permission from the student and the student's parents prior to conducting the search. 18 U.S.C. § 2701(c)(2).

**Can a district discipline students who post or view inappropriate content on the Internet or who send inappropriate content over the Internet using district computers?**

The district may discipline students who post or view inappropriate content on the Internet or send inappropriate content over the Internet using district computers in accordance with the district's student code of conduct and acceptable use policy. The TASB model student code of conduct includes several relevant general conduct violations such as a prohibition on violating the district's acceptable use policy and a prohibition on sending or posting electronic messages that are sexually oriented, harassing, or damaging to another's reputation. In addition, students may be disciplined for having possessed or promoted child pornography as described above.

**May a district discipline students caught photographing or videotaping students changing in a locker room for distribution through social media?**

A student who photographs, records, broadcasts, or transmits an image of another student changing in a school bathroom or a private dressing room without the other person's consent and with the intent to invade the privacy of the other student or to arouse or gratify the sexual desire of any person will be considered to have committed the offense of improper photography or visual recording in violation of Texas Penal Code section 21.15. If the action is taken in any other location on campus, the student will have committed the offense even if the student did not intend to invade the privacy of the other student. The student need only know about the character and content of the image and promote it. The offense is a state jail felony, requiring the district to place the student in the disciplinary alternative education program (DAEP). Tex. Penal Code § 21.15; Tex. Educ. Code § 37.006(a).

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**District Responsibility and Liability for Social Networking**

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**What steps must a district take to protect students from online predators, cyberbullies, and other Internet safety risks?**

Under the Children's Internet Protection Act (CIPA), a district must, as a prerequisite to receiving universal service discount rates on telecommunications services such as Internet access, implement an Internet safety policy, submit certification to the Federal Communications Commission (FCC), and ensure that student use of district computers with Internet access is in accordance with the certifications. The Internet safety policy must address access by minors to inappropriate content on the Internet; safety and security of minors using electronic communications; hacking and other unlawful activities by minors on the Internet; unauthorized disclosure, use, and dissemination of a minor's personal identification information; and measures employed to restrict minors' access to harmful materials. Districts must also educate minors about appropriate online behavior and cyberbullying awareness. The school board or its designee must determine if Internet information is inappropriate for minors. In accordance with the appropriate FCC certification, districts must also operate a technology protection measure to protect minors from obscene and pornographic images as well as monitor minors' online activity. 47 U.S.C. § 254(c)(3), (h)(5)(A)-(B), (I); 47 C.F.R. § 54.520.

Districts that do not receive universal service discounts but do receive certain federal funds under the Elementary and Secondary Education Act (ESEA) must, as a prerequisite to receiving the funds, implement certain Internet safety measures and submit certification to the U.S. Department of Education. The funds may not be used to purchase computers used to access the Internet or pay for direct costs associated with accessing the district unless: the district had an internet safety policy that includes the operation of a technology protection measure restricting minors' access to harmful information and restricting all others' access to images that are obscene or child pornography. 20 U.S.C. § 6777.

### **Can a district be held liable for failing to protect students from Internet safety risks posed by third parties?**

While accessing the Internet, students may be subject to a number of risks such as cyberbullying or sexual predators. If the Internet is accessed using district technology or otherwise has a nexus with the school, parents may seek to hold the district liable for failure to protect their children from the Internet safety risks. Their ability to successfully sue is limited, however.

### **State Law Claims**

When a student is subjected to Internet safety risks, the student's parents may file a lawsuit, alleging state law claims. As with many lawsuits, the parents will probably sue many different parties and allege a variety of causes of action. For example, parents may allege that the negligent supervision by the school district's employees caused their child's injuries. The common law doctrine of governmental immunity protects school districts from these types of negligence claims. *Garza v. Edinburg Consol. Indep. Sch. Dist.*, 576 S.W.2d 916 (Tex. Civ. App.—Corpus Christi 1979, no writ).

### **Harassment Based on a Protected Characteristic**

A district may be liable under federal or state law for Internet safety risks, such as cyberbullying, that involves harassment based on a protected characteristic.

**Liability Under Title IX for Sexual Harassment:** The U.S. Supreme Court has determined that a school district may be liable for monetary damages if: (1) its deliberate indifference causes students to undergo harassment or makes them vulnerable to it, and (2) the harassment takes place in a context subject to the school district's control. A school district may be liable under Title IX only if its response or lack of response to harassment is clearly unreasonable in light of the known circumstances. *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629 (1999).

Harassment directed against a member of the same sex may be actionable under Title IX. *Theno v. Tonganoxie Unified Sch. Dist.*, 377 F. Supp. 2d 952 (D. Kan. 2005) (mem.) (gender stereotyping); *Ray v. Antioch Unified Sch. Dist.*, 107 F. Supp. 2d 1165 (N.D. Cal. 2000) (perceived sexuality).

**Liability Under Title VI for Racial and Other Harassment:** Only an intended beneficiary of, or a participant in, a federally funded program who has suffered from intentional discrimination prohibited by the statute may bring a Title VI action against a fund recipient. 42 U.S.C. § 2000d; *Alexander v. Sandoval*, 532 U.S. 275 (2001). A district may be held liable under the Texas Equal Rights Amendment, Texas Constitution article I, section 3a, for discrimination on the basis of sex, race, color, religion, or national origin. However, such claims are rarely asserted without a corresponding federal law claim.

### **Federal Section 1983 Claims**

Students and their parents may also sue school districts for violations of federal law. These claims are typically brought under 42 U.S.C. § 1983 (Section 1983). Under Section 1983, an individual may bring a claim against a person who is acting under color of state law and who has deprived the individual of rights protected by the U.S. Constitution or federal law. Under Section 1983, local governments, school districts, and school district employees are all persons who may be sued. *Monell v. Dept. of Soc. Serv. of City of N.Y.*, 436 U.S. 658 (1978).

To be actionable under Section 1983, a harmful action must be committed under color of state law—meaning with governmental authority. For a governmental entity to be liable under Section 1983, the entity must act through an official policy, custom, or practice. *Monell v. Dept. of Soc. Serv. of City of N.Y.*, 436 U.S. 658 (1978). For an individual governmental official or employee to be liable, the individual must himself act to deprive a citizen of a protected right or he must inadequately supervise a subordinate who violates a citizen’s rights under color of state law. *Doe v. Taylor Indep. Sch. Dist.*, 15 F.3d 443 (5th Cir. 1994) (en banc).

To state a claim under Section 1983, a plaintiff must allege that he or she has suffered the deprivation of a federal constitutional or statutory right. An alleged deprivation of one of several constitutional rights may serve as the basis for a Section 1983 suit:

- First Amendment: freedom of religion, freedom of speech, and the right to petition for redress of grievances
- Fourth Amendment: freedom from unreasonable search or seizure
- Fourteenth Amendment: right to due process and equal protection of the laws

In a cause of action arising out of exposure to Internet safety risks, parents may allege the district was deliberately indifferent to the student’s health and safety. Specifically, parents might allege that the school district, acting under the color of state law, violated the student’s Fourteenth Amendment due process rights to life, liberty, health, safety, and bodily integrity.

In general, school districts and school officials have no specific duty to protect students from constitutional harm by third parties. Two exceptions to this general rule exist.

**Special Relationship:** Governmental entities generally have a legal duty to protect citizens when a special relationship exists between the government and the citizens. *DeShaney v. Winnebago Cty. Dept. of Social Serv.*, 489 U.S. 189 (1989). A special relationship arises only when an individual is involuntarily in the care and custody of the government. *Walton v. Alexander*, 44 F.3d 1297 (5th Cir. 1995); *Priester v. Lowndes County*, 354 F.3d 414 (5th Cir. 2004). Compulsory attendance laws do not create a special relationship. *Doe v. Hillsboro Indep. Sch. Dist.*, 113 F.3d 1412 (5th Cir. 1997) (en banc); *Maldonado v. Josey*, 975 F.2d 727 (10th Cir. 1992), *cert. denied*, 507 U.S. 914 (1993).

Federal courts with jurisdiction in Texas have refused to hold school districts liable for constitutional claims based on harassment because school districts do not have a special relationship with the students. *Garza v. Galena Park Indep. Sch. Dist.*, 914 F. Supp. 1437 (S.D. Tex. 1994); *Esmeralda v. Partin*, 864 F. Supp. 626 (S.D. Tex. 1994); *Bowles v. Floresville Indep. Sch. Dist.*, 84 F.3d 432 (5th Cir. 1996). However, recent court opinions have focused on the districts' relationships with students in special education programs where schools have heightened responsibilities. *Teague v. Texas City Indep. Sch. Dist.*, 185 Fed. Appx. 355 (5th Cir. 2006).

**State-Created Danger Theory:** The second exception to the general rule is called the state-created danger theory. This theory has only been accepted in a handful of jurisdictions and, currently, has not been expressly adopted by the Fifth Circuit Court of Appeals which has jurisdiction over Texas. *Rios v. City of Del Rio*, No. 444 F.3d 417 (5th Cir. 2006). Under the state-created danger theory, the government must protect individuals from harm if the government itself creates a threat to individuals' rights. Because some other jurisdictions recognize this cause of action, and because it is often alleged by plaintiffs in this jurisdiction, it is important for school districts to be aware of the potential for liability.

A school district or its administrators may have liability for the actions that expose students to a state-created danger. A state-created danger arises only if the district or administrators create an environment that is dangerous, the district has actual knowledge that the environment is dangerous, and the district uses its authority to create an opportunity for a harm that would not otherwise have existed. *Doe v. Hillsboro Indep. Sch. Dist.*, 113 F.3d 1412 (5th Cir. 1997) (en banc) (addressing the state-created danger theory in the context of a crime committed by a third party). *See also Breen v. Texas A&M Univ.*, 485 F.3d 325 (5th Cir. 2007), *modified on reh'g*, 494 F.3d 516 (5th Cir. 2007) (per curiam) (discussing the claim of state-created danger in the context of injuries incurred in the Texas A&M bonfire tragedy).

While claims under Section 1983 based on deprivation of bodily integrity or state-created danger are possible, no similar claim has been successful in Texas. However, school officials should know of the potential risks and take precautions accordingly.

## **Can individual employees be held liable for failing to protect students from Internet safety risks posed by third parties?**

Employee may be held liable for failing to protect students from Internet safety risks in certain circumstances.

### **State Law Negligence Claims**

School district employees are often named as defendants in a variety of lawsuits. District employees can be sued in both their official capacities as well as their individual capacities. When district employees are sued in their official capacities for acts performed within the scope of their employment, the claims are equivalent to the claims made against the governmental entity. These lawsuits are considered exclusively against the school district and do not jeopardize employee's personal financial resources.

Employees sued in their individual capacities must defend and explain their personal conduct in the particular incident. Under Texas state law, employees facing potential individual liability for their own negligence may have common law and statutory immunities. Employees are protected by common law official immunity when they act: (1) in good faith; (2) within the scope of their authority; and (3) in the performance of discretionary duties. *Ballantyne v. Champion Builders, Inc.*, 144 S.W.3d 417 (Tex. 2004). If an employee meets all three parts of this test, the employee will not be held personally liable for tort claims.

In addition, the Texas Education Code provides professional employees with state statutory immunity for claims made against them in their individual capacity. Tex. Educ. Code § 22.0511. This provision protects district employees from individual liability "for any act that is incident to or within the scope of the duties of the employee's position of employment and that involves the exercise of judgment or discretion on the part of the employee . . ." Tex. Educ. Code § 22.0511(a). At times, however, district employees will not have statutory protection. For example, statutory immunity is not available for causes of action arising out of the operation of motor driven vehicles or discipline involving the excessive use of force. Tex. Educ. Code § 22.0511.

The Texas Civil Practice and Remedies Code contains a separate provision that limits damages for claims against school district officials sued in their individual capacities. School district officials and employees are not personally liable for damages in excess of \$100,000 arising from personal injury, death, property damage, or deprivation of a right, privilege, or immunity if the damages are a result of an act or omission by the employee in the course and scope of employment, and if the employee is covered by an insurance or indemnification agreement. Tex. Civ. Prac. & Rem. Code § 108.002.

### **Federal Section 1983 Claims**

Plaintiffs alleging a violation of constitutional law under 42 U.S.C. § 1983 (Section 1983) often name both the school district and district employees in their individual capacities as defendants. Under Section 1983, an individual has a claim against any person who is "acting under color of state law" and who has deprived the individual of rights protected by the U.S. Constitution or

federal law. *Doe v. Taylor Indep. Sch. Dist.*, 15 F.3d 443, 486 (5th Cir. 1994) (en banc). While governmental entities do not have immunities available to them under Section 1983, individual employees can escape liability if they successfully assert that they were acting in good faith.

State law immunities do not apply to claims brought under federal law. Instead, a separate federal immunity doctrine, qualified immunity, can protect governmental actors sued for violations of federal rights. Qualified immunity shields “government officials performing discretionary functions” from liability for civil damages “insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). So long as school officials act reasonably, within the scope of their responsibilities, without violating clearly established rights, they will not be held liable. *Harlow v. Fitzgerald*, 457 U.S. 800 (1982).

### **If an employee engages in an inappropriate relationship with a student, can the district or the supervisors be held liable?**

As discussed in the section on Employee Social Networking with Students, at times, employees may initiate an inappropriate relationship with a student through a social networking site or other technology. Questions will naturally arise as to whether the district or the employee’s supervisors may be held liable for the employee’s actions.

### **District Liability Under Section 1983.**

A school district may not be held liable for violations of the U.S. Constitution just because its employee violates the law. A school district will be held liable under Section 1983 if the violation is a result of an official policy, custom, or practice of the district. *Monell v. Dept. of Social Serv. of City of N.Y.*, 436 U.S. 658 (1978). Generally, a school district’s policy will specifically prohibit this type of conduct. Therefore, school district liability arises only when a school official qualifies as a policy maker commits the wrong. *Doe v. Dallas Indep. Sch. Dist.*, 153 F.3d 211 (5th Cir. 1998).

### **District Liability Under Title IX.**

Title IX provides that “[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance . . . .” 20 U.S.C. § 1681(a). The U.S. Supreme Court has held that sexual harassment of a student by a teacher is sex discrimination under Title IX and that a plaintiff may recover monetary damages for a violation. *Franklin v. Gwinnett County Pub. Sch.*, 503 U.S. 60 (1992). A student who has been sexually harassed by a school

district employee can seek damages from the school district if an official with authority to address the discrimination and institute corrective measures on the school’s behalf had actual knowledge of the discrimination and failed to respond or responded with deliberate indifference to the discrimination. *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274 (1998).



### **Supervisor Liability Under Section 1983**

In the area of sexual harassment and abuse, the Fifth Circuit Court of Appeals has articulated a clear standard for supervisory liability under Section 1983. As discussed previously, a person who, acting with governmental authority, deprives an individual of his or her federal constitutional rights is liable to that individual under Section 1983. 42 U.S.C. § 1983. The Fifth Circuit has found that, in the context of sexual harassment or abuse, a loss of bodily integrity violates constitutional rights. Specifically, a student has a liberty interest in his or her bodily integrity that is protected by the Due Process Clause of the Fourteenth Amendment, and physical sexual abuse by a school employee violates that right. *Doe. v. Taylor Indep. Sch. Dist.*, 15 F.3d 443 (5th Cir. 1994) (en banc).

A supervising official will be individually liable under Section 1983 for a subordinate's sexual harassment or abuse if: (1) the official learned of facts or a pattern of inappropriate sexual behavior by a subordinate pointing plainly toward the conclusion that the subordinate was sexually abusing the student; (2) the official demonstrated deliberate indifference toward the constitutional rights of the student by failing to take action that was obviously necessary to prevent or stop the abuse; and (3) such failure caused the constitutional injury to the student. *Doe. v. Taylor Indep. Sch. Dist.*, 15 F.3d 443 (5th Cir. 1994) (en banc).

Qualified immunity shields "government officials performing discretionary functions" from liability for civil damages "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800 (1982). Courts have consistently held that the liberty interest in bodily integrity under the Fourteenth Amendment is clearly established law. As such, the supervisors of an employee who engaged in an inappropriate sexual relationship with a student would not be entitled to qualified immunity if they had actual notice of the employee's behavior, and they failed to take actions calculated to end the conduct, allowing it to continue. *Doe. v. Taylor Indep. Sch. Dist.*, 15 F.3d 443 (5th Cir. 1994) (en banc).

### **If an employee harasses another employee, can the district or the employee's supervisor be held liable?**

Both Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e - 2000e-17, and the Fourteenth Amendment, as enforced through Section 1983, prohibit harassment of an employee by another employee based on a protected characteristic. If harassment does occur through social media, an employee may bring a lawsuit against the district under Title VII or Section 1983 and against a supervisor under Section 1983.

### **District Liability Under Title VII for Harassment By a Supervisor**

Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e - 2000e-17, prohibits discrimination in employment, stating "[i]t shall be an unlawful employment practice for an employer . . . to fail or refuse to hire or discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex or national origin. . . ." 42 U.S.C. § 2000 e-2.

The U.S. Supreme Court has held that Title VII forbids behavior that is so objectively offensive that it alters the conditions of the victim's employment. The severity of the harassment will be judged from the perspective of a reasonable person in the plaintiff's position in light of all the circumstances. *Oncala v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75 (1998).

If an employee has suffered a tangible job detriment as a result of a supervisor's harassing or discriminatory act, the district is strictly liable, meaning that the district is held liable, no matter who knew or did not know about the harassment. A tangible job detriment means a significant change in employment status—like termination, demotion, undesirable reassignment, loss of promotion, or a change in benefits. *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742 (1998).

If the employee does not suffer a tangible job detriment, the district may avoid liability for the harassing conduct of a supervisor if the district can prove:

- The district exercised reasonable care to prevent and correct promptly any harassing behavior; and
- The victimized employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the district or to otherwise avoid harm.

*Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742 (1998).

According to the U.S. Supreme Court, a supervisor is a person with immediate or successively higher authority over an employee. *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998). The Fifth Circuit Court of Appeals has defined a supervisor as someone with significant control over an employee's hiring, firing, or conditions of employment. *Sharp v. City of Houston*, 164 F.3d 923 (5th Cir. 1999); *Canutillo Indep. Sch. Dist. v. Leija*, 101 F.3d 393 (5th Cir. 1996).

### **District Liability Under Title VII for Harassment By a Coworker**

Employee-to-employee harassment is judged by a negligence standard. The district will be held liable if it knew or should have known of the harassment and failed to take timely corrective action reasonably calculated to end the harassment. 29 C.F.R. § 1604.11.

If an employee harasses a coworker, courts will say the district knew or should have known about the harassment if a supervisor with authority to take corrective action had notice of the harassment and failed to take corrective action. Note that the definition of a supervisor for this purpose is different from the definition of supervisor for the purpose of selecting a standard for liability described above. In this context, notice to an individual who has the authority to accept a harassment complaint is sufficient to hold the employer liable. *Williamson v. City of Houston*, 148 F.3d 462 (5th Cir. 1998).

### **District Liability Under Section 1983 for Employee-Employee Harassment**

In addition to Title VII, plaintiffs occasionally file suit under Section 1983, alleging violations of their Fourteenth Amendment rights. Section 1983 allows a person to sue the district if the individual's constitutional rights have been violated.

Section 1983 requires a person to meet a greater burden of proof than Title VII. The individual must prove: (1) he or she was subjected to harassment, (2) the harassment occurred because of the person's protected characteristic, and (3) the harassment was caused by a district policy or practice. *Monell v. Dept. of Social Serv. of City of N.Y.*, 436 U.S. 658 (1978).

### **Supervisor Liability Under Section 1983 for Employee-Employee Harassment**

A person can sue an individual supervisor under Section 1983 if the person can prove that: (1) one of the supervisor's subordinates violated the person's constitutional rights, (2) the supervisor had notice of facts or a pattern pointing to constitutional violations by the subordinate, (3) the supervisor demonstrated deliberate indifference to the acts; and (4) this deliberate indifference caused the individual's injuries. *Doe v. Taylor Indep. Sch. Dist.*, 15 F.3d 443 (5th Cir. 1994).

### **What liability does a district have for student and employees' illegal or questionable activities performed using district-sponsored Web sites and e-mail?**

Districts that provide students and employees with certain Web based services, including e-mail, may find that the users are using district services to illegally share copyrighted files, harass students, or engage in other illegal or inappropriate activity. Federal law provides districts some protections from liability for such behavior.

The Digital Millennium Copyright Act, 17 U.S.C. § 512, protects service providers, as defined by 17 U.S.C. § 512(k), from liability for copyright infringement by users. Qualifying districts must not have actual knowledge that the work or activity related to the work is infringing on a copyright and must act immediately to remove the information once the district learns of the infringement. The district must also not receive a financial benefit stemming from the infringing activity and must designate an agent to receive notification of a claimed infringement through the service and the district Web site. 17 U.S.C. § 512(c).

The liability limitations only apply if the district has implemented a policy that provides for termination of users' accounts if the user repeatedly infringes on the rights of copyright holders; gives students notice about the policy; and accommodates and does not interfere with standard technical measures used by copyright owners to identify and protect copyrighted works. Alternatively, the district will not be liable for a claim based on the good faith disabling of access to, or removal of, infringing materials, regardless of whether the material is ultimately determined to be infringing. 17 U.S.C. § 512(g), (i). See TASB Policies CQ(LOCAL)(REGULATION)(EXHIBIT).

In addition, the Communications Decency Act of 1996 (CDA), 47 U.S.C. § 230, protects service providers or users, such as districts that provide Web sites for student and employee use, from being treated as a speaker or publisher of information provided by another information content provider. The CDA also protects service providers and users from liability for restricting in good faith access to information that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable or providing others the means to restrict that material. The CDA does not provide immunity for violations of certain criminal laws, intellectual property laws, or communication privacy laws, however. 47 U.S.C. § 230.

*This document is provided for educational purposes only and contains information to facilitate a general understanding of the law. It is neither an exhaustive treatment of the law on this subject nor is it intended to substitute for the advice of an attorney. It is important for the recipient to consult with the district's own attorney in order to apply these legal principles to specific fact situations.*

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*Published February 2011*

# Remembering Montana

Anti-bullying Initiatives  
Offer Hope for Students  
Suffering from  
Age-old Problem

by Adam J. Holland



**M**ontana Lance looked forward to the extended break from school that marked his 2009 winter holiday.

Like so many other children, the 9-year-old saw the two weeks as his chance to sleep a little later, create some masterpieces with his Legos, and play with the neighborhood kids. Between occasional complaints of boredom and watching Spongebob Squarepants and MythBusters re-runs in the family's den, Montana anxiously awaited Christmas morning. By the time the school bells rang in the second semester at his North Texas elementary school, he had become quite skilled at his new Lego Star Wars video game.

Many children, though they don't often outwardly admit it, look forward to returning to the routine of school. But not Montana Lance. Not that year.



Montana, a fourth-grader, regularly incurred the emotionally and physically painful wrath of bullies. He attempted to deal with his attackers on his own. His parents, Jason and Debbie, were also becoming increasingly familiar with the art on the walls of the principal's office. Classroom taunting and shoving continued.

Montana Jay Lance, who just weeks earlier, could not contain his smile beneath the family's Christmas tree as he ripped the wrapping paper from his new Nintendo Wii, could no longer stand the pain. In the early afternoon of January 21, he was found hanging by his own belt in a nurse's office bathroom. He was pronounced dead a short time later.

Some 18 million children will be bullied this year on playgrounds and in school classrooms and lunchrooms, according to the U.S. Department of Education. In many cases, the act of bullying will involve physical harm. Some bullies wield words, which can be equally painful.

"Kids would use name-calling and shoving to bully Montana," his father said. "The majority of it was verbal abuse: 'You're stupid.' 'You're gay.' Also, kids would tell other kids not to sit with Montana at lunch because he was sitting at the stupid table."

Montana took prescribed medication for a learning disability and was in special education classes. Debbie Lance added she would have to reassure her son that he was named after former NFL quarterback Joe Montana—not Hannah Montana, as his classmates would tell him.

The Lances described their son as a boy who cared deeply about what others—adults and children—thought about him. He liked the companionship of children his age, and he went out of his way to help adults in his neighborhood. Montana got along so well with his younger brother, Dooley Lance, now 5, that the two celebrated their birthdays at the same time. How then, many have wondered, could Montana have been driven to the point of wanting to die?

## Compassion Fatigue

Ask the parents of bullied children who's responsible and you'll get different answers almost every time. Some parents place the blame on their own children, while others hold accountable their child's attackers, classmates, teachers, principals, and even state or federal lawmakers.

The truth is, according to Lorna Harri-son, bullying is a problem that must in-

volve everyone if incidents of it are to be reduced to any extent. Harrison is a longtime classroom teacher and guidance counselor who writes anti-bullying curriculum for the Austin-based Trevor Romain Company. She is quick to point out that the Trevor Romain model even at the earliest stages of implementation is much more than an anti-bullying poster in the lunchroom or library—because it involves everyone.

"We have an assessment that we give students, parents, and teachers so the bystanders understand they are almost a part of bullying," Harrison said. "We are trying to help the bully, the victim, and the bystander simultaneously."

Longview ISD, North Forest ISD, and Gonzalez ISD are among about a dozen Texas school districts that integrate the Trevor Romain lessons with TEKS English Language Arts curriculum. The U.S. Department of Defense also uses the program at military bases worldwide.

"We speak (the children's) language," Harrison said. "The students learn what bullies, bystanders, and victims are. They learn how they may be bullies themselves so they can change their behavior. . . . Teachers and school counselors are suffering from compassion fatigue, and they can't deal with every individual issue with 600 kids in a school."

Allen ISD and Rockwall ISD use a similar program called Rachel's Challenge, named for Rachel Scott, the first person killed at Columbine High School in 1999. The initiative encourages participants to begin a chain reaction of kindness and is used at more than 1,000 schools in North and Central America, according to a company promotional video.

#### What is Bullying?

What is bullying, exactly? Surprisingly, the word "bully" at one time was used to describe a good friend or a sweetheart. While current word usage generally describes someone who exhibits almost the exact opposite behavior, Harrison during her extensive research on the subject learned that bullying has a multitude of negative meanings.

"Everything has become bullying, right down to kids looking cross-eyed at one another," she said. "There are a million different versions out there of what bullying is. The most accepted definition combines several aspects: repeated harm to others,

## Bullying Statistics

- During the 2007-08 school year, 25 percent of U.S. public schools reported that bullying occurred among students on a daily or weekly basis.
- Studies indicate that 15-20 percent of U.S. students bully others with some frequency.
- From July 1, 2008, through June 30, 2009, there were seven suicides of school-age youth (ages 5-18) at school.
- In 2007, 32 percent of students (ages 12-16) reported having been bullied at school during the school year. Twenty-one percent said they had experienced bullying that consisted of being made fun of, 18 percent reported being the subject of rumors; 11 percent said they were pushed, shoved, tripped, or spit on; 6 percent said they were threatened with harm; 5 percent said they were excluded from activities; 4 percent said someone tried to make them do things they did not want to do or that their property was destroyed.
- In 2007, 7 percent of students ages 12-18 reported that they had avoided a school activity or one or more places in school in the previous six months because of fear of attack or harm.
- As many as 160,000 students might stay home on any given day because they are afraid of being bullied.
- Children with disabilities or special needs are at higher risk of being bullied than other children.
- Children who bully are more likely to get into fights, vandalize property, and drop out of school. Additionally, 60 percent of boys who were bullies in middle school had at least one criminal conviction by age 24.

Endyouarto.gov

"I read on a higher level than the rest of the class, and I had a teacher who would put me out in the hall to read my book while she taught them," Isaac said. He described the teacher as well-meaning but admitted that the many days spent sitting in the school's corridors contributed to his lower personality.

Montana Lance was being treated for Attention Deficit Hyperactivity Disorder and reacted to insults quickly and easily, according to his mom. He would report his attackers, his father said, but was often told by teachers to quit being a tattler.

"He didn't hold it in," Debbie said. "The advice I would give to teachers is to look at this. He got into trouble over and over."

Company namesake Trevor Romain said his work with hundreds of thousands of educators and students has shed some light on a major component of the bullying issue.

"I think what happens so often, a lot of people don't say it's a normal part of growing up, but they believe it is," said Romain, a South African native who was bullied as a child and once contemplated suicide. "There is nothing normal about being beaten up emotionally or physically."

#### Fixing the Problem

According to a recent study from the Kellogg School of Management at Northwestern University, one reason that bullying continues is because people fail to understand the consequences of social trauma left by the victims.

"Everyone knows that social trauma is unpleasant, but people are often blind to the full severity of these experiences and therefore don't do enough to protect or intervene when victims suffer," said Lorán Nordgren, assistant professor of Management and Organizations at the Kellogg School of Management.

Research suggests that people have difficulty appreciating the full severity of social suffering unless they themselves experience it, according to Nordgren. The researchers explored their theory by conducting five experiments that simulated a socially painful event.

The Trevor Romain program starts down a similar avenue, except that it focuses on bringing more understanding about the bully's mindset.

"What we are trying to do with our program is to look at the bully," Romain



Montana Lance cared deeply about what others thought about him. He liked the companionship of children his age and went out of his way to help adults in his neighborhood. Montana got along so well with his younger brother, Dooley, that the two celebrated their birthdays at the same time.

#### Austin-based Trevor Romain Company features the following:

- TEKS-aligned anti-bullying and other related K-12 curricula
- Anti-bullying program used in approximately 12 Texas schools and at U.S. military bases worldwide
- Curriculum in English and Spanish

For more information, visit [www.trevoromain.com](http://www.trevoromain.com) or call 877.876.6246.

For more on anti-bullying legislation filed in the 82<sup>nd</sup> Texas Legislature, see House Bill 224 on page 29.

said, "If we can have the victims look at the bullies... actually create a community of compassion and understanding all the way around, we can do better than put a Band-Aid on it. We have to create a culture to make the bully understand what he is doing."

The understanding is accomplished through curriculum integration, according to Harris and Harrison. Every student, whether he or she is a bully, victim, or bystander, learns about bully behavior through reading, vocabulary, and writing in a personal journal, which keeps the lines of communication open with teachers.

"We have found through the journal writing that this is such a salient issue with them," Harrison said. "They are going into their journals before they get to their lessons."

Added Romain, "And you'd be surprised how honest people are in their journals when it's kept between each student and the teacher."

Elizabeth L. Pearman, a psychologist with Colorado-based Pearman & Associates, said the program also improved the students' writing, grammar, and vocabulary. Pearman analyzed the journal entries to determine how students were using new words and using them in sentences and found that they generally used the new words correctly and effectively in their writing.

"Bullying is nothing new, but we've never really explored what it is exactly," Longview ISD Superintendent James E. Wilcox said. "Now that everyone is figuring out what we are dealing with, we can deal with it more effectively—and we are. That is integrated with TEKS and helps prepare our students academically as a nice bonus."

Rachel's Challenge is also an ongoing program that aims to educate everyone and reinforce positive behaviors.

"For example, one of the years we did chain links of compassion," said Sheri Fowler, Rockwall ISD's executive director of Communications, Public Relations, and Marketing. "Each time a faculty member, student, or parent did something compassionate, they got a chain link. Every year, there is some type of acknowledgment for those kind of behaviors on campus."

The specialized programs are relatively new, having been implemented in the past four to five years at these Texas schools. And while scientific efficacy studies have

## Fifteen Days of Caring

In the opinion of Longview ISD's Margaret Davis, there's no such thing as too much effort when it comes to putting an end to bullying. Davis, who heads the district's International Baccalaureate (IB) program, hopes a local idea will spawn worldwide participation.

The movement, entitled "15 Days of Caring," was developed as part of the district's service learning portion of the IB curriculum. The aim is simple: to create more caring classrooms, campuses, and communities across the United States and worldwide. Longview ISD students launched their 15 Days February 14.

"Addressing such (bullying) statistics requires a concerted effort with both the components of teaching resistance to bullying tactics and the very important, often neglected, component of replacing the negative behaviors with positive behaviors," Davis said. "This movement involves people doing a kind act daily for 15 days. Research shows that after 15 days of doing something, you are well on your way to making it a habit."

Davis's model begins with a small number of students practicing caring for 15 school days and getting others to do the same. At last count, Davis had commitments from two other Texas school districts.

"Imagine what would happen if 1,500, 150,000, or 1.5 million students practiced caring for 15 days," Davis said.

For more information, visit [www.15daysofcaring.org](http://www.15daysofcaring.org).

Not been conducted at Longview, North Forest, or Gonzales schools, officials pointed out that the climate is changing. School officials at Allen concurred. Fowler said Rockwall was so impressed with improvements in the original secondary-only program, local school officials developed a K-6 program that was adopted by Rachel's Challenge.

"Most of the data is anecdotal, but I could give story after story of children who were impacted positively," Fowler said. "We believe that it is absolutely working, because students are less tolerant of unkind behavior... What we are seeing is many more students stepping up to self-monitor in that area."

Gonzales ISD trustee Josie Smith-Wright said there have been fewer mes-school suspensions this school year and that bully prevention is the buzz at various parent meetings. Prior to implementation in all primary grade levels two years ago, Smith-Wright said the district's bully prevention efforts essentially consisted of occasional guest speakers. So far in North Forest ISD, according to Superintendent Adrian Johnson, there is evidence that concerted anti-bullying efforts have everyone thinking and talking along the same lines, which should spawn further improvements.

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# WHEN PUSH COMES TO SHOVE

**SCHOOLS CONTINUE TO BATTLE  
NEVER-ENDING BULLYING PROBLEM**

by Roger White



**A**s long as there have been schools, there have been school bullies. At one time or another in your life as a student, you most likely experienced this unfortunate rite—either as bully, bullied, or bystander. To some, bullying and harassment are simply part of the territory; the rationalization is whenever more than a few kids are assembled together over a period of time, some will pick on others.

But for many, the bullying experience is traumatic and tormenting, the consequences of which can be devastating. According to the American Academy of Child & Adolescent Psychiatry (AACAP), children who are bullied experience severe suffering that can interfere with their emotional and social development, as well as their school performance. Some bullying victims have resorted to harming themselves or others—to the point of loss of life—rather than endure the continuing abuse. Long-term ramifications for victims include low self-esteem and greater risk of depression as an adult.

However, bullies themselves suffer, as well. Chronic childhood bullies show a higher tendency to use drugs and alcohol, skip school, or drop out of school altogether. As adults, they experience a higher proportion of legal and criminal problems, according to the National Youth Violence Prevention Resource Center (NYVPRC). In one study, 60 percent of those characterized as bullies in grades 6-9 had at least one criminal conviction by age 24.

The unsettling truth is that bullying occurs in schools on a regular basis:

- An estimated 30 percent of all children in grades 6-10 have experienced some form of bullying, according to the U.S. Department of Health and Human Services.
- One student in 10 is bullied at least once a week, and one in three has been bullied or bullied others in an average school semester, according to the Heroes and Dreams Foundation.
- Fifty-eight percent of students surveyed by the American School Counselors Association claimed they stayed home from school at least once to avoid being bullied.
- Half of all students have been bullied during their school years, and at least 10 percent are bullied on a regular basis, according to the AACAP.
- Six out of 10 American teens reported witnessing bullying at least once a day, according to the National Crime Prevention Council.
- Bullying and harassment have been linked to at least 75 percent of school shooting incidents, according to a 2002 U.S. Secret Service report.

### **When Is It Bullying?**

Social and legal experts generally agree that bullying can occur in three ways: physical, verbal, and emotional. The act is deliberate, whether it involves hitting, name-calling, spreading rumors, or shunning. And it is often repeated toward the same victim or victims.

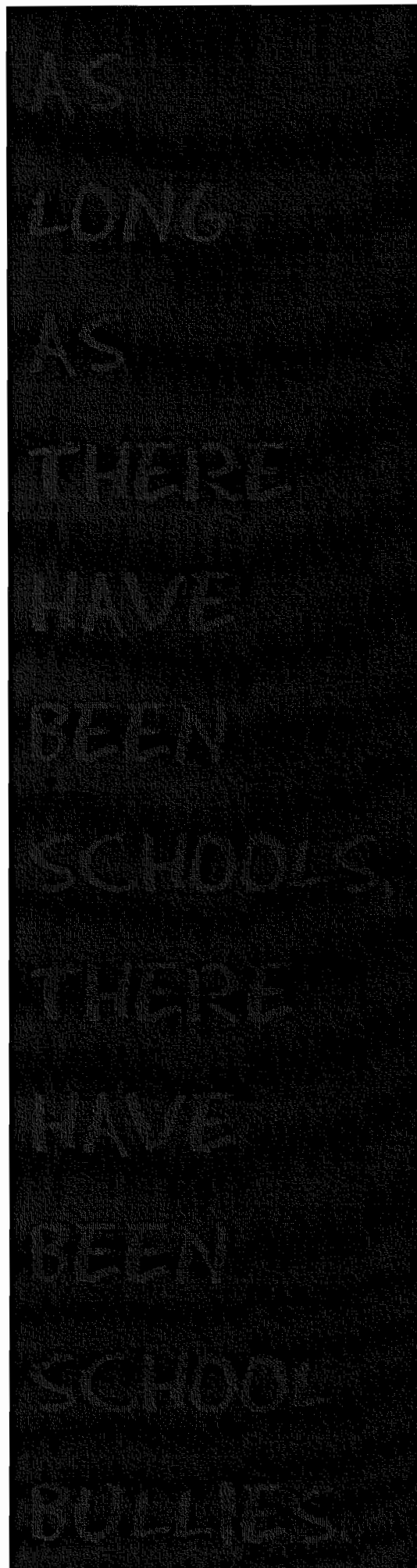
“Bullying is conduct engaged in with the purpose of intimidating or demeaning the victim,” explained TASB senior attorney Amy Magee. “The conduct may cause physical harm or the fear of physical harm to the victim or result in harm or fear of harm of property. It is also possible that the conduct or expression may result in severe emotional harm. Bullying may include such acts as harassment, hazing, threats, taunting, confinement, assault, and ostracism. Bullying does not include mere horseplay, however.”

Thomas Hutton, senior staff attorney for the National School Boards Association (NSBA), agreed. “Not every nasty little thing that kids do to each other rises to the level of bullying,” Hutton said. “It has to be severe enough, persistent enough, and pervasive enough that it creates something of an intimidating or hostile environment for the person on the receiving end.”

And with the advent of the Internet, another form of bullying—cyberbullying—has come to the fore.

Pete Price, principal at Austin ISD’s O. Henry Middle School, said that although traditional forms of bullying have apparently decreased on his campus, reports of cyberbullying are on the rise.

“These cases are very challenging,” Price said. “I’m guessing a lot of cases go unreported. If the bullying is done from a home computer, it makes it tough for schools to intervene. However, if we hear of any type of bullying, inside or outside of school, we call



students in and talk with the parents involved.”

One aspect of cyberbullying that makes it difficult to combat— anonymity—is the very feature that attracts some cyberbullies. “These methods, which give an illusion of anonymity, encourage bullying by those who would normally not engage in such behavior,” said Magee. “They also allow a bully to avoid direct confrontation with the victim.”

Of the children and youth surveyed by [cyberbullying.us](http://cyberbullying.us), a clearinghouse for online bullying and harassment cases, 33 percent indicated they had been victims of cyberbullying. Other findings:

- Primary cyberbullying locations were chat rooms (56 percent), followed by instant messaging (49 percent) and e-mail (28 percent).

- Forty-one percent of victims did not tell anyone in their offscreen lives about their cyberbullying experience.
- Seventeen percent admitted to bullying someone else on line.
- More than half said that cyberbullying is as bad or worse than bullying in real life.
- Five percent of those interviewed said they feared for their personal safety.

### Help for Victims

For chronic victims of school bullying, who researchers say tend to be more passive, easily intimidated, and possess fewer social resources than their peers, reaching out for help can be difficult. Many cases likely go unreported due to the

victims’ sense of shame or fear of retaliation.

“Students often fear retaliation and don’t report bullying,” said O. Henry’s Price. “We take every case individually. We ask the victim how they would like us to handle the situation. Sometimes, we call the bully in alone and talk with him or her. Sometimes we conduct a mediation session with both parties. As for schoolwide presentations, we haven’t found a lot of long-term benefit with them.”

Social worker Stan Davis, creator of [stopbullyingnow.com](http://stopbullyingnow.com), concurred that the mass-audience approach seldom works without direct intervention and one-on-one assistance for victim and perpetrator.

“There are a number of curriculum approaches to reducing aggressive behavior. Most of them teach alternatives to aggression and work to build empathy. These approaches used by themselves without changes in staff behavior and discipline interventions, like sensitivity training as a sole preventive to workplace sexual harassment, are often ignored by the people whose behavior we want to change. Bullies tend to either deny their behavior or see it as justified,” Davis said.

Attentive and sincere response to the victim’s request for assistance, as well as prompt intervention when bullying is witnessed, is important for teachers and school personnel, as well as parents.

“We can provide protective agreements, sort of like a behavior contract between the students,” said Ken Knippel, assistant superintendent of Administration for Aldine ISD. “Counselors and intervention specialists discuss issues with students and provide other strategies. We also have student-to-student peer mentoring and problem solving, which has been effective.”

The Heroes and Dreams Foundation, a Minnesota-based nonprofit organization dedicated to character education for children ages 5-12, suggests several steps that campus staff, as well as parents, can take to help victims cope with bullying situations:

- Make it clear that you accept the student’s report of bullying and that you take the report seriously—and reassure the student that the situation can be resolved.
- Let the student know that it is not his or her fault.

## BULLYING FACTS AND FIGURES

In a review of more than 2,000 studies on bullying, the Archives of Pediatrics & Adolescent Medicine found that school-based programs involving multiple disciplines reduced bullying markedly in elementary, junior high, and high schools.

Children most likely to experience bullying are in fifth, sixth, and seventh grades. Boys are more likely to be involved than girls, especially when it comes to physical bullying, according to the Heroes and Dreams Foundation. Girls are more likely to be involved in shunning and rumor-spreading.

Adults are often unaware of bullying problems, according to the U.S. Department of Health and Human Services. In one study, 70 percent of teachers believed that teachers intervene “almost always” in bullying situations; only 25 percent of students agreed with this assessment.

A common myth in bullying intervention is that it can be solved in the same manner as conflict. *Conflict* involves antagonism among two or more people. Whereas any two people may have a conflict (disagreement or fight), bullying only occurs where there is a power imbalance—where one child has a difficult time defending himself or herself. Conflict resolution or mediation strategies are sometimes misused to solve bullying problems. These strategies send the message that both children are “partly right and partly wrong” or that “we need to work out the conflict between you.” These messages are not appropriate in cases of bullying (or in any situation where someone is being victimized). —U.S. Department of Health and Human Services

While approaches that simply crack down on individual bullies are seldom effective, a schoolwide commitment to end bullying can reduce the behavior by up to 50 percent, according to the National Youth Violence Prevention Center.

- Ask the student what actions he or she may have already taken in dealing with the situation; talk about what else can be done and what actions you both can take.
- Let the student know there are assertive actions he or she can take. This doesn't necessarily mean fighting back; it can be as simple as saying, "Leave me alone."
- Suggest that the student stick with two or more friends, if possible, in situations where the bully may be encountered.

### Help for Those Who Bully

Although every case is unique, students who bully share common characteristics. According to the U.S. Department of Health and Human Services, bullies tend to be impulsive, be easily frustrated, lack empathy, and have difficulty following rules.

The most common denominator among bullies, experts agree, is a dysfunctional home life. Family risk factors include:

- Lack of warmth and involvement by parents
- Overly permissive parenting
- Lack of parental supervision
- Harsh, physical discipline
- Bullying at home

Despite the tendency to "give the bully what's coming to him," intervention and aid for those who bully should involve more than simply seeking justice, said John Sommers-Flanagan, associate professor of Counselor Education at the University of Montana.

"Because bullying is inherently unfair, those playing the role of an adult bystander or victim's parent have a natural urge to teach the bully a lesson through some sort of punishment," said Sommers-Flanagan, co-author of *Tough Kids, Cool Counseling: User-Friendly Approaches with Challenging Youth*. "The 'punish-the-bully' urge is natural and, unfortunately, ineffective. Think about it. You see a bigger boy picking on a littler boy. You intervene by grabbing the bigger boy by the back of the neck and chewing him out. Yes, your response is natural. Yes, the bigger boy deserved punishment. But, ironically, when an adult intervenes in an aggressive or violent manner, the bullying cycle re-

peats—only this time an older, bigger adult is picking on a younger, smaller bully."

Sommers-Flanagan noted that compelling research indicates a need to intervene on many levels simultaneously. "In other words, bullies, victims, peer bystanders, school personnel, and parents all have a role to play in preventing and reducing bullying."

From the school's perspective, consistency is key. The school should have a clear, effective limit-setting system for bullying behavior. Bullies need to know exactly what consequences they will suffer if they engage in bullying behavior, according to the American School Counselors Association.

"As for parents of bullies, we alert them and try to help them with their child's behavior," said O. Henry's Price. "At the middle school level, a lot of bullying relates to low self-esteem and immaturity. We offer suggestions to the parents on how to help their children behave appropriately at school."

### Changing the School Environment

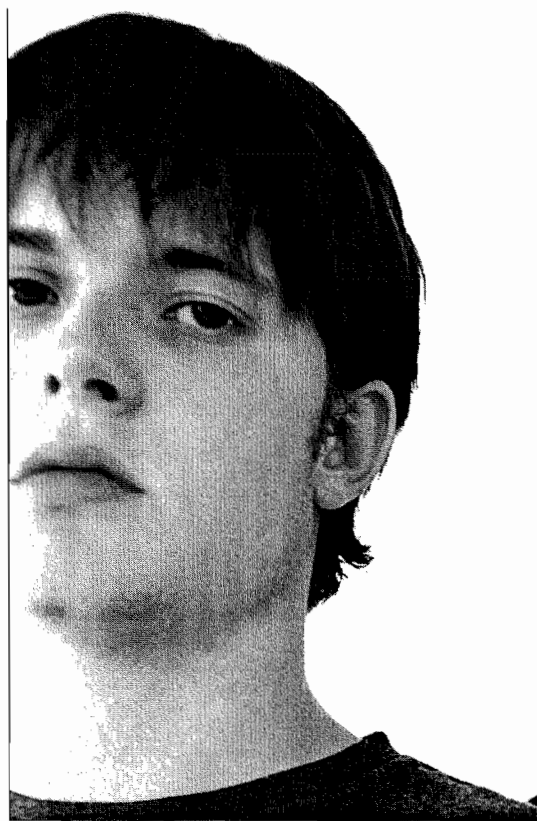
Recent media attention to the school bullying phenomenon, including high-profile stories of bullying-related campus shootings and suicides linked to bullying, has prompted not only tougher stances on bullying but greater focus on prevention.

"School efforts in this area have definitely paid off," said Price. "Like most schools, our policy is zero tolerance. That doesn't mean it doesn't go on. But when we hear about it, we react quickly to do our best to stop it."

"Setting expectations for behavior at early ages is a powerful strategy," added Aldine ISD's Knippel. "We also have to be very up front with our older students that the type of behavior will not be accepted and/or tolerated."

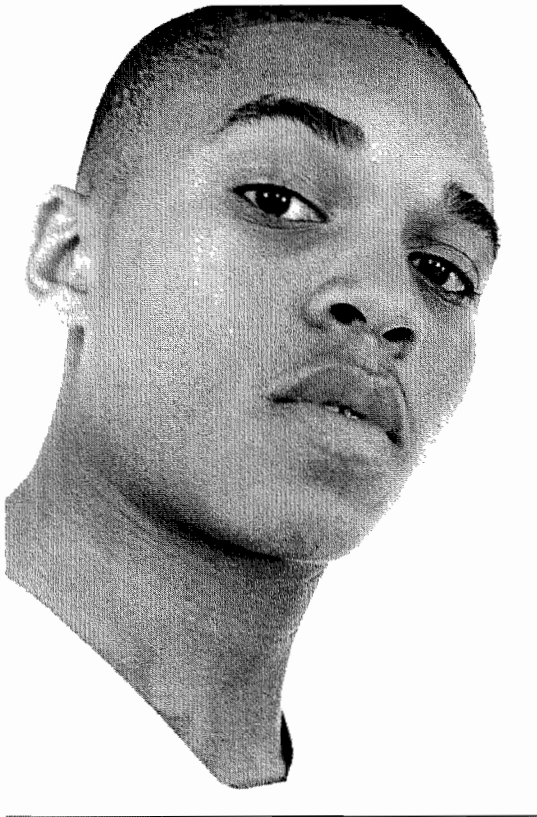
Research by the NYVPRC points to 10 "best practices" schools and districts have used to prevent campus bullying:

1. **Focus on the social environment of the school.** Make it "uncool" to bully and "cool" to help those who are bullied. This requires dedication by everyone on campus.
2. **Assess bullying at the school.** Adults are not always keen to know the extent of bullying on campus or the bullying "hot spots." Anonymous student



**The most common denominator among bullies, experts agree, is a dysfunctional home life. Family risk factors include:**

- **Lack of warmth and involvement by parents**
- **Overly permissive parenting**
- **Lack of parental supervision**
- **Harsh, physical discipline**
- **Bullying at home**



**For parents, signs that a child is being bullied include torn or damaged clothing, missing or damaged items, unexplained bruises or scratches, anxiousness about going to school, and moodiness or depression.**

- questionnaires may help.
3. **Garner staff and parent support.** Prevention efforts require buy-in from everyone involved, not just administrators or policymakers.
  4. **Form a group to coordinate prevention activities.** This group, which may include a cross-section of staff and parents, should meet regularly. A student advisory group is also a good idea.
  5. **Train staff members in bullying prevention.** This includes everyone on campus—lunchroom staff, bus drivers, custodians, parent volunteers, etc.
  6. **Establish and enforce school rules and policies related to bullying.** Although many school district policies forbid bullying, most do not articulate expectations for model student behavior. It is important to explain that the school not only expects students *not* to bully but to be good citizens, not passive bystanders.
  7. **Increase adult supervision in bullying “hot spots.”** Bullying tends to thrive in locations where adults are not present or not vigilant.
  8. **Intervene consistently and appropriately in bullying situations.** Designated staff should also hold follow-up meetings (separately) with the victim and the bully.
  9. **Focus some class time on bullying prevention.** Teachers should set aside time at least every other week to discuss bullying and peer relations with students. Meetings or presentations on anything larger than classroom scale tend to lose effectiveness.
  10. **Continue these efforts over time.** There is no end date to bullying prevention; it should be woven into the entire school environment.

Additionally, the Olweus Program, a nationally recognized bullying prevention method based on the work of Swedish psychology professor Dan Olweus, recommends four principles: (1) warmth, positive interest, and involvement from adults; (2) firm limits on unacceptable

behavior; (3) consistent application of non-punitive, non-physical sanctions for unacceptable behavior and violation of rules; and (4) adults who act as authorities and positive role models.

According to districts that have used the Olweus method, the program, which works at school, classroom, and individual levels, has reduced bullying incidents by as much as 40 percent. Goals of the program are to change the “opportunity and reward structures” for bullying behavior, resulting in fewer opportunities and rewards for bullying.

### **On the Home Front**

When it comes to dealing with bullying, as with most things taught and learned, the lessons begin at home.

“If all parents sent us students who possess strong self-esteem and moral compasses, we wouldn’t have any bullying. But that has never happened,” Price said. “Therefore, we encourage parents to talk with their students about their relationships with other students at school and to check on a regular basis whether their child is being bullied.”

Knippel agreed, noting that “parents should always keep discussion lines open with their kids. We encourage parents and students to report bullying when they are aware of it. We also provide parent workshops at the campus level to discuss how they can effectively communicate with their children so issues like this are not left in the dark.”

For parents, signs that a child is being bullied include torn or damaged clothing, missing or damaged items, unexplained bruises or scratches, anxiousness about going to school, and moodiness or depression. Tips for parents of victims, from the Heroes and Dreams Foundation, include:

- Make sure your child knows it is OK to ask for help from a teacher or other adult. Practice what the child will say so it doesn’t sound like whining or tattling.
- Determine if your child has healthy friendships with other children. If not, perhaps he or she can benefit by developing better social skills.
- Encourage your child to invite friends over to your home and participate in school activities.
- If necessary, meet with school



representatives to discuss the problem.

- Remember, bullying is not a normal part of growing up. Help your child develop the necessary tools to stick up for himself or herself and others.

Indications for parents that their child may be a bully include positive views toward violence, aggression toward adults, marked need to control others, and short temper. Tips for parents of bullies include:

- Do not make excuses for your child.
- Make it clear to your child that you take bullying seriously and will not tolerate it.
- Maintain and enforce family rules. Use positive reinforcement when your child follows the rules and appropriate negative consequences when he or she breaks the rules.
- Stay involved and supportive of your child's school and extracurricular activities. Stay informed of what they're doing and with whom they're spending time.
- Encourage your child to channel his or her energy into more positive activities, such as sports, clubs, or music.

### Liability Issues

School personnel, schools, and school districts can be held liable for bullying incidents on campus or at school-related activities.

"There are some courts that have held that a principal, and even a classroom teacher, who was made aware of severe bullying happening and sort of turns a blind eye to it or says 'that's not my problem' can be personally liable," said NSBA's Hutton. "When it's a principal and it's brought to their attention, clearly there's some liability concern for the principal and also the school district if that person is the person who has the authority to do something about it, has actual notice that it's happening, and then doesn't take any action."

Conversely, districts must tread carefully in discipline regarding cyberbullying cases. "If students are in the computer lab using school equipment, that's more clear-cut," Hutton said. "It's the school district's equipment, and your district's acceptable-use policy should lay out that you're not going to tolerate this

## RESOURCES FOR BATTLING BULLYING

A wide range of anti-bullying resources is available for school districts and parents, including the following:

- *TASB Legal Line.* Call for assistance from the TASB Legal Services staff toll-free at 800.580.5345.
- *TASB Legal Services Bullying and Harassment in Schools DVD.* Contact the TASB Store at 800.580.8272 or visit [tasb.org](http://tasb.org).
- *National School Boards Association.* Visit [www.nsba.org](http://www.nsba.org).
- *National Youth Violence Prevention Resource Center.* A federal resource for communities working to prevent violence committed by and against young people. Visit [www.safeyouth.org](http://www.safeyouth.org).
- *U.S. Department of Health and Human Services.* The department maintains an anti-bullying Web site entitled [stopbullyingnow.hrsa.gov](http://stopbullyingnow.hrsa.gov).
- *American School Counselors Association.* Visit [www.schoolcounselor.org](http://www.schoolcounselor.org).
- *American Academy of Child and Adolescent Psychiatry.* Visit [www.aacap.org](http://www.aacap.org).
- *National Crime Prevention Council.* Visit [www.ncpc.org](http://www.ncpc.org).
- *Fight Crime: Invest in Kids.* Visit [www.fightcrime.org](http://www.fightcrime.org).
- *Olweus Bullying Prevention Program.* Visit [www.clemson.edu/olweus](http://www.clemson.edu/olweus).
- *Bully Police USA.* Visit [www.bullypolice.org](http://www.bullypolice.org).
- *Stop Bullying Now!* Not to be confused with [stopbullyingnow.hrsa.gov](http://stopbullyingnow.hrsa.gov), this site is run by social worker Stan Davis. Visit [www.stopbullyingnow.com](http://www.stopbullyingnow.com).
- *Cyberbullying.us.* This anti-cyberbullying site is run by criminal justice professor Justin W. Patchin and criminology professor Sameer Hinduja. Visit [cyberbullying.us](http://cyberbullying.us).
- *Center for Safe and Responsible Internet Use.* Visit [www.csriu.org](http://www.csriu.org).

kind of thing using school equipment. That gives you a legal handle to be confident in imposing consequences for the behavior. It's much more complicated if the kids are doing this on their own outside of school. The law gets very tricky about how you intervene with respect to off-campus behavior like this."

Although the district's hands may be tied by use of personal equipment and free-speech issues, Hutton noted there are steps schools can take. "Very often in a bullying situation, if it's on line you can find it very easily. There are ways of figuring out who the person is who's doing the cyberbullying. As a practical matter, bring their parents in and talk to them about it. They may be your best allies in this kind of thing."

Other steps include blocking communication from cyberbullies, reporting them to the Web site or service provider, and saving all evidence of the offenses, according to the Center for Safe and Responsible Internet Use.

Unfortunately, TASB has witnessed a recent surge in claims against school districts regarding bullying incidents, said Todd Holt, TASB's division director of Property/Casualty Claims Administration.

"We are seeing a rise in what we call 'rite of passage' claims," Holt said. "These are situations where, for example, the seniors of a football team 'initiate' the freshmen players. The initiation process may range from verbal abuse to sexual assault. What happens is the gang mentality kicks in and the level of violence begins to escalate.

"From a risk management perspective, these situations are completely avoidable," Holt added. "Accidents are going to happen. School districts are going to have the inevitable automobile accident. We cannot control the weather, so there will be the occasional hail, flood, or tornado loss. What makes these occurrences frustrating is that the bullying does not have to happen. It is an intentional act, committed by a perpetrator upon a victim and is 100 percent avoidable. School district staff should be cognizant of what is going on on playgrounds, in the hallways, and on buses.

"When bullying of any type is identified, appropriate measures should be taken to ensure a situation does not escalate."

With consistency in mind, each bullying case ultimately must be handled on its own merit, often in consultation with the school district attorney. And records of actions taken by the school should always be kept. "You have to keep a record of what's going on here so that you're able to show actions you've taken," Hutton said. "If there are further allegations, you have the full picture of what's been happening with this situation."

### **A Matter of Policy**

"To assist districts in addressing allegations of bullying and to establish a consistent procedure for documenting and responding to complaints, TASB Legal Services and TASB Policy Service worked together to suggest a model policy in Policy Update 83," said Joy Baskin, TASB director of Legal Services.

TASB's recommended local policy, FFI(LOCAL), states that bullying "may include hazing, threats, taunting, teasing, confinement, assault, demands for money, destruction of property, theft of valued possessions, name calling, rumor spreading, and ostracism."

The TASB-recommended policy also states that the district "shall promptly respond by taking appropriate disciplinary or corrective action reasonably calculated to address the conduct." (See sidebar, page 15.)

On the state level, anti-bullying disciplinary legislation was filed by Representative Richard Raymond (D-Laredo) during the 80th legislative session in 2007. House Bill 163, which would mandate alternative placement of students engaged in bullying on or within 300 feet of school property or at school-related events, was left pending in committee.

However, the Texas Legislature passed Senate Bill 136, designed to teach Internet safety, including reporting of cyberbullying and online threats. Under the bill, authored by Senator Jane Nelson (R-Lewisville), the Texas School Safety Center, in cooperation with the attorney general, will develop a program that provides instruction on Internet safety, including potential dangers, reporting inappropriate online solicitation, and the prevention, detection, and reporting of bullying or threats over the Internet. The center will make the program available to

public schools, according to the bill's language.

According to NSBA's Hutton, approximately 18 states have enacted legislation related to school bullying. The Texas Education Code requires school districts' student codes of conduct to prohibit bullying and hazing and to permit transfers of bullying victims, an outcome of legislation passed by the 79th Texas Legislature. The state does not have an "anti-bullying" law *per se*. Bully Police USA, a self-described watchdog organization that advocates for bullied children, rates Texas a C- for its anti-bullying initiatives. Thirty-four states, including Oklahoma and Arkansas, rate ahead of Texas, according to the organization.

As with local efforts, many state measures have been prompted by sensational cases of bullying's devastating consequences brought to light by the media.

The Florida legislature, for example, adopted in April an anti-bullying law called the "Jeffrey Johnston Stand Up for All Students Act," named after a 15-year-old boy who committed suicide after being the target of bullying, including cyberbullying, for two years. The Florida law prohibits bullying and harassment of any public K-12 student or employee and requires public schools to adopt measures to protect students and employees from physical and psychological effects of bullying and harassment.

### **A Helping Hand**

Just as students must understand that there is someone to turn to, school districts need to know that help is available, as well. Myriad resources regarding dealing with student bullying may be found on line, in your school district attorney's office, and at TASB. (See sidebar, page 13.)

"TASB Legal Services offers bullying prevention training, including a training DVD," said Baskin. "Last year, TASB's Risk Management Fund made the DVD available at no cost to hundreds of member districts as a renewal incentive. In addition, the staff in Legal Services is available to talk to all Texas school districts on our toll-free Legal Line (800.580.5345) about legal issues related to bullying."★

*Roger White is managing editor of Texas Lone Star.*

# Guidance from TASB Policy FFI(LOCAL)

*Excerpts from Policy FFI(LOCAL) from TASB Policy Service:*

The District prohibits bullying as defined by this policy. Retaliation against anyone involved in the complaint process is a violation of District policy.

## **Definition**

Bullying occurs when a student or group of students engages in written or verbal expression or physical conduct that:

1. Will have the effect of physically harming a student, damaging a student's property, or placing a student in reasonable fear of harm to the student's person or of damage to the student's property; or
2. Is sufficiently severe, persistent, or pervasive that the action or threat creates an intimidating, threatening, or abusive educational environment for a student.

## **Examples**

Bullying of a student may include hazing, threats, taunting, teasing, confinement, assault, demands for money, destruction of property, theft of valued possessions, name calling, rumor spreading, and ostracism.

## **Timely Reporting**

Reports of bullying shall be made as soon as possible after the alleged act or knowledge of the alleged act. A failure to promptly report may impair the District's ability to investigate and address the prohibited conduct.

## **Reporting Procedures**

Any student who believes that he or she has experienced bullying or believes that another student has experienced bullying should immediately report the alleged acts to a teacher, counselor, principal, or other District employee. A report may be made orally or in writing.

## **Notice of Report**

Any District employee who receives notice that a student has or may have experienced bullying shall immediately notify the campus principal or designee.

## **Investigation of Report**

If a report is made orally, the campus principal or designee shall reduce the report to written form.... The campus principal or designee shall conduct an appropriate investigation based on the allegations in the report. The campus principal or designee shall promptly take interim action calculated to prevent bullying during the course of an investigation, if appropriate.

## **Concluding the Investigation**

Absent extenuating circumstances, the investigation should be completed within 10 District business days from the date of the report; however, the campus principal or designee shall take additional time, if necessary, to complete a thorough investigation. The campus principal or designee shall prepare a written report of the investigation, including a determination of whether bullying occurred, and send a copy to the Superintendent or designee.

## **District Action**

If the results of an investigation indicate that bullying occurred, the District shall promptly respond by taking appropriate disciplinary or corrective action reasonably calculated to address the conduct in accordance with the District's Student Code of Conduct.... The District may take action based on the results of an investigation, even if the District concludes that the conduct did not rise to the level of bullying under this policy.

## **Confidentiality**

To the greatest extent possible, the District shall respect the privacy of the complainant, persons against whom a report is filed, and witnesses. Limited disclosures may be necessary in order to conduct a thorough investigation.

Section 4  
New York State School Boards Association



## NYSSBA Sample Policy 0115

### STUDENT BULLYING PREVENTION AND INTERVENTION

*NOTE: With the enactment of the Dignity for All Students Act, signed into law by Governor Paterson on September 8, 2010, and with the recent issuance of guidance ('Dear Colleague' letter) from the United State Department of Education Office for Civil Rights (OCR), NYSSBA recommends this policy.*

*The state law goes into effect in July of 2012, so while no action is required immediately, NYSSBA recommends that districts begin their planning so that they have a program in place in a timely fashion. In addition, the district should take the opportunity to review how civil rights protections and complaint procedures fit in with the district's bullying prevention program. This policy is offered to assist in that process. When SED issues regulations, NYSSBA will again review the policy to determine if adjustments need to be made and issue an updated version, if necessary.*

*Please note that although the new law does not explicitly address cyberbullying, NYSSBA has included it in this policy since it is an issue in schools and given the media attention and public concern about it.*

The Board of Education is committed to providing an educational and working environment that promotes respect, dignity and equality. The Board recognizes that harassment, hazing and bullying are detrimental to student learning and achievement. These behaviors interfere with the mission of the district to educate its students and disrupt the operation of the schools. Such behavior affects not only the students who are its targets but also those individuals who participate and witness such acts.

To this end, the Board condemns and strictly prohibits all forms of harassment, hazing and bullying on school grounds, school buses and at all school-sponsored activities, programs and events including those that take place at locations outside the district but that materially and substantially disrupt the educational process of the school environment or impinge on the rights of others.

#### **Definitions**

Harassment has been defined in various ways in federal and state law and regulation. The Board recognizes that these definitions are important standards, but the Board's goal is to prevent behaviors from escalating to promote a positive school environment and to limit liability. For example, the Dignity for All Students Act (§§10-18 of Education Law) defines harassment as the creation of a hostile environment by conduct or by verbal threats, intimidation or abuse that has or would have the effect of unreasonably and substantially interfering with a student's educational performance, opportunities or benefits, or mental, emotional or physical well-being; or conduct, verbal threats, intimidation or abuse that reasonably causes or would reasonably be expected to cause a student to fear for his or her physical safety. The harassing behavior may be based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sex, sexual orientation, or gender (identity or expression).

## NYSSBA Sample Policy 0115

*NOTE: The law includes gender, but does not include identity or expression. NYSSBA recommends including those terms to make clear that transgender and gender nonconforming students are protected.*

In order to facilitate implementation, provide meaningful guidance and prevent behaviors from rising to a violation of law, this policy will use the term bullying (which is subsumed under the term “harassment”), which is understood to be a hostile activity which harms or induces fear through the threat of further aggression and/or creates terror. Bullying may be premeditated or a sudden activity. It may be subtle or easy to identify, done by one person or a group. Bullying is characterized by:

1. **Power imbalance** - occurs when a bully uses his/her physical or social power over a target.
2. **Intent to harm** - the bully seeks to inflict physical or emotional harm and/or takes pleasure in this activity.
3. **Threat of further aggression** - the bully and the target believe the bullying will continue.
4. **Terror** - when any bullying increases, it becomes a “systematic violence or harassment used to intimidate and maintain dominance.”

*(Barbara Coloroso, *The Bully, The Bullied & The Bystander*, 2003)*

There are at least three kinds of bullying: verbal, physical and social/relational.

- Verbal bullying includes name calling, insulting remarks, verbal teasing, frightening phone calls, violent threats, extortion, taunting, gossip, spreading rumors, racist slurs, threatening electronic communications, anonymous notes, etc.
- Physical bullying includes poking, slapping, hitting, tripping or causing a fall, choking, kicking, punching, biting, pinching, scratching, spitting, twisting arms or legs, damaging clothes and personal property, or threatening gestures.
- Social or relational bullying includes excluding someone from a group, isolating, shunning, spreading rumors or gossiping, arranging public humiliation, undermining relationships, teasing about clothing, looks, giving dirty looks, aggressive stares, etc.

In the remainder of this policy and associated regulation the term “bullying” will be used to refer to harassing or hazing behaviors because that is the term most commonly used by students and parents.

In some instances, bullying or harassment may constitute a violation of an individual’s civil rights. The district is mindful of its responsibilities under the law and in accordance with district policy, 0100, Equal Opportunity and Nondiscrimination and 0110, Sexual Harassment.

NYSSBA Sample Policy

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## Prevention

The school setting provides an opportunity to teach children, and emphasize among staff, that cooperation with and respect for others is a key district value. A program geared to prevention is designed to not only decrease incidents of bullying, but to help students build more supportive relationships with one another by integrating the bullying prevention program into classroom instruction. Staff members and students will be sensitized, through district-wide professional development and instruction, to the warning signs of bullying, as well as to their responsibility to become actively involved in the prevention of bullying before overt acts occur. The components of such an effort involve the following:

- Learning about and identifying the early warning signs and precursor behaviors that may lead to bullying.
- Gathering information about bullying at school directly from students.
- Establishing clear school wide and classroom rules about bullying.
- Training adults in the school to respond sensitively and consistently to bullying.
- Raising awareness among adults, through training, of the school experiences of marginalized student populations (with particular attention to lesbian, gay, bisexual, transgender and questioning youth), social stigma in the school environment, gender norms in the school environment, and strategies for disrupting bullying, intimidation, harassment or other forms of violence.
- Providing adequate adult supervision, particularly in less structured areas such as in the hallways, cafeteria and playground.
- Raising parental awareness and involvement in the prevention program and in addressing problems.
- Providing instruction in civility, citizenship and character education that emphasizes empathy, tolerance and respect for others.

*NOTE: In the paragraph below, the policy suggests creation of a district-wide committee. NYSSBA believes it is important that this task to be shared with a committee made up of various constituencies, rather than assigning it to the Superintendent or another administrator. The Board may choose to give this responsibility to an existing district-wide committee, such as wellness, safety or shared decision-making, rather than establishing a new one.*

In order to implement this program the Superintendent will establish a district wide Task Force on Bullying Prevention, as well as Bullying Prevention Coordinating Committees in each school. The district-wide task force and the school-level committee will assist the administration in developing and implementing specific procedures on early identification of bullying and other preventive strategies. In addition, the program will include reporting, investigating, remedying and tracking allegations of bullying.

## **Intervention**

Intervention by adults and bystanders is an important step in preventing escalation and resolving issues at the earliest stages. Intervention will emphasize education and skill-building. In addition, intervention will focus upon the safety of the target/victim. Staff is expected, when made aware of bullying, to either refer the student to designated resources for assistance, or to intervene in accordance with this policy and regulation.

### Provisions for students who don't feel safe at school

The Board acknowledges that, notwithstanding actions taken by district staff, intervention may require a specific coordinated approach if the child does not feel safe at school. Students who do not feel safe at school are limited in their capacity to learn and reach their academic potential. Staff, when aware of bullying, should establish if accommodations are needed in order to help ensure the safety of the student; and, bring this to the attention of the building principal. The building principal, other appropriate staff, the student and the student's parent will work together to define and implement any needed accommodations. Accommodations may include, but are not limited to:

- A "permanent" hall pass that allows the student to visit a designated adult at any time;
- Access to private bathroom facilities;
- Access to private locker room facilities;
- An escort during passing periods;
- If the student feels unsafe in a specific class, an opportunity for individual tutoring or independent study until the case is resolved;
- An opportunity for independent study at home with district-provided tutor until the case is resolved;
- Permission to use personal cell phone in the event that the student feels threatened and needs immediate access to parent or guardian;
- Assignment of a bus monitor.

Each case will be handled individually, and student, parent/guardian(s), and school administration will collaborate to establish safety provisions that best meet the needs of the targeted student. Follow-up discussion and/or meetings will be scheduled, as needed, to ensure that safety concerns have been adequately addressed and to determine when and if accommodations need to be changed or discontinued.

## **Training**

The Board recognizes that in order to implement an effective bullying prevention and intervention program, professional development is needed. The

## NYSSBA Sample Policy 0115

Superintendent and the district Professional Development Team will incorporate training to support this program in the annual professional development plan, as needed. Training opportunities will be provided for all staff, including but not limited to bus drivers, cafeteria and hall monitors and all staff who have contact with students. In accordance with state law, the Superintendent shall ensure that at least one staff member is thoroughly trained in human relations in the areas of race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender and sex in order to implement this policy.

### Reporting and Investigation

Students who have been bullied, parents whose children have been bullied, or other students who observe bullying behavior are encouraged and expected to make a verbal and/or written complaint to a teacher, coach, bus driver, social worker, counselor, supervisor, or administrator in accordance with the training and guidelines provided. At all times, complaints will be documented, tracked and handled in accordance with the regulations and procedures accompanying this policy, or, if applicable, district policy 0100, Equal Opportunity and Nondiscrimination or 0110, Sexual Harassment, and the district's Code of Conduct. If a staff person is unsure of the reporting procedure, he/she is expected to inquire about how to proceed by speaking with their supervisor. Incidents will be included in the Violent and Disruptive Incident Reporting (VADIR) system, when applicable.

*NOTE: The paragraph above indicates that incidents will be included in the VADIR system, as applicable. Bullying, harassment and intimidation are included in VADIR currently, even before the enactment and implementation of DASA. The State Education Department will provide guidance as to how DASA might change VADIR reporting. The Board may wish to consider, though, instituting a reporting mechanism for bullying complaints that goes beyond the VADIR reporting. The Board may benefit from having more detailed data on bullying and school climate than what VADIR offers. Language should be inserted in this section of the policy if the Board wishes to require that.*

There shall be a duty for all school personnel to report any incidents of student-to-student and staff-to-student bullying that they observe to their building principal or other administrator who supervises their employment. In addition, there shall be a further duty for all school personnel to report any incidents of student-to-student and staff-to-student bullying of which they are made aware by students to their building principals or other administrator who supervises their employment. Supervisors will refer the information to appropriate district staff for investigation, as designated in regulation.

The results of the investigation shall be reported back to both the target and the accused, in accordance with the accompanying regulation (0115-R). If either of the parties disagree with the results of the investigation, they can appeal the findings in accordance with 0115-R.

## **Disciplinary Consequences**

While the focus of this policy is on prevention, bullying acts may still occur. In these cases, offenders will be given the clear message that their actions are wrong and the behavior must improve. Offenders will receive in-school guidance in making positive choices in their relationships with others. If appropriate, disciplinary action will be taken by the administration in accordance with the district's Code of Conduct, as applicable. If the behavior rises to the level of criminal activity, law enforcement will be contacted.

## **Non Retaliation**

All complainants and those who participate in the investigation of a complaint in conformity with state law and district policies, who have acted reasonably and in good faith, have the right to be free from retaliation of any kind.

## **Dissemination, Monitoring and Review**

This policy, or a plain language summary, shall be published in student registration materials, student, parent and employee handbooks, and posted on the district's website.

Each year, as part of the annual review of the Code of Conduct, this policy will be reviewed to assess its effectiveness and compliance with state and federal law. If changes are needed, revisions will be recommended to the Board for its consideration.

In addition, the Board will receive the annual VADIR data report for each building and for the district as whole, with particular attention to the trends in the incidence of bullying. Based on the review of the data, the Board may consider further action, including but not limited to modification of this policy and additional training.

Cross-ref: 0100, Equal Opportunity and Nondiscrimination  
0110, Sexual Harassment  
5300, Code of Conduct

Ref: Dignity for All Students Act, Education Law, §10 – 18  
Americans with Disabilities Act, 42 U.S.C. §12101 *et seq.*  
Title VI, Civil Rights Act of 1964, 42 U.S.C. §2000d *et seq.*  
Title VII, Civil Rights Act of 1964, 42 U.S.C. §2000e *et seq.*; 34 CFR §100 *et seq.*  
Title IX, Education Amendments of 1972, 20 U.S.C. §1681 *et seq.*  
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## NYSSBA Sample Policy 0115

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*Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57 (1986)

Adoption date:

DRAFT

**STUDENT BULLYING PREVENTION AND INTERVENTION  
REGULATION**

**Reporting and Investigation**

In order for the Board to effectively enforce this policy and to take prompt corrective measures, it is essential that all targets and persons with knowledge of bullying report such behavior immediately to [insert title] or the [insert title] as soon as possible after the incident so that it may be effectively investigated and resolved. The district will promptly investigate all complaints, either formal or informal, verbal or written. To the extent possible, all complaints will be treated in a confidential manner, although limited disclosure may be necessary to complete a thorough investigation.

In order to assist investigators, individuals should document the harassment, hazing, bullying as soon as it occurs and with as much detail as possible including: the nature of the incident(s); dates, times, places it has occurred; name of perpetrator(s); witnesses to the incident(s); and the target's response to the incident.

If, after appropriate investigation, the district finds that a student, an employee or a third party has violated this policy, prompt corrective action will be taken in accordance with the code of conduct, applicable collective bargaining agreement, district policy and state law. If the reported behavior constitutes a civil rights violation, the complaint procedure associated with either policy 0100 or 0110 will be followed, as applicable. If either of the parties disagree with the findings of the initial investigation, an appeal may be made to the Superintendent in accordance with the process described below.

Confidentiality

It is district policy to respect the privacy of all parties and witnesses to bullying. To the extent possible, the district will not release the details of a complaint or the identity of the complainant or the individual(s) against whom the complaint is filed to any third parties who do not need to know such information. However, because an individual's desire for confidentiality must be balanced with the district's legal obligation to provide due process to the accused, to conduct a thorough investigation, and/or to take necessary action to resolve the complaint, the district retains the right to disclose the identity of parties and witnesses to complaints in appropriate circumstances to individuals with a need to know. The staff member responsible for investigating complaints will discuss confidentiality standards and concerns with all complainants.

If a complainant requests that his/her name not be revealed to the individual(s) against whom a complaint is filed, the staff member responsible for conducting the investigation shall inform the complainant that:



## NYSSBA Sample Regulation 0115-R

1. the request may limit the district's ability to respond to his/her complaint;
2. district policy and federal law prohibit retaliation against complainants and witnesses;
3. the district will attempt to prevent any retaliation; and
4. the district will take strong responsive action if retaliation occurs.

If the complainant still requests confidentiality after being given the notice above, the investigator will take all reasonable steps to investigate and respond to the complaint consistent with the request as long as doing so does not preclude the district from responding effectively to the bullying and preventing the bullying of other students.

### Investigation and Resolution Procedure

#### A. Initial (Building-level) Procedure

Whenever a complaint of bullying is received whether verbal or written, it will be subject to a preliminary review and investigation. Except in the case of severe or criminal conduct, the **[insert title]** or **[insert title]** shall make all reasonable efforts to resolve complaints informally at the school level. The goal of informal procedures is to end the bullying, ensure the safety of the target and obtain a prompt and equitable resolution to a complaint.

As soon as possible but no later than *three working days* following receipt of a complaint, the **[insert title]** or **[insert title]** should begin an investigation of the complaint by:

- Reviewing any written documentation provided by the target(s).
- Conducting separate interviews of the target(s), alleged perpetrator(s), and witnesses, if any, and documenting the conversations.
- Providing the alleged perpetrator(s) a chance to respond and notify him/her that if objectionable behavior has occurred, it must cease immediately and that the individual may be subject to discipline.
- Determining whether the complainant needs any accommodations to ensure his/her safety, in accordance with policy 0115, and following up periodically until the complaint has been resolved.

Parents of student targets and accused students should be notified within one school day of allegations that are serious or involve repeated conduct.

Where appropriate, informal methods may be used to resolve the complaint, including but not limited to:

- a. discussion with the accused, informing him or her of the district's policies and indicating that the behavior must stop;

## NYSSBA Sample Regulation 0115-R

- b. suggesting counseling, skill building activities and/or sensitivity training;
- c. conducting training for the department or school in which the behavior occurred, calling attention to the consequences of engaging in such behavior;
- d. requesting a letter of apology to the target;
- e. writing letters of caution or reprimand; and/or
- f. separating the parties.

Appropriate disciplinary action shall be recommended and imposed in accordance with district policy, the applicable collective bargaining agreement or state law.

The investigator shall report back to both the target and the accused, notifying them in writing, and also in person, as appropriate, regarding the outcome of the investigation and the action taken to resolve the complaint. The target shall report immediately if the objectionable behavior occurs again or if the alleged perpetrator retaliates against him/her.

If a complaint contains evidence or allegations of serious or extreme bullying, the complaint shall be referred promptly to the Superintendent. In addition, where the [insert title] or the [insert title] has a reasonable suspicion that the alleged bullying incident involves criminal activity, he/she should immediately notify the Superintendent, who shall then contact the school attorney, appropriate child protection and law enforcement authorities.

Any party who is not satisfied with the outcome of the initial investigation may request a district-level investigation by submitting a written complaint to the Superintendent within 30 days.

### B. District-level Procedure

The Superintendent or his/her designee shall promptly investigate and resolve all bullying complaints that are referred to him/her, as well as those appealed to the Superintendent following an initial investigation. In the event the complaint involves the Superintendent, the complaint shall be filed with or referred to the Board President, who shall refer the complaint to an appropriate independent individual for investigation.

The district level investigation should begin as soon as possible ***but not later than three working days*** following receipt of the complaint by the Superintendent or Board President.

In conducting the formal district level investigation, the district will endeavor to use individuals who have received formal training regarding such investigations or that have previous experience investigating such complaints.

## NYSSBA Sample Regulation 0115-R

If a district investigation results in a determination that bullying did occur, prompt corrective action will be taken to end the misbehavior.

No later than 30 days following receipt of the complaint, the Superintendent (or in cases involving the Superintendent, the Board-appointed investigator) will notify the target and alleged perpetrator, in writing, of the outcome of the investigation. If additional time is needed to complete the investigation or take appropriate action, the Superintendent or Board-appointed investigator will provide all parties with a written status report within 30 days following receipt of the complaint.

The district shall retain documentation associated with complaints and investigations in accordance with Schedule ED-1.

### Retaliation Prohibited

Any act of retaliation against any person who opposes bullying behavior, or who has filed a complaint, is prohibited and illegal, and therefore subject to disciplinary action. Likewise, retaliation against any person who has testified, assisted, or participated in any manner in an investigation, proceeding, or hearing of a bullying complaint is prohibited. For purposes of this policy, retaliation includes but is not limited to: verbal or physical threats, intimidation, ridicule, bribes, destruction of property, spreading rumors, stalking, harassing phone calls, and any other form of harassment. Any person who retaliates is subject to immediate disciplinary action, up to and including suspension or termination.

### Discipline/Penalties

Any individual who violates this policy by engaging in prohibited bullying will be subject to appropriate disciplinary action. Disciplinary measures available to school authorities include, but are not limited to the following:

Students: Discipline may range from a reprimand up to and including suspension from school, to be imposed consistent with the student code of conduct and applicable law.

Employees: Discipline may range from a warning up to and including termination, to be imposed consistent with all applicable contractual and statutory rights.

Volunteers: Penalties may range from a warning up to and including loss of volunteer assignment.

Vendors: Penalties may range from a warning up to and including loss of district business.

## NYSSBA Sample Regulation 0115-R

Other individuals: Penalties may range from a warning up to and including denial of future access to school property.

### Policy Dissemination

*NOTE: The following section addresses dissemination of the policy and regulation. This should be customized to reflect the methods used in the district.*

All students and employees shall be informed of this policy in student and employee handbooks, on the district website and student registration materials. A poster summarizing the policy shall also be posted in a prominent location at each school.

All employees shall receive information about this policy and regulation at least once a year.

Principals in each school shall be responsible for informing students and staff on a yearly basis of the terms of this policy, including the procedures for filing a complaint and the impact of bullying on the target and bystanders.

### Training

Training needs in support of this bullying prevention and intervention program will be reflected in the district's annual professional development plan, in curriculum and will be considered in the budget process. Administrative employees and other staff, such as counselors or social workers who have specific responsibilities for investigating and/or resolving complaints of bullying shall receive yearly training to support implementation of this policy, regulation and on related legal developments.

Adoption date:

**STUDENT BULLYING PREVENTION AND INTERVENTION  
REGULATION**

**Reporting and Investigation**

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## NYSSBA Sample Regulation 0115-R

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## NYSSBA Sample Regulation 0115-R

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The district shall retain documentation associated with complaints and investigations in accordance with Schedule ED-1.

### Retaliation Prohibited

Any act of retaliation against any person who opposes bullying behavior, or who has filed a complaint, is prohibited and illegal, and therefore subject to disciplinary action. Likewise, retaliation against any person who has testified, assisted, or participated in any manner in an investigation, proceeding, or hearing of a bullying complaint is prohibited. For purposes of this policy, retaliation includes but is not limited to: verbal or physical threats, intimidation, ridicule, bribes, destruction of property, spreading rumors, stalking, harassing phone calls, and any other form of harassment. Any person who retaliates is subject to immediate disciplinary action, up to and including suspension or termination.

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## NYSSBA Sample Regulation 0115-R

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### Policy Dissemination

*NOTE: The following section addresses dissemination of the policy and regulation. This should be customized to reflect the methods used in the district.*

All students and employees shall be informed of this policy in student and employee handbooks, on the district website and student registration materials. A poster summarizing the policy shall also be posted in a prominent location at each school.

All employees shall receive information about this policy and regulation at least once a year.

Principals in each school shall be responsible for informing students and staff on a yearly basis of the terms of this policy, including the procedures for filing a complaint and the impact of bullying on the target and bystanders.

### Training

Training needs in support of this bullying prevention and intervention program will be reflected in the district's annual professional development plan, in curriculum and will be considered in the budget process. Administrative employees and other staff, such as counselors or social workers who have specific responsibilities for investigating and/or resolving complaints of bullying shall receive yearly training to support implementation of this policy, regulation and on related legal developments.

Adoption date:

**STUDENT BULLYING PREVENTION AND INTERVENTION**

*NOTE: In view of recent developments, NYSSBA is issuing this policy. Two previous policies (0115, Harassment, Hazing and Bullying and 0115.1, Bullying Prevention) have been combined into one and have been updated. Revising and combining those policies made particular sense with the enactment of the Dignity for All Students Act, signed into law by Governor Paterson on September 8, 2010, and with the recent issuance of guidance ('Dear Colleague' letter) from the United State Department of Education Office for Civil Rights (OCR).*

*The state law goes into effect in July of 2012, so while no action is required on that right now, NYSSBA recommends that districts begin their planning so that they have a program in place in a timely fashion. In addition, the district should take the opportunity to review how civil rights protections and complaint procedures fit in with the district's bullying prevention program. This policy is offered to assist in that process. When SED issues regulations, we will again review the policy to determine if adjustments need to be made and issue an updated version, if necessary.*

*Please note that although the new law does not explicitly address cyberbullying, NYSSBA has included it in this policy since it is an issue in schools and given the media attention and public concern about the issue.*

*Finally, please note that the 'Dear Colleague' letter issued by the OCR is the subject of national debate among school attorneys as to whether it represents an expanded interpretation of law. NYSSBA's sample policy (below) doesn't incorporate the language under debate. If the Board wishes to incorporate OCR's guidance into its policy, please seek direction from your school attorney or contact NYSSBA's Legal department.*

The Board of Education is committed to providing an educational and working environment that promotes respect, dignity and equality. The Board recognizes that harassment, hazing and bullying is detrimental to student learning and achievement. It interferes with the mission of the district to educate its students and disrupts the operation of the schools. Such behavior affects not only the students who are its targets but also those individuals who participate and witness such acts.

To this end, the Board condemns and strictly prohibits all forms of harassment, hazing and bullying on school grounds, school buses and at all school-sponsored activities, programs and events including those that take place at locations outside the district but that materially and substantially disrupt the educational process of the school environment or impinge on the rights of others.

**Definitions**

For purposes of this policy, the term "harassment" is defined as the creation of a hostile environment by conduct or by verbal threats, intimidation or abuse that has or would have the effect of unreasonably and substantially interfering with a student's educational performance, opportunities or benefits, or

## NYSSBA Sample Policy 0115

mental, emotional or physical well-being; or conduct, verbal threats, intimidation or abuse that reasonably causes or would reasonably be expected to cause a student to fear for his or her physical safety. The harassing behavior may be based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sex, sexual orientation, or gender (identity or expression).

*NOTE: The law includes gender, but does not include identity or expression. NYSSBA recommends including those terms to make clear that transgender and questioning students are protected.*

In some instances, bullying or harassment may constitute a violation of an individual's civil rights. The district is mindful of its responsibilities under the law and in accordance with district policy, 0100, Equal Opportunity and Nondiscrimination and 0110, Sexual Harassment.

For the purposes of this policy, "bullying" (which is subsumed under the term "harassment"), is understood to be a hostile activity which harms or induces fear through the threat of further aggression and/or creates terror. Bullying may be premeditated or a sudden activity. It may be subtle or easy to identify, done by one person or a group. Bullying is characterized by:

1. **Power imbalance** - occurs when a bully uses his/her physical or social power over a target.
2. **Intent to harm** - the bully seeks to inflict physical or emotional harm and/or takes pleasure in this activity.
3. **Threat of further aggression** - the bully and the target believe the bullying will continue.
4. **Terror** - when any bullying increases, it becomes a "systematic violence or harassment used to intimidate and maintain dominance."

*(Barbara Coloroso, *The Bully, The Bullied & The Bystander*, 2003)*

There are at least three kinds of bullying: verbal, physical and social/relational.

- Verbal bullying includes name calling, insulting remarks, verbal teasing, frightening phone calls, violent threats, extortion, taunting, gossip, spreading rumors, racist slurs, threatening electronic communications, anonymous notes, etc.
- Physical bullying includes poking, slapping, hitting, tripping or causing a fall, choking, kicking, punching, biting, pinching, scratching, spitting, twisting arms or legs, damaging clothes and personal property, or threatening gestures.
- Social or relational bullying includes excluding someone from a group, isolating, shunning, spreading rumors or gossiping, arranging public humiliation, undermining relationships, teasing about clothing, looks, giving dirty looks, aggressive stares, etc.

## NYSSBA Sample Policy 0115

In the remainder of this policy and associated regulation the term “bullying” will be used to refer to harassing or hazing behaviors because that is the term most commonly used by students and parents.

### Prevention

The school setting provides an opportunity to teach children, and emphasize among staff, that cooperation with and respect for others is a key district value. A program geared to prevention is designed to not only decrease incidents of bullying, but to help students build more supportive relationships with one another by integrating the bullying prevention program into classroom instruction. Staff members and students will be sensitized, through district-wide professional development and instruction, to the warning signs of bullying, as well as to their responsibility to become actively involved in the prevention of bullying before overt acts occur. The components of such an effort involve the following:

- Learning about and identifying the early warning signs and precursor behaviors that may lead to bullying.
- Gathering information about bullying at school directly from students.
- Establishing clear school wide and classroom rules about bullying.
- Training adults in the school to respond sensitively and consistently to bullying.
- Providing adequate adult supervision, particularly in less structured areas such as in the hallways, cafeteria and playground.
- Raising parental awareness and involvement in addressing problems.
- Providing instruction in civility, citizenship and character education that emphasizes tolerance and respect for others.

*NOTE: In the paragraph below, the policy suggests creation of a district-wide committee. NYSSBA believes it is important that this task to be shared with a committee made up of various constituencies, rather than assigning it to the Superintendent or another administrator. The Board may choose to give this responsibility to an existing district-wide committee, such as wellness, safety or shared decision-making, rather than establishing a new one.*

In order to implement this program the Superintendent will establish a district wide Task Force on Bullying Prevention, as well as Bullying Prevention Coordinating Committees in each school. The district-wide task force and the school-level committee will assist the administration in developing and implementing specific procedures on early identification of bullying and other preventive strategies. In addition, the program will include reporting, investigating, remedying and tracking allegations of bullying.

### **Intervention**

Intervention by adults and bystanders is an important step in preventing escalation and resolving issues at the earliest stages. Intervention will emphasize education and skill-building. In addition, intervention will focus upon the safety of the target/victim. Staff is expected, when made aware of bullying, to either refer the student to designated resources for assistance, or to intervene in accordance with this policy and regulation.

### **Training**

The Board recognizes that in order to implement an effective bullying prevention and intervention program, professional development is needed. The Superintendent and the district Professional Development Team will incorporate training to support this program in the annual professional development plan, as needed. Training opportunities will be provided for all staff, including but not limited to bus drivers, cafeteria and hall monitors and all staff who have contact with students. In accordance with state law, the Superintendent shall ensure that at least one staff member is thoroughly trained in human relations in the areas of race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender and sex.

### **Reporting and Investigation**

Students who have been bullied, parents whose children have been bullied, or other students who observe bullying behavior are encouraged to make a verbal and/or written complaint to a teacher, coach, bus driver, social worker, counselor, supervisor, or administrator in accordance with the training and guidelines provided. At all times, complaints will be documented, tracked and handled in accordance with the regulations and procedures accompanying this policy, or, if applicable, district policy 0100, Equal Opportunity and Nondiscrimination or 0110, Sexual Harassment, and the district's Code of Conduct. Incidents will be included in the Violent and Disruptive Incident Reporting (VADIR) system, when applicable.

There shall be a duty for all school personnel to report any incidents of student-to-student and staff-to-student bullying that they observe to their building principal or other administrator who supervises their employment. In addition, there shall be a further duty for all school personnel to report any incidents of student-to-student and staff-to-student bullying of which they are made aware by students to their building principals or other administrator who supervises their employment. Supervisors will refer the information to appropriate district staff for investigation, as designated in regulation.

### **Disciplinary Consequences**

While the focus of this policy is on prevention, bullying acts may still occur. In these cases, offenders will be given the clear message that their actions

## NYSSBA Sample Policy 0115

are wrong and the behavior must improve. Offenders will receive in-school guidance in making positive choices in their relationships with others. If appropriate, disciplinary action will be taken by the administration in accordance with the district's Code of Conduct, as applicable. If the behavior rises to the level of criminal activity, law enforcement will be contacted.

### **Non Retaliation**

All complainants and those who participate in the investigation of a complaint in conformity with state law and district policies, who have acted reasonably and in good faith, have the right to be free from retaliation of any kind.

### **Dissemination, Monitoring and Review**

This policy, or a plain language summary, shall be published in student registration materials, student, parent and employee handbooks, and posted on the district's website.

Each year, as part of the annual review of the Code of Conduct, this policy will be reviewed to assess its effectiveness and compliance with state and federal law. If changes are needed, revisions will be recommended to the Board for its consideration.

In addition, the Board will receive the annual VADIR data report for each building and for the district as whole, with particular attention to the trends in the incidence of bullying. Based on the review of the data, the Board may consider further action, including but not limited to modification of this policy and additional training.

Cross-ref: 0100, Equal Opportunity and Nondiscrimination  
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Ref: Dignity for All Students Act, Education Law, §10 – 18  
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**STUDENT BULLYING PREVENTION AND INTERVENTION  
REGULATION**

**Reporting and Investigation**

In order for the Board to effectively enforce this policy and to take prompt corrective measures, it is essential that all victims and persons with knowledge of bullying report such behavior immediately to \_\_\_\_\_ or the \_\_\_\_\_ as soon as possible after the incident so that it may be effectively investigated and resolved. The district will promptly investigate all complaints, either formal or informal, verbal or written. To the extent possible, all complaints will be treated in a confidential manner, although limited disclosure may be necessary to complete a thorough investigation.

In order to assist investigators, individuals should document the harassment, hazing, bullying as soon as it occurs and with as much detail as possible including: the nature of the incident(s); dates, times, places it has occurred; name of perpetrator(s); witnesses to the incident(s); and the victim's response to the incident.

If, after appropriate investigation, the district finds that a student, an employee or a third party has violated this policy, prompt corrective action will be taken in accordance with the code of conduct, applicable collective bargaining agreement, district policy and state law. If the reported behavior constitutes a civil rights violation, the complaint procedure associated with either policy 0100 or 0110 will be followed, as applicable.

Confidentiality

It is district policy to respect the privacy of all parties and witnesses to complaints of bullying. To the extent possible, the district will not release the details of a complaint or the identity of the complainant or the individual(s) against whom the complaint is filed to any third parties who do not need to know such information. However, because an individual's need for confidentiality must be balanced with the district's legal obligation to provide due process to the accused, to conduct a thorough investigation, or to take necessary action to resolve the complaint, the district retains the right to disclose the identity of parties and witnesses to complaints in appropriate circumstances to individuals with a need to know. The staff member responsible for investigating complaints will discuss confidentiality standards and concerns with all complainants.

If a complainant requests that his/her name not be revealed to the individual(s) against whom a complaint is filed, the staff member responsible for conducting the investigation shall inform the complainant that:



## NYSSBA Sample Regulation 0115-R

1. the request may limit the district's ability to respond to his/her complaint;
2. district policy and federal law prohibit retaliation against complainants and witnesses;
3. the district will attempt to prevent any retaliation; and
4. the district will take strong responsive action if retaliation occurs.

If the complainant still requests confidentiality after being given the notice above, the investigator will take all reasonable steps to investigate and respond to the complaint consistent with the request as long as doing so does not preclude the district from responding effectively to the bullying and preventing the bullying of other students.

### Investigation and Resolution Procedure

#### A. Initial (Building-level) Procedure

Whenever a complaint of bullying is received whether verbal or written, it will be subject to a preliminary review and investigation. Except in the case of severe or criminal conduct, the \_\_\_\_\_ or \_\_\_\_\_ should make all reasonable efforts to resolve complaints informally at the school level. The goal of informal procedures is to end the bullying and obtain a prompt and equitable resolution to a complaint.

As soon as possible but no later than *three working days* following receipt of a complaint, the \_\_\_\_\_ or \_\_\_\_\_ should begin an investigation of the complaint by:

- Reviewing any written documentation provided by the victim(s).
- Conducting separate interviews of the victim(s), alleged perpetrator(s), and witnesses, if any, and documenting the conversations.
- Providing the alleged perpetrator(s) a chance to respond and notify him/her that if objectionable behavior has occurred, it must cease immediately and that the individual may be subject to discipline.

Parents of student victims and accused students should be notified within one school day of allegations that are serious or involve repeated conduct.

Where appropriate, informal methods may be used to resolve the complaint, including but not limited to:

- a. discussion with the accused, informing him or her of the district's policies and indicating that the behavior must stop;
- b. suggesting counseling, skill building activities and/or sensitivity training;

## NYSSBA Sample Regulation 0115-R

- c. conducting training for the department or school in which the behavior occurred, calling attention to the consequences of engaging in such behavior;
- d. requesting a letter of apology to the victim;
- e. writing letters of caution or reprimand; and/or
- f. separating the parties.

Appropriate disciplinary action shall be recommended and imposed in accordance with district policy, the applicable collective bargaining agreement or state law.

The \_\_\_\_\_ or the \_\_\_\_\_ shall report back to both the victim and the accused, notifying them in writing, and also in person, as appropriate, regarding the outcome of the investigation and the action taken to resolve the complaint. The victim shall report immediately if the objectionable behavior occurs again or if the alleged perpetrator retaliates against him/her.

If a complaint contains evidence or allegations of serious or extreme bullying, the complaint shall be referred promptly to the Superintendent. In addition, where the \_\_\_\_\_ or the \_\_\_\_\_ has a reasonable suspicion that the alleged bullying incident involves criminal activity, he/she should immediately notify the Superintendent, who shall then contact the school attorney, appropriate child protection and law enforcement authorities.

Any party who is not satisfied with the outcome of the initial investigation by the \_\_\_\_\_ or the \_\_\_\_\_ may request a district-level investigation by submitting a written complaint to the Superintendent within 30 days.

### B. District-level Procedure

The Superintendent or his/her designee shall promptly investigate and resolve all bullying complaints that are referred to him/her, as well as those appealed to the Superintendent following an initial investigation by a \_\_\_\_\_ or the \_\_\_\_\_. In the event the complaint involves the Superintendent, the complaint shall be filed with or referred to the Board President, who shall refer the complaint to an appropriate individual for investigation.

The district level investigation should begin as soon as possible **but not later than three working days** following receipt of the complaint by the Superintendent or Board President.

In conducting the formal district level investigation, the district will endeavor to use individuals who have received formal training regarding such investigations or that have previous experience investigating such complaints.

## NYSSBA Sample Regulation 0115-R

If a district investigation results in a determination that bullying did occur, prompt corrective action will be taken to end the misbehavior.

No later than 30 days following receipt of the complaint, the Superintendent (or in cases involving the Superintendent, the Board-appointed investigator) will notify the victim and alleged perpetrator, in writing, of the outcome of the investigation. If additional time is needed to complete the investigation or take appropriate action, the Superintendent or Board-appointed investigator will provide all parties with a written status report within 30 days following receipt of the complaint.

### Retaliation Prohibited

Any act of retaliation against any person who opposes bullying behavior, or who has filed a complaint, is prohibited and illegal, and therefore subject to disciplinary action. Likewise, retaliation against any person who has testified, assisted, or participated in any manner in an investigation, proceeding, or hearing of a bullying complaint is prohibited. For purposes of this policy, retaliation includes but is not limited to: verbal or physical threats, intimidation, ridicule, bribes, destruction of property, spreading rumors, stalking, harassing phone calls, and any other form of harassment. Any person who retaliates is subject to immediate disciplinary action, up to and including suspension or termination.

### Discipline/Penalties

Any individual who violates this policy by engaging in prohibited bullying will be subject to appropriate disciplinary action. Disciplinary measures available to school authorities include, but are not limited to the following:

Students: Discipline may range from a reprimand up to and including suspension from school, to be imposed consistent with the student conduct and discipline policy and applicable law.

Employees: Discipline may range from a warning up to and including termination, to be imposed consistent with all applicable contractual and statutory rights.

Volunteers: Penalties may range from a warning up to and including loss of volunteer assignment.

Vendors: Penalties may range from a warning up to and including loss of district business.

Other individuals: Penalties may range from a warning up to and including denial of future access to school property.

## NYSSBA Sample Regulation 0115-R

### Training

All students and employees shall be informed of this policy in student and employee handbooks, on the district website and student registration materials. A poster summarizing the policy shall also be posted in a prominent location at each school.

All employees shall receive information about this policy and regulation at least once a year. Administrative employees and other staff, such as counselors or social workers, who have specific responsibilities for investigating and/or resolving complaints of bullying shall receive yearly training to support implementation of this policy, regulation and on related legal developments.

Principals in each school shall be responsible for informing students and staff on a yearly basis of the terms of this policy, including the procedures for filing a complaint and the impact of bullying on the victim and bystanders.

Training needs in support of this bullying prevention and intervention program will be reflected in the district's annual professional development plan, in curriculum and will be considered in the budget process.

Adoption date:

## SEXUAL HARASSMENT

*NOTE: This policy and accompanying regulation outlines the Board's and the district's responsibilities with regard to handling and resolving student and staff complaints of sexual harassment. It has been developed in light of decisions from the United States Supreme Court which have clarified the law regarding sexual harassment in schools and which have made clear that school districts can limit their legal liability by adopting effective anti-harassment policies and complaint procedures.*

The Board of Education recognizes that harassment of students and staff on the basis of sex, gender and/or sexual orientation is abusive and illegal behavior that harms victims and negatively impacts the school culture by creating an environment of fear, distrust, intimidation and intolerance. The Board further recognizes that preventing and remedying such harassment in schools is essential to ensure a healthy, nondiscriminatory environment in which students can learn and employees can work productively.

*NOTE: This paragraph below was added to make it clear that harassment may occur outside of the school building and that this policy extends to school events.*

The Board is committed to providing an educational and working environment that promotes respect, dignity and equality and that is free from all forms of sexual harassment. To this end, the Board condemns and strictly prohibits all forms of sexual harassment on school grounds, school buses and at all school-sponsored activities, programs and events including those that take place at locations outside the district.

*NOTE: This next paragraph was written to make it clear that this policy applies not only to students and staff members, but also third parties such as independent contractors and visitors on district property.*

Because sexual harassment can occur staff to student, staff to staff, student to student, male to female, female to male, male to male or female to female, it shall be a violation of this policy for any student, employee or third party (school visitor, vendor, etc.) to sexually harass any student or employee.

In order for the Board to effectively enforce this policy and to take prompt corrective measures, it is essential that all victims of sexual harassment and persons with knowledge of sexual harassment report the harassment immediately. The district will promptly investigate all complaints of sexual harassment, either formal or informal, verbal or written. To the extent possible, all complaints will be treated in a confidential manner. Limited disclosure may be necessary to complete a thorough investigation.

## NYSSBA Sample Policy 0110

If, after appropriate investigation, the district finds that a student, an employee or a third party has violated this policy, prompt corrective action will be taken in accordance with the applicable collective bargaining agreement, district policy and state law.

All complainants and those who participate in the investigation of a complaint of sexual harassment have the right to be free from retaliation of any kind.

The Superintendent of Schools is directed to develop and implement regulations for reporting, investigating and remedying allegations of sexual harassment. These regulations are to be attached to this policy. In addition, training programs shall be established for students and employees to raise awareness of the issues surrounding sexual harassment and to implement preventative measures to help reduce incidents of sexual harassment.

*NOTE: It is not enough for the Board to simply adopt a sexual harassment policy. The Board must make sure that the policy is widely disseminated so that students and staff are aware of the district's procedures for reporting and responding to allegations of sexual harassment (see paragraph below).*

This policy shall be posted in a prominent place in each district facility and shall also be published in student registration materials, student, parent and employee handbooks, and other appropriate school publications.

*NOTE: The Board is not required to include the following statement in the policy. However, some language should be included that addresses periodic review of the district's sexual harassment policy and procedures.*

A committee of administrators, teachers, parents, students and the school attorney shall be convened annually to review this policy's effectiveness and compliance with applicable state and federal law, and to recommend revisions to Board.

Ref: Education Amendments of 1972, Title IX, 20 U.S.C. §1681 *et seq.*  
Title VII of Civil Rights Act (1964), 42 U.S.C. §2000-e; 34 CFR §100 *et seq.*  
*Davis v. Monroe County Board of Education*, 526 U.S. 629, 652 (1999)  
*Gebser v. Lago Vista Independent School District*, 524 U.S. 274 (1998)  
*Faragher v. City of Boca Raton*, 524 U.S. 775 (1998)  
*Burlington Industries v. Ellerth*, 524 U.S. 742 (1998)  
*Oncale v. Sundowner Offshore Services, Inc.*, 523 U.S. 75 (1998)  
*Franklin v. Gwinnett County Public Schools*, 503 U.S. 60 (1992)  
*Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57 (1986)

Adoption date:

## NYSSBA Sample Regulation 0110-R

*NOTE: Among other things, this regulation provides detailed guidelines to assist staff in determining whether alleged misconduct constitutes sexual harassment (i.e., harassment based on sex, gender, or sexual orientation) and outlines potential sanctions and penalties for violating district policy/regulation.*

### SEXUAL HARASSMENT REGULATION

This regulation is intended to create and preserve an educational and working environment free from unlawful sexual harassment on the basis of sex, gender and/or sexual orientation in furtherance of the district's commitment to provide a healthy and productive environment for all students and employees that promotes respect, dignity and equality.

#### Sexual Harassment Defined

"Sexual harassment" means unwelcome sexual advances, requests for sexual favors, sexually motivated physical conduct or other verbal or physical conduct or communication of a sexual nature when:

1. submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of an employee's employment or a student's education (including any aspect of the student's participation in school-sponsored activities, or any other aspect of the student's education); or
2. submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting an employee's employment or a student's education; or
3. the conduct or communication has the purpose or effect of substantially or unreasonably interfering with an employee's work performance or a student's academic performance or participation in school-sponsored activities, or creating an intimidating, hostile or offensive working or educational environment.

#### Unacceptable Conduct

*NOTE: It is important for the district's regulation to include examples of sexual harassment to help students and staff recognize when sexual harassment is occurring (see below).*

School-related conduct that the district considers unacceptable and which may constitute sexual harassment includes, but is not limited to, the following:

1. rape, attempted rape, sexual assault, attempted sexual assault, forcible sexual abuse, hazing, and other sexual and gender-based activity of a criminal nature as defined under the State Penal Law;
2. unwelcome sexual invitations or requests for sexual activity in exchange for grades, promotions, preferences, favors, selection for extracurricular activities or job assignments, homework, etc.;

## NYSSBA Sample Regulation 0110-R

3. unwelcome and offensive public sexual display of affection, including kissing, making out, groping, fondling, petting, inappropriate touching of one's self or others, sexually suggestive dancing, and massages;
4. any unwelcome communication that is sexually suggestive, sexually degrading or implies sexual motives or intentions, such as sexual remarks or innuendoes about an individual's clothing, appearance or activities; sexual jokes; sexual gestures; public conversations about sexual activities or exploits; sexual rumors and "ratings lists;" howling, catcalls, and whistles; sexually graphic computer files, messages or games, etc;
5. unwelcome and offensive name calling or profanity that is sexually suggestive, sexually degrading, implies sexual intentions, or that is based on sexual stereotypes or sexual preference;
6. unwelcome physical contact or closeness that is sexually suggestive, sexually degrading, or sexually intimidating such as the unwelcome touching of another's body parts, cornering or blocking an individual, standing too close, spanking, pinching, following, stalking, frontal body hugs, etc.;
7. unwelcome and sexually offensive physical pranks or touching of an individual's clothing, such as hazing and initiation, "streaking," "mooning," "snuggies" or "wedgies" (pulling underwear up at the waist so it goes in between the buttocks), bra-snapping, skirt "flip-ups," "spiking" (pulling down someone's pants or swimming suit); pinching; placing hands inside an individual's pants, shirt, blouse, or dress, etc.;
8. unwelcome leers, stares, gestures, or slang that are sexually suggestive; sexually degrading or imply sexual motives or intentions;
9. clothing with sexually obscene or sexually explicit slogans or messages;
10. unwelcome and offensive skits, assemblies, and productions that are sexually suggestive, sexually degrading, or that imply sexual motives or intentions, or that are based on sexual stereotypes;
11. unwelcome written or pictorial display or distribution of pornographic or other sexually explicit materials such as magazines, videos, films, Internet material, etc.;
12. any other unwelcome gender- or sexually orientated-based behavior that is offensive, degrading, intimidating, demeaning, or that is based on sexual stereotypes and attitudes.

For purposes of this regulation, action or conduct shall be considered "unwelcome" if the student or employee did not request or invite it and regarded the conduct as undesirable or offensive.



## NYSSBA Sample Regulation 0110-R

### Determining if Prohibited Conduct is Sexual Harassment

*NOTE: This material puts individuals on notice of the standards that will be used to evaluate allegations of sexual harassment.*

Complaints of sexual harassment will be thoroughly investigated to determine whether the totality of the behavior and circumstances meet any of the elements of the above definition of sexual harassment and should therefore be treated as sexual harassment. Not all unacceptable conduct with sexual connotations may constitute sexual harassment. In many cases (other than quid pro quo situations where the alleged harasser offers academic or employment rewards or threatens punishment as an inducement for sexual favors), unacceptable behavior must be sufficiently severe, pervasive and objectively offensive to be considered sexual harassment.

In evaluating the totality of the circumstances and making a determination of whether conduct constitutes sexual harassment, the individual investigating the complaint should consider:

1. the degree to which the conduct affected the ability of the student to participate in or benefit from his or her education or altered the conditions of the student's learning environment or altered the conditions of the employee's working environment;
2. the type, frequency and duration of the conduct;
3. the identity of and relationship between the alleged harasser and the subject of the harassment (e.g., sexually based conduct by an authority figure is more likely to create a hostile environment than similar conduct by another student or a co-worker);
4. the number of individuals involved;
5. the age and sex of the alleged harasser and the subject of the harassment;
6. the location of the incidents and context in which they occurred;
7. other incidents at the school; and
8. incidents of gender-based, but non-sexual harassment.

### Reporting Complaints

*NOTE: The district must investigate all complaints of sexual harassment, even those that are received verbally.*

Any person who believes he or she has been the victim of sexual harassment by a student, district employee or third party related to the school is required to report complaints as soon as possible after the incident in order to enable the district to effectively investigate and resolve the complaint. Victims are encouraged to submit the complaint in writing; however, complaints may be filed verbally.

## NYSSBA Sample Regulation 0110-R

*NOTE: We have listed the Principal or Title IX Coordinator as the individuals to receive harassment complaints. If this is not the case in your district, please revise this section.*

Complaints should be filed with the **Principal or the Title IX coordinator**.

Any school employee who receives a complaint of sexual harassment from a student shall inform the student of the employee's obligation to report the complaint to the school administration, and then shall immediately notify the **Principal and/or the Title IX coordinator**.

In order to assist investigators, victims should document the harassment as soon as it occurs and with as much detail as possible including: the nature of the harassment; dates, times, places it has occurred; name of harasser(s); witnesses to the harassment; and the victim's response to the harassment.

### Confidentiality

It is district policy to respect the privacy of all parties and witnesses to complaints of sexual harassment. To the extent possible, the district will not release the details of a complaint or the identity of the complainant or the individual(s) against whom the complaint is filed to any third parties who do not need to know such information. However, because an individual's need for confidentiality must be balanced with the district's legal obligation to provide due process to the accused, to conduct a thorough investigation, or to take necessary action to resolve the complaint, the district retains the right to disclose the identity of parties and witnesses to complaints in appropriate circumstances to individuals with a need to know. The staff member responsible for investigating complaints will discuss confidentiality standards and concerns with all complainants.

If a complainant requests that his/her name not be revealed to the individual(s) against whom a complaint is filed, the staff member responsible for conducting the investigation shall inform the complainant that:

1. the request may limit the district's ability to respond to his/her complaint;
2. district policy and federal law prohibit retaliation against complainants and witnesses;
3. the district will attempt to prevent any retaliation; and
4. the district will take strong responsive action if retaliation occurs.

If the complainant still requests confidentiality after being given the notice above, the investigator will take all reasonable steps to investigate and respond to the complaint consistent with the request as long as doing so does not preclude the district from responding effectively to the harassment and preventing the harassment of other students or employees.

Investigation and Resolution Procedure

A. Initial (Building-level) Procedure

The Principal or the Title IX coordinator shall conduct a preliminary review when they receive a verbal or written complaint of sexual harassment, or if they observe sexual harassment. Except in the case of severe or criminal conduct, the **Principal or the Title IX coordinator** should make all reasonable efforts to resolve complaints informally at the school level. The goal of informal investigation and resolution procedures is to end the harassment and obtain a prompt and equitable resolution to a complaint.

*NOTE: The district's regulation should include a time frame within which the investigation will commence. In the paragraph below, we have indicated three working days, but that may be changed by the Board.*

As soon as possible but no later than three working days following receipt of a complaint, the **Principal or Title IX coordinator** should begin an investigation of the complaint according to the following steps:

1. Interview the victim and document the conversation. Instruct the victim to have no contact or communication regarding the complaint with the alleged harasser. Ask the victim specifically what action he/she wants taken in order to resolve the complaint. Refer the victim, as appropriate, to school social workers, school psychologists, crisis team managers, other school staff, or appropriate outside agencies for counseling services.
2. Review any written documentation of the harassment prepared by the victim. If the victim has not prepared written documentation, instruct the victim to do so, providing alternative formats for individuals with disabilities and young children, who have difficulty writing and need accommodation.
3. Interview the alleged harasser regarding the complaint and inform the alleged harasser that if the objectionable conduct has occurred, it must cease immediately. Document the conversation. Provide the alleged harasser an opportunity to respond to the charges in writing.
4. Instruct the alleged harasser to have no contact or communication regarding the complaint with the victim and to not retaliate against the victim. Warn the alleged harasser that if he/she makes contact with or retaliates against the victim, he/she will be subject to immediate disciplinary action.
5. Interview any witnesses to the complaint. Where appropriate, obtain a written statement from each witness. Caution each witness to keep the complaint and his/her statement confidential.

## NYSSBA Sample Regulation 0110-R

6. Review all documentation and information relevant to the complaint.
7. Where appropriate, suggest mediation as a potential means of resolving the complaint. In addition to mediation, use appropriate informal methods to resolve the complaint, including but not limited to:
  - a. discussion with the accused, informing him or her of the district's policies and indicating that the behavior must stop;
  - b. suggesting counseling and/or sensitivity training;
  - c. conducting training for the department or school in which the behavior occurred, calling attention to the consequences of engaging in such behavior;
  - d. requesting a letter of apology to the complainant;
  - e. writing letters of caution or reprimand; and/or
  - f. separating the parties.
8. Parent/Student/Employee Involvement and Notification
  - a. Parents of student victims and accused students shall be notified within one school day of allegations that are serious or involve repeated conduct.
  - b. The parents of students who file complaints are welcome to participate at each stage of both informal and formal investigation and resolution procedures.
  - c. If either the victim or the accused is a disabled student receiving special education services under an IEP or section 504/Americans with Disabilities Act accommodations, the committee on special education will be consulted to determine the degree to which the student's disability either caused or is affected by the discrimination or policy violation. In addition, due process procedures required for persons with disabilities under state and federal law shall be followed.
  - d. The Principal or Title IX Coordinator (i.e., the investigator) shall submit a copy of all investigation and interview documentation to the Superintendent.
  - e. The investigator shall report back to both the victim and the accused, notifying them in writing, and also in person as appropriate regarding the outcome of the investigation and the action taken to resolve the complaint. The investigator shall instruct the victim to report immediately if the objectionable behavior occurs again or if the alleged harasser retaliates against him/her.
  - f. The investigator shall notify the victim that if he/she desires further investigation and action, he/she may request a district level investigation by contacting the Superintendent of Schools. The investigator shall also notify the victim of his/her right to contact the U.S. Department of Education's Office for Civil Rights and/or a private attorney. Employees may also contact the U.S. Equal Employment Opportunity Commission or the New York State Division of Human Rights.

## NYSSBA Sample Regulation 0110-R

If the initial investigation results in a determination that sexual harassment did occur, the investigator will promptly notify the Superintendent, who shall then take prompt disciplinary action in accordance with district policy, the applicable collective bargaining agreement or state law.

If a complaint received by the **Principal or the Title IX Coordinator** contains evidence or allegations of serious or extreme harassment, such as employee to student harassment, criminal touching, quid pro quo (e.g., offering an academic or employment reward or punishment as an inducement for sexual favors), or acts which shock the conscience of a reasonable person, the complaint shall be referred promptly to the Superintendent. In addition, where the **Principal or the Title IX coordinator** has a reasonable suspicion that the alleged harassment involves criminal activity, he/she should immediately notify the Superintendent, who shall then contact appropriate child protection and law enforcement authorities. Where criminal activity is alleged or suspected by a district employee, the accused employee shall be suspended pending the outcome of the investigation, consistent with all contractual or statutory requirements.

Any party who is not satisfied with the outcome of the initial investigation by the **Principal or the Title IX coordinator** may request a district-level investigation by submitting a written complaint to the Superintendent within 30 days.

### B. District-level Procedure

The Superintendent shall promptly investigate and resolve all sexual harassment complaints that are referred to him/her by a **Principal or Title IX coordinator**, as well as those appealed to the Superintendent following an initial investigation by a **Principal or Title IX coordinator**. In the event the complaint of sexual harassment involves the Superintendent, the complaint shall be filed with or referred to the Board President, who shall refer the complaint to a trained investigator not employed by the district for investigation.

The district level investigation should begin as soon as possible but not later than three working days following receipt of the complaint by the Superintendent or Board President.

In conducting the formal district level investigation, the district will use investigators who have received formal training in sexual harassment investigation or that have previous experience investigating sexual harassment complaints.

If a district investigation results in a determination that sexual harassment did occur, prompt corrective action will be taken to end the harassment. Where appropriate, district investigators may suggest mediation as a means of exploring options of corrective action and informally resolving the complaint.

## NYSSBA Sample Regulation 0110-R

No later than 30 days following receipt of the complaint, the Superintendent (or in cases involving the Superintendent, the Board-appointed investigator) will notify the victim and alleged harasser, in writing, of the outcome of the investigation. If additional time is needed to complete the investigation or take appropriate action, the Superintendent or Board-appointed investigator will provide all parties with a written status report within 30 days following receipt of the complaint.

The victim and the alleged harasser have the right to be represented by a person of their choice, at their own expense, during sexual harassment investigations and hearings. In addition, victims have the right to register sexual harassment complaints with the U.S. Department of Education's Office for Civil Rights.

Employee victims also have the right to register complaints with the federal Equal Employment Opportunity Commission and the New York State Division of Human Rights. Nothing in these regulations shall be construed to limit the right of the complainant to file a lawsuit in either state or federal court.

### Retaliation Prohibited

Any act of retaliation against any person who opposes sexually harassing behavior, or who has filed a complaint, is prohibited and illegal, and therefore subject to disciplinary action. Likewise, retaliation against any person who has testified, assisted, or participated in any manner in an investigation, proceeding, or hearing of a sexual harassment complaint is prohibited. For purposes of this policy, retaliation includes but is not limited to: verbal or physical threats, intimidation, ridicule, bribes, destruction of property, spreading rumors, stalking, harassing phone calls, and any other form of harassment. Any person who retaliates is subject to immediate disciplinary action, up to and including suspension or termination.

### Discipline/Penalties

Any individual who violates the sexual harassment policy by engaging in prohibited sexual harassment will be subject to appropriate disciplinary action. Disciplinary measures available to school authorities include, but are not limited to the following:

Students: Discipline may range from a reprimand up to and including suspension from school, to be imposed consistent with the student conduct and discipline policy and applicable law.

Employees: Discipline may range from a warning up to and including termination, to be imposed consistent with all applicable contractual and statutory rights.

Volunteers: Penalties may range from a warning up to and including loss of volunteer assignment.

## NYSSBA Sample Regulation 0110-R

Vendors: Penalties may range from a warning up to and including loss of district business.

Other individuals: Penalties may range from a warning up to and including denial of future access to school property.

### False Complaints

False or malicious complaints of sexual harassment may result in corrective or disciplinary action taken against the complainant.

### Training

All students and employees shall be informed of this policy in student and employee handbooks and student registration materials. A poster summarizing the policy shall also be posted in a prominent location at each school. All secondary school student body officers shall receive district training about the policy at the beginning of each school year.

All new employees shall receive information about this policy and regulation at new employee orientation. All other employees shall be provided information at least once a year regarding this policy and the district's commitment to a harassment-free learning and working environment. Principals, Title IX coordinators, and other administrative employees who have specific responsibilities for investigating and resolving complaints of sexual harassment shall receive yearly training on this policy, regulation and related legal developments.

Principals in each school and program directors shall be responsible for informing students and staff on a yearly basis of the terms of this policy, including the procedures established for investigation and resolution of complaints, general issues surrounding sexual harassment, the rights and responsibilities of students and employees, and the impact of sexual harassment on the victim.

*NOTE: The Board should be aware that the Public Employment Relations Board (PERB) has held that to the extent that a school district's sexual harassment regulations relate to investigatory and disciplinary procedures involving employees, the regulation is a mandatory subject of bargaining. (Patchogue-Medford UFSD, 30 PERB ¶ 3041 (1997)). Before adopting this regulation, the Board should consult with its labor counsel to determine whether the provisions contained in the regulation dealing with investigations of employee conduct and employee discipline represent a change in existing district practice or are in conflict with existing collective bargaining agreements.*

Adoption date:

**5300.20 ESSENTIAL PARTNERS**

A. Parents

All parents are expected to:

1. Recognize that the education of their child(ren) is a joint responsibility of the parents and the school community.
2. Send their children to school ready to participate and learn.
3. Ensure their children attend school regularly and on time.
4. Ensure absences are excused.
5. Ensure their children be dressed and groomed in a manner consistent with the student dress code.
6. Help their children understand that in a democratic society appropriate rules are required to maintain a safe, orderly environment.
7. Know school rules and help their children understand them.
8. Convey to their children a supportive attitude toward education and the district.
9. Build good relationships with teachers, other parents and their children's friends.
10. Help their children deal effectively with peer pressure.
11. Inform school officials of changes in the home situation that may affect student conduct or performance.
12. Provide a place for study and ensure homework assignments are completed.

B. Teachers

All district teachers are expected to:

1. Maintain a climate of mutual respect and dignity for all students regardless of actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex, which will strengthen students' self-concept and promote confidence to learn.
2. Be prepared to teach.
3. Demonstrate interest in teaching and concern for student achievement.
4. Know school policies and rules, and enforce them in a fair and consistent manner.
5. Maintain confidentiality in conformity with federal and state law.
6. Communicate to students and parents:
  - a. Course objectives and requirements
  - b. Marking/grading procedures
  - c. Assignment deadlines
  - d. Expectations for students
  - e. Classroom discipline plan.



7. Communicate regularly with students, parents and other teachers concerning growth and achievement.
8. Participate in school-wide efforts to provide adequate supervision in all school spaces, in conformity with the Taylor Law.
9. Confront issues of harassment or any situation that threatens the emotional or physical health or safety of any student, school employee or any person who is lawfully on school property or at a school function.
10. Address personal biases that may prevent equal treatment of all students in the school or classroom setting.

C. Guidance Counselors

1. Maintain a climate of mutual respect and dignity for all students regardless of actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex.
2. Assist students in coping with peer pressure and emerging personal, social and emotional problems.
3. Initiate teacher/student/counselor conferences and parent/teacher/student/counselor conferences, as necessary, as a way to resolve problems.
4. Regularly review with students their educational progress and career plans.
5. Maintain confidentiality in accordance with federal and state law.
7. Provide information to assist students with career planning.
8. Encourage students to benefit from the curriculum and extracurricular programs.
9. Make known to students and families the resources in the community that are available to meet their needs..
10. Participate in school-wide efforts to provide adequate supervision in all school spaces.
11. Confront issues of harassment or any situation that threatens the emotional or physical health or safety of any student, school employee, or any person who is lawfully on school property or at a school function.
12. Address personal biases that may prevent equal treatment of all students.

D. Other School Personnel

1. Maintain a climate of mutual respect and dignity for all students regardless of actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex.
2. Maintain confidentiality in accordance with federal and state law.
3. Be familiar with the code of conduct.
4. Help children understand the district's expectations for maintaining a safe, orderly environment.
5. Participate in school-wide efforts to provide adequate supervision in all school spaces.

6. Confront issues of harassment or any situation that threatens the emotional or physical health or safety of any student, school employee, or any person who is lawfully on school property or at a school function.
7. Address personal biases that may prevent equal treatment of all students.

E. Principals/Administrators

1. Promote a safe, orderly and stimulating school environment, supporting active teaching and learning for all students regardless of actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex.
2. Ensure that students and staff have the opportunity to communicate regularly with the principal/administrators and have access to the principal/administrators for redress of grievances.
3. Maintain confidentiality in accordance with federal and state law.
4. Evaluate on a regular basis all instructional programs.
5. Support the development of and student participation in appropriate extracurricular activities.
6. Provide support in the development of the code of conduct, when called upon. Disseminate the code of conduct and anti-harassment policies.
7. Be responsible for enforcing the code of conduct and ensuring that all cases are resolved promptly and fairly.
8. Participate in school-wide efforts to provide adequate supervision in all school spaces.
9. Confront issues of harassment or any situation that threatens the emotional or physical health or safety of any student, school employee, or any person who is lawfully on school property or at a school function.
10. Address personal biases that may prevent equal treatment of all students and staff.

F. Superintendent

1. Promote a safe, orderly and stimulating school environment, supporting active teaching and learning for all students regardless of actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex.
2. Inform the Board about educational trends relating to student discipline
3. Review with district administrators the policies of the Board of education and state and federal laws relating to school operations and management.
4. Maintain confidentiality in accordance with federal and state law.
5. Work to create instructional programs that minimize incidence of misconduct and are sensitive to student and teacher needs.
6. Work with district administrators in enforcing the code of conduct and ensuring that all cases are resolved promptly and fairly.
7. Participate in school-wide efforts to provide adequate supervision in all school spaces.
8. Confront issues of harassment or any situation that threatens the emotional or physical health or safety of any student, school

employee, or any person who is lawfully on school property or at a school function.

9. Address personal biases that may prevent equal treatment of all students and staff.

G. Board of Education



1. Promote a safe, orderly and stimulating school environment, supporting active teaching and learning for all students regardless of actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex.
2. Maintain confidentiality in accordance with federal and state law.
3. Develop and recommend a budget that provides programs and activities that support achievement of the goals of the code of conduct.
3. Collaborate with student, teacher, administrator, and parent organizations, school safety personnel and other school personnel to develop a code of conduct that clearly defines expectations for the conduct of students, district personnel and visitors on school property and at school functions.
4. Adopt and review at least annually the district's code of conduct to evaluate the code's effectiveness and the fairness and consistency of its implementation.
5. Lead by example by conducting Board meetings in a professional, respectful, courteous manner.
6. Confront issues of harassment or any situation that threatens the emotional or physical health or safety of any student, school employee, or any person who is lawfully on school property or at a school function.
7. Address personal biases that may prevent equal treatment of all students and staff.

## NAVIGATING THE LANDMINES OF TECHNOLOGY MISUSE

*How Districts Can Protect The School Environment*

**Linda Bakst**  
 Deputy Director of Policy Services  
 &  
**Jay Worona**  
 General Counsel  
 New York State School Boards Association

For the  
**The 71<sup>st</sup> Annual Conference of the National School Boards Association**  
 San Francisco, California

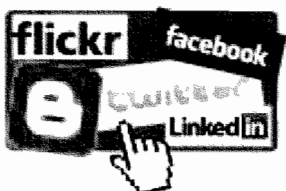



## NAVIGATING THE LANDMINES OF TECHNOLOGY MISUSE

Understanding what we  
**DON'T** know  
 about Technology

### How Are Students Using Technology to Access Each Other?

- Social Networking
- Instant Messaging
- Picture/Video Sites
- Cell Phone Issues
- Posting Sites




### Students and Technology Use-By the Numbers

- 96% of surveyed students who had online access have previously accessed a social networking website.
- Children age 10-14 spend more time on the internet than watching TV.

**Social Networking**

- 50% of teens who use the internet have at least one profile on at least one social networking website.




### Students and Technology Use-By the Numbers


- 43% of social network users who are teens send messages through social networks daily.

**Cyber-Bullying**

- 43% of teens have been victims of cyber-bullying.
- 27% of youths who had been targets of cyber-bullying (monthly or more often) had carried a weapon to school at least once.



### Students and Technology Use-By the Numbers



The number of teenagers who have sent or posted nude or semi-nude pictures or video of themselves:

- 20% of teenagers overall
- 22% of teen girls
- 18% of teen boys
- 11% of young teen girls ages 13-16

## Students and Technology Use-By the Numbers

- 15% of teenagers who have sent or posted nude or seminude images of themselves report that they have done so to someone they *only know online*. However, 48% of teenagers say they have received this type of message.
- 36% of teen girls and 39% of teen boys say it is common for nude or semi-nude photos to be shared with people other than the intended recipient.

## Students and Technology Use-By the Numbers

### Why are teens engaging in this behavior?



- 51% of teen girls cite pressure from a boy as the reason for sending sexy messages or images. Only 18% of teen boys cited pressure from girls as the reason.
- 66% of teen girls and 60% of teen boys say they did so to be "fun or flirtatious" – this was the most common reason cited during the survey.
- 40% of teen girls viewed sexting as a "joke".

## Issues Schools are Facing with Technology Use

- Cheating
- Disruption of School Operations (ringers; theft of phones/computers; cyber-bullying; sexting)
- Flirting



## Issues Schools are Facing with Technology Use

### Criminal Purposes

- Engaging in child pornography – students who are being photographed and those taking the photographs.
- Possession of child pornography – students who took the photographs and students who receive the photograph (whether solicited or unsolicited), and fail to turn over same to an adult or the police.
- Distribution of child pornography if sent to fellow classmates/friends. (See examples pp.5-6)

## Issues Schools are Facing with Technology Use

- Bullying/Harassment
- Can take place off school premises but have consequences in school that disrupt the educational system.
- Cyber-bullying can be anonymous and inflict increased stress upon the victim, who cannot confront the bully in the traditional sense. This anonymity can also lead children to engage in online behaviors they may not otherwise attempt if the experience were face-to-face.



## Student Technology Use in the News

- On June 22, 2010, New York State passed the Dignity for All Students Act (DASA), an enumerated anti-bullying bill. Gov. Signed September 8, 2010 (pp.7-8)
- U.S. Dept. of Education issues guidance to support educators in combating bullying in schools on October 26, 2010 (p. 8)



## Student Technology Use in the News

- "Victim of Secret Dorm Sex Tape Posts Facebook Goodbye, Jumps to His Death" (p.10)



Tyler Clementi

- "Duke University Graduate Karen Owen Pens Sex Life Thesis" (pp.10-11)

## Student Technology Use in the News

- In Massachusetts, six teenagers charged in suicide death of bullied 15 year old Irish freshman (p.14)



- "Text rage" Leads to Alleged Brutal Teen Beating" (p. 14)
- "Coach sued for requesting Facebook logins" (p.14)

## Student Technology Use in the News

- "Vermont Lawmakers Lessen Penalties for Teen 'Sexting'" (p.15)
- "Sexting Girls Facing Porn Charges Sue D.A.", (pp.15-16)
- "Sexting" Investigated at N. Hartford School" (p.16)



See articles on sexting entitled: "States Struggle with Minors' Sexting" and "A Girl's Nude Photo, and Altered Lives" from the New York Times on Sunday March 26, 2011.

## What is a School's Ability to Gain Control, Prevent Problems & Impose Discipline where necessary?

- A. Critical Considerations - the First and Fourth Amendments to the U.S. Constitution;
- B. What Constitutes Criminal Behavior and When to Involve the Police;
- C. Employee Use of Technology
- D. Policy Considerations and Practical Resources

## First Amendment Rights – Defining the Essential Terms

*"Congress shall make no law ... abridging the freedom of speech, or the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."*



First Amendment, United States Constitution (p.16)

## Landmark Rulings of the United States Supreme Court -Free Speech

The United States Supreme Court ruled that students are entitled to First Amendment free speech protections even within the walls of the school house building but that these rights may be subject to reasonable time, place and manner restrictions.

*Tinker v. Des Moines Independent Community School District*



## Landmark Rulings of the United States Supreme Court -Free Speech

*Tinker v. Des Moines*  
*Independent Community School District* (pp. 16-17)



## Free Speech



However, the Court held in *Tinker* that student free speech protections do not extend to speech which would materially and substantially disrupt the educational process of the school environment or that would impinge on the rights of others.



## Exceptions to Tinker



- Lewd and Indecent Speech (*Bethel School District No. 403 v. Fraser*)
- School Sponsored Speech (*Hazelwood School District v. Kuhlmeier*)
- Speech which Promotes Illegal Drug Usage (*Morse v. Frederick*)



## *Morse v. Fredrick*



## *Morse v. Fredrick*



- The Court, in a majority decision written by Chief Justice Roberts, distilled two basic principles from its previous rulings on student speech in *Tinker*, *Fraser*, and *Hazelwood*. First, student free speech rights are construed "in light of the special characteristics of the school environment."
- Second, "the mode of analysis set forth in *Tinker* is not absolute" or "the only basis for restricting student speech."

## *Morse v. Fredrick*



- The governmental interest in stopping student drug abuse allows schools to restrict student expression they reasonably regard as promoting illegal drug use. However, the Supreme Court rejected the school district's call for a broader rule that the speech was "proscribable because it is plainly 'offensive' as that term is used in *Fraser*." Such a rule would "stretch *Fraser* too far," the Court held, noting that the "concern here is not that [the student's] speech was offensive, but that it was reasonably viewed as promoting illegal drug use."

## • The Supreme Court's Recent Student Search and Seizure Cases

• In the Supreme Court's previous drug testing cases, the Court also demonstrated its concerns with drug usage amongst our nation's students. As a result it has upheld school officials' authority to conduct random drug tests on students engaging in extracurricular activities such as sports. Now, the Court has transposed those concerns into the student free speech area.



## • *Morse v. Fredrick*



• Justice Thomas wrote separately "to state [his] view that the standard set forth in *Tinker*, is without basis in the Constitution."

## • *Morse v. Fredrick*



• "To accomplish the desirable ends of teaching self-restraint, obedience, and other civic virtues, the Master of a school must govern these pupils, quicken the slothful, spur the indolent, restrain the impetuous, and control the stubborn."

## • New York State Commissioner of Education Decision (an example of deference for school authorities)

### • *Appeal of Ravick* (p. 36)

• NY's Commissioner of Education held that a school district had authority to suspend a student who e-mailed an offensive message from a home computer to other students' home computers because the district reasonably interpreted the e-mail as a threat to student safety and it substantially disrupted school operations.



## • *Doninger v. Niehoff* (p.22)

• A high school junior brought suit alleging that her First Amendment rights were violated when the district barred her from running for senior class secretary after she posted a derogatory blog on an independent website stating that the "douchebags in central office" had canceled a school event and urged students and parents to call complaints into the district to "piss off" the superintendent. Court ruled for the district given the disruptive impact of the speech.



## • *Wisniewski v. Board of Educ. of Weedsport CSD* (pp. 23-24)

• A three judge panel of the United States Court of Appeals for the Second Circuit, which has jurisdiction over all of New York State, affirmed a decision by the United States District Court for the Northern District of New York, albeit on slightly different grounds, which held that the Weedsport Central School District did not violate the First Amendment Free Speech rights of a District pupil when the District suspended the pupil for making a threat against a District teacher on his home computer that was ultimately shared with the Teacher by others and caused disruption at school.







## Student 4th Amendment Rights – What Constitutes an Illegal Search and Seizure?

*"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."*



*Fourth Amendment,  
United States Constitution,  
(p. 19)*

## Student Fourth Amendment Rights

The Supreme Court has previously determined that students attending public schools have Fourth Amendment rights to be "secure in their persons, and effects, against unreasonable searches and seizures."  
(see p. 20)



## Search and Seizure of Students

In *New Jersey v. T.L.O.*, 469 U.S. 325 (1985), the United States Supreme Court ruled that student searches conducted by school officials were subject to the Fourth Amendment and concluded that such searches may be conducted as long as the search was "reasonable under the circumstances." (p. 20)

To determine the proper standard, the Court balanced the child's legitimate expectation of privacy with the school's equally legitimate need to maintain an environment in which learning can take place.



## Student Fourth Amendment Rights-Strip Search

On June 25<sup>th</sup>, the Supreme Court ruled that a school district had not properly demonstrated that it had the requisite grounds to strip search of a 13 year old female student, although the Court was satisfied that the district had enough grounds to justify a search of the student's backpack and outer clothing. (The district was searching for prescription ibuprofen). The Court did, however provide qualified immunity to the school administrators who conducted the search.

*Safford Unified School District #1 et. al.  
Redding* (p. 21)



## Student Fourth Amendment Rights-Strip Search



The Court reaffirmed that the more deferential "reasonable suspicion" standard is applicable to student searches to justify the legality of school administrator's searches of students but that searches will be "permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction."

## Student Fourth Amendment Rights-Strip Search



The indignity of the search does not, of course, outlaw it, but it does implicate the rule of reasonableness as stated in *T.L.O.*, that "the search as actually conducted [be] reasonably related in scope to the circumstances which justified the interference in the first place." Here, the content of the suspicion failed to match the degree of intrusion."

## Student Fourth Amendment Rights-Strip Search



Justice Thomas concurred and dissented in part. Agreed that qualified immunity should have been granted BUT also would hold search was constitutionally acceptable.

“The majority imposes a vague and amorphous standard on school administrators. . . [T]he Court should return to the common-law doctrine of *in loco parentis* under which the judiciary was reluctant to interfere in the routine business of school administration, allowing schools and teachers to set and enforce rules and to maintain order.”

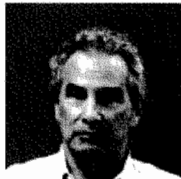
## Student Fourth Amendment Rights-Strip Search



“By declaring the search unreasonable in this case, the majority has “surrender[ed] control of the American public school system to public school students” by invalidating school policies that treat all drugs equally and by second-guessing swift disciplinary decisions made by school officials. If the common-law view that parents delegate to teachers their authority to discipline and maintain order were to be applied in this case, the search of [the student] would stand.”

## What Constitutes Criminal Behavior & When to Involve the Police?

“Sexting’ Hysteria Falsely Brands Educator as Child Pornographer” (pp. 37-38)



## What Constitutes Criminal Behavior & When to Involve the Police?



### Background

School administrators in Virginia learned that students were distributing nude pictures on their cell phones. Assistant Principal Ting Yi Oei, age 60, was assigned to investigate. Oei and a school safety and security specialist met with a 16-year-old student who admitted possessing one of the pictures on his cell phone.

The image depicted the torso of a 17-year-old girl wearing only underpants, with her arms covering her breasts. The boy claimed no knowledge of the girl, or who sent him the picture.

## What Constitutes Criminal Behavior & When to Involve the Police?



### Oei's Actions

Oei showed the picture to the building principal, who told him to preserve a copy on his computer for the investigation. He did not know how to transfer the text message to his computer, so he asked the student to forward the photograph as a text message to Oei's phone, so he could then send it via email to his work computer. Oei told the student to delete the photograph.

Oei tried to determine who the girl was, but investigations revealed nothing further, and he reported same to the principal.

## What Constitutes Criminal Behavior & When to Involve the Police?



### Police Involvement

Two weeks later, the same boy was disciplined for another school infraction. His mother found out about the picture and was furious that she had not been informed, and demanded his suspension for the pants incident be revoked. When Oei refused, she informed the police about the photo. Investigators came to school and helped Oei recover the photo from his phone. They determined the photo was of a student at Oei's school.

## What Constitutes Criminal Behavior & When to Involve the Police?



Two weeks later, Police filed charges against Oei that he failed to report suspicion of child abuse (a misdemeanor). Although the prosecution admitted the photo did not show evidence of sexual activity or show the student's genitalia (making it unclear whether any child abuse had occurred), the county prosecutor demanded that Oei resign or the charge would be increased to a felony. Even under the state's reporting requirements, though, Oei had fulfilled his responsibility by showing his supervisor, the principal the picture. Nonetheless, the prosecutor's office pursued the case.

## What Constitutes Criminal Behavior & When to Involve the Police?



### Grand Jury Indictment

A grand jury indicted Oei for possession of child pornography – a crime with a possible 5 year jail sentence. He was arrested at school.

The county prosecutor's office stated to media, "We just feel very strongly that this is not someone who should be in the Loudon County school system".

## What Constitutes Criminal Behavior & When to Involve the Police?



### Devastating Effects

Oei was reassigned by the district to a position with no contact with students. His already ill wife became paranoid. He took a second mortgage on his home to pay legal bills. Oei was also charged with asking the 16 year-old student to send him the photo, and for storing the photo on his computer, which could have added two more years to his jail sentence.

## What Constitutes Criminal Behavior & When to Involve the Police?



### Resolution

Oei's defense attorney filed a motion to dismiss the charges on the grounds that the photo did not constitute child pornography, and a judge agreed.

All charges against Oei were dismissed. However, says Oei, as he considers whether to return to the district or seek employment elsewhere, "If someone were to Google me, why would you want to touch someone who had [this trouble], even if I had the charge dismissed?...I don't think you'd necessarily want that baggage."

## Federal Pornography and Obscenity Statutes (p. 39)



- 18 USC § 2251 prohibits production of child pornography (mandatory minimum jail term is 15 years, while the maximum is 30 years in prison).
- 18 USC § 2252 and §2252A prohibit possessing, distributing, and receiving child pornography (mandatory minimum jail term for possession is 1 year if child pornography under the provision is 5 years, while the maximum is life in prison).
- 18 USC § 2260 prohibits the importation of child pornography (maximum jail term is 10 years).
- 18 USC § 1460 prohibits the transmission of obscene material, including through a computer, to a minor under age 16.
- 47 USC § 223(d) prohibits the use of a computer to display child pornography or obscenity on a monitor that makes it available to a minor under age 18.
- 47 USC § 231 prohibits knowingly making a commercial communication using the internet that includes obscene and is available to a minor under age 17.

## Criminal Considerations in New York (pp. 39-42)



- Section 156.05 of the New York State Penal Law makes it a class A misdemeanor for a person to knowingly use a device to be used, or access a computer, computer network, or computer network without authorization.
- Section 156.10 of the New York State Penal Law makes it a class B misdemeanor to access a computer, computer network, or computer network without authorization.
- New York State Law prohibits intentional dissemination, manufacture, promotion, going or selling any material that is obscene (NY Penal Law section 235.00).
- NY Penal Law 235.20 p. 36 prohibits the dissemination of indecent material to minors.
- New York State Law prohibits distribution, dissemination, manufacture, promotion, going or selling any material that is obscene (NY Penal Law section 235.00).
- NY Penal Law 235.20 p. 36 prohibits the dissemination of indecent material to minors.

## Child Abuse Reporting Requirements

- Child Abuse in the Educational Setting (Education Law section 1125) (p. 41)
- Child Abuse in the Domestic Setting (Social Services Law section 412 *et seq.*) (pp. 41-42)



## Fourth Amendment Search and Seizure Issues (p. 42)



If school officials, administrators, teachers and/or staff become aware that students are using technology for cyber-bullying, harassment, sexting, and the like, what steps should be taken?

## Fourth Amendment Search and Seizure Issues

- Reasonable suspicion must be present in order to search information contained on technology devices.
- Investigating Sexting: Contact law enforcement prior to confiscating evidence
- When in doubt contact school district attorney



## General Guidelines



Ultimately, two functions of law enforcement vis-à-vis schools can help school administrators and officials decide when the police should be involved: protecting students, and working with students and district staff and officials to understand the negative consequences of students' inappropriate use of technology.

Consider the role of the S.R.O in investigating student technology cases.

## How to Work With Law Enforcement



The police-school relationship has long antedated these laws and has existed in the context of dealing with crimes on school property, K-9 searches of lockers, bomb threat responses, patrols of school property and school resource officers in the schools. This enduring relationship has become stronger and more vital in light of the on-going war against terror, school related violence and the prevalence of drug use in our society. (See special rules which may apply in your state regarding how police school district relationship is defined. (pp.44-45))

## If Cyber-Bullying Escalates to Stalking/Harassment (pp. 43-44)

- Police and parents should be contacted when:
  - A student makes threats of violence to a particular student, groups of students, or the school at large
  - School officials learn that student(s) (the victim or bully) plans or actually takes physical steps to confront the other student(s) in a way that is not designed to resolve the issue peacefully
  - Students complain of being actually threatened or complain that the behavior has put them in a situation where they feel unsafe at school or at home.

**Anthony Stancel accused of posing as girl on Facebook, blackmailing students into sex acts**  
(p.54)

By staff writers  
NEWS.com.au  
February 06, 2009 07:49am



Accused ... Anthony Stancel has been charged over alleged sexual assaults / AP

A TEENAGER has been charged with sexual assault after he allegedly posed as a girl on Facebook, had classmates send him naked photos and blackmailed them into performing sex acts. If convicted, he could face up to 293 years in prison.

**Anthony Stancel accused of posing as girl on Facebook, blackmailing students into sex acts**

Anthony Stancel, 18 of New Berlin, Wisconsin, persuaded at least 31 boys to send him compromising pictures and then coerced some of them to perform sexual acts to keep him from releasing the photos on the internet, prosecutors said. "The kind of manipulation that occurred here is really sinister in my estimation," Waukesha County District Attorney Brad Schmiel told the Associated Press.

Mr Stancel is accused of posing as a girl, named either Kayla or Emily, who would ask his schoolmates to perform sexual acts on a male friend of her or trick them into sending nude photos or videos of themselves.



**Anthony Stancel accused of posing as girl on Facebook, blackmailing students into sex acts**

They were told that if they didn't comply, the girl would send the nude photos or movies to their friends and post them on the internet, according to the criminal complaint.

Mr Stancel has been charged with five counts of child enticement, two counts of second degree sexual assault of a child, two counts of third-degree sexual assault, possession of child pornography, repeated sexual assault of the same child and making a bomb threat.

**Anthony Stancel accused of posing as girl on Facebook, blackmailing students into sex acts**

The incidents occurred from mid 2007 until the time of Mr Stancel's arrest in November last year.

The investigation into Mr Stancel began after bomb threats in November led to the closure of his school, New Berlin Eisenhower Middle High School. Police said the threats were sent via email from a computer that Mr Stancel was logged into at a public library.

**Anthony Stancel accused of posing as girl on Facebook, blackmailing students into sex acts**

During the bomb threat investigation into Mr Stancel one of his alleged victims went to police after Mr Stancel asked him to get nude pictures of his brother, prosecutors said.

More than 300 naked photos and movie clips of his classmates and another 600 professionally made pornographic movies of children were allegedly found on Mr Stancel's computer.

**Anthony Stancel accused of posing as girl on Facebook, blackmailing students into sex acts**


Mr Stancel's lawyer, Craig Kuhary, told the Associated Press his client plans to plead not guilty.

"It's too early in the case for me to make a statement, other than the fact at some point we are going to go into events that had taken place earlier that might have had some impact on what he did here," he said.



**Anthony Stancl accused of posing as girl on Facebook, blackmailing students into sex acts**

"The Stancl case, as extreme as it is, offers an unsettling answer: what happened here is shocking because it was not all that shocking. . . This exchange was within the range of what kids-lots of kids-consider normal. On line, a boy chats with a girl he's never met. Pants go down. Pictures are sent. And a chain of unpredictable, unknowable consequences is set in motion."

*Sexortion at Eisenhower High, by Michael Joseph Gross  
GQ Magazine, August 2009*




**Constitutional Rights of Teachers** (pp.55-64)


*Pickering v. Bd. of Education*

**Constitutional Rights of Teachers** (pp 55-64)





*Connick v. Meyers*

*Waters v. Churchill*



**Constitutional Rights of Teachers** (pp 55-64)

*Garcetti v. Ceballos*

*Weintraub v. Bd. Of NYC*


*Mayer v. Monroe Cmty Sch. Corp*

*Melzer v. Board of Educ. of the City of New York*

**Decisions Impacting Rights of School Employers to Control Employee Use of Technology**

*Spanierman v. Hughes* (p. 62)


A non-tenured teacher was terminated for "poor judgment" after the district discovered the existence of several "MySpace" profiles he created which contained pictures of nude men with inappropriate comments beneath them, "peer-like" conversations with students about their weekend activities and parties, and the like. The teacher sued, alleging the district violated his rights to free speech and expression. Court ruled for district.



**Decisions Impacting Rights of School Employers to Control Employee Use of Technology**

*Snyder v. Millersville University, et al,* (pp. 62-63)

A student teacher was denied certification to teach from her university due to certain web pages on the internet that concerned her. The court determined that there was no violation of the student teacher's free speech rights because her web postings only raised personal matters, and did not touch on matters of public concern.



### Decisions Impacting Rights of School Employers to Control Employee Use of Technology

*Board of Educ. of the City of N.Y. v. Herzhkovitz*, (p. 63)

A state appeals court ruled that a district did not owe back pay to a teacher fired for admittedly seeking sexual relations with a student through the internet and over the phone, an appellate court has ruled. Remarkably, firing this teacher has entailed seven legal proceedings over ten years for the district.



### Decisions Impacting Rights of School Employers to Control Employee Use of Technology

*Bd. Of Ed. of the Peru CSD v. Stepline*, (p. 64)



A tenured second grade teacher was caught downloading obscene and pornographic material from the internet onto computers located in his classroom, and accessible and used by his students on a regular basis. His activity occurred during the school day but while the children were away from the classroom. A § 3020-a hearing officer found the teacher guilty of the charges and imposed a one year suspension without pay.

### Decisions Impacting Rights of School Employers to Control Employee Use of Technology

*Bd. Of Ed. of the Peru CSD v. Stepline*,

The District appealed and a state appeals court agreed that the penalty was not appropriate. Although "the internet provides a wonderful addition to the teaching tools... its presence also presents the possibility for damaging and far reaching abuse." The court noted that teachers are guardians, custodians and role models for small children, and this teacher placed pornography on the very computers the children accessed on a regular basis.



### Applicable Statutes Impacting Rights of Employers to Control Use of Technology by Employees (pp. 64-65)

- Stored Communications Act (SCA) Essentially, this statute forbids an individual from attempting to obtain emails, messages, etc that are stored on a computer or other electronic communication service, without permission.
- Electronic Communications Privacy Act Prohibits a person from "intercepting" electronic communications. (See *Pure Power Boot Camp v. Warrior Fitness Boot Camp*, in which a federal court ruled that an employer violated the SCA by reviewing an employee's private e-mail account maintained on a company computer).

### Applicable Statutes Impacting Rights of Employers to Control Use of Technology by Employees (pp. 66-67)



- NY Penal Law § 250.05 Prohibits a person from unlawfully intercepting or accessing an electronic communication.
- NY Labor Law § 201 d(2) Generally prohibits employers from taking negative employment action against an individual for his legal political/recreational activities outside of work hours, off the employer's premises and without use of the employer's equipment or property.

### Employee Internet Speech – Blogging, Videos, Emails, & the Like-What is Protected?

- Blogging and social networking by employees is now quite common (Facebook, Livejournal, Twitter, MySpace, etc).
- Schools may be restricted from disciplining school employees if their private speech is on a matter of public concern. (See Labor Law §201 d).
- Districts can be open to liability for *not* supervising employees' use of social networks in instances when they are hosted by the district and in instances when they are not.



### ● Employer Use of Technology During Interviews & Background Checks (pp. 69-70)

● Although employers wish to exercise due diligence during the hiring process, school officials should be mindful of charges of discrimination that may be articulated by employees who charge prospective employees for failing to hire them based upon information which was discovered on the internet (e.g. be aware of Title VII; State's Human Rights Law).



### ● Employee Internet Communications with Students- A Protected Right? (pp. 70-71)



● Criminal Considerations for what mandatory reports must be made

● Use of School Policies to express district expectations and requirements



### ● Employee Use of Computers & Equipment (pp. 71-72)

● Districts may require employees to sign Acceptable Computer Use Agreements wherein employees agree that they will abide by the district's rules for using district-owned computers, whether or not school is in session



### ● Employee Use of Computers & Equipment (pp. 71-72)

● District policies should plainly state whether the district currently monitors employees' use of district-owned computers/cell phones (whether physically located on district property or sent home with staff). If monitoring procedures are in place, they should be used regularly.



## ● D. Policy Implications and Other Considerations

### ● 1. Curriculum and Instruction

● Infuse curriculum with opportunities for social-emotional growth and learning




### ● 2. Policies to Review and Consider

- a. Computer Network Use
- b. Internet Safety
- c. Student Use of Personal Electronic Devices
- d. Code of Conduct
- e. Sexual Harassment
- f. Bullying Prevention




### a. Computer Network Use

- Applies to all users
- Use for educational purposes only
- Prohibits disclosure of personal information
- Establishes no expectation of privacy
- “Privilege, not a right” – but.....disciplinary consequences need to be discussed



### b. Internet Safety

- Required by federal law
- Blocking/filtering mechanism
- Educate students regarding cyber-bullying and internet safety




### c. Student Use of Personal Electronic Devices

Prohibit/Permit use of devices


Input of staff, parents and students when developing policy

Parameters of searching devices

Confiscation and other consequences for violating policy



### d. Code of Conduct




Essential elements:

- Rights and responsibilities of students
- Definitions
- Roles of “essential partners”
- Prohibited conduct – enumerated list
- Range of consequences
- Due process rights


### Code of Conduct

- Possible language to include (in **Prohibited Conduct** section):
- Engage in off-campus misconduct that endangers the health and safety of students or staff within the school or substantially disrupts the educational process. Examples of such misconduct include, but are not be limited to:
  1. Cyberbullying (i.e., menacing, willful and repeated harm through the use of electronic text,
  2. Threatening or harassing students or school personnel over the phone or other electronic medium.
  3. Using message boards or e-conferences, threats, derogatory comments or post pornographic pictures of students or school personnel


### Code of Conduct



- Focus on prohibited behaviors – not mode of delivery / communication (i.e., bullying, harassment, intimidation is the behavior)
- May address cell phones, if not in separate policy. If in separate policy, incorporate by cross-reference
- Prohibited conduct section should be carefully reviewed annually

**Code of Conduct** 

Schools can require that the Code of Conduct contain an acknowledgment form to be signed by parents and students ensuring that they are aware of school rules and prohibitions in this area.

**Sexual Harassment** (p.50) 

Sexual harassment is not a criminal offense. However, a school's failure to follow sexual harassment reporting and investigation requirements (under both school policy and federal and state mandates) can subject the school to civil liability by a student who alleges the school knew of sexually harassing behavior occurring during school hours yet failed to address the behavior.


**f. Bullying Prevention and Intervention Policy**

**Key elements:**


- Reporting and investigating
- Definitions
- School-wide programs
- Training component
- Dissemination
- Monitoring
- Review

**Policy Considerations and Practical Resources**

- LGBTQ students – need for awareness; specific policy implications and potential accommodations.
- Potential accommodations for transgender youth and/or students who feel unsafe in school may address locker room use, access to a private restroom, “pass” to visit counselor, etc.
- Consider adequacy of supervision and training for those who provide supervision

**Practical Suggestions** 


- Ensure all adult staff members are familiar with the social media that students now use to communicate with one another. Do not assume all staff are as tech-savvy as students!
- Conduct informal and/or anonymous formal assessments of students to better understand issues of school climate.
- Consider implementing education programs throughout the district to instill compassion rather than imposing punitive discipline.

**Take-Aways** 

- Keep abreast of developments in the law
- Keep lines of communication open among parents, students, staff and administration
- Ensure that district policies are legally defensible and practically useful
- Develop district-wide approaches aimed at creating an inclusive school environment



**Take-Aways**

- Educate parents and students on the dangerous and long-term consequences of bullying in all its forms
- Engage the community in conversation about emerging issues, including LGBTQ youth.



**NAVIGATING THE LANDMINES OF TECHNOLOGY MISUSE**  
*How Districts Can Protect The School Environment*

**Linda Bakst**  
Deputy Director of Policy Services  
&  
**Jay Worona**  
General Counsel  
New York State School Boards Association




For the  
**The 71<sup>st</sup> Annual Conference of the National School Boards Association**  
San Francisco, California

**SchoolBoardU**  
*Learning for Leaders*

## Essential Policy Elements of School Safety: Keeping Children Protected

Presented by:  
Linda Bakst, Deputy Director for Policy Services  
Jessica Goldstein, Senior Policy Consultant  
Courtney Sanik, Policy Consultant



New York State School Boards Association

## Welcome and Introduction

Research shows there is a relationship between student safety and student achievement:

“Students who do not feel safe in school tend to have difficulty concentrating in class and retaining what was taught” (Garcia-Reid, et al., 2005)

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## Agenda

- Emergency Preparedness and Crisis Management – SAVE
- School Climate and Bullying Prevention
- Board Policy and Building Safety

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## Emergency Preparedness and Crisis Management – SAVE Requirements

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## Emergency Preparedness and Crisis Management – SAVE Requirements

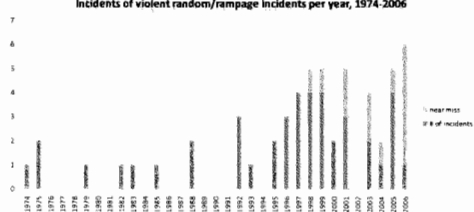
- SAVE Legislation
- Components of SAVE
- District-wide Plan
- Building-level Plan
- Hypothetical Emergency

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## Project SAVE - History and Context

- Rising numbers of increasingly violent (and high-profile) incidents on school grounds through the 1990's.

Incidents of violent random/rampage incidents per year, 1974-2006



Source: Compiled from various school violence resource internet sites including [www.columbine.org/06](http://www.columbine.org/06)

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### Project SAVE - History and Context

- January 1999 - State Task Force on School Violence (Lt. Gov. Mary Donohue).
- April 1999 culmination and acceleration – Columbine.
- July 2000 - SAVE legislation (Safe Schools Against Violence in Education) passed.
- April 2001 - SED Guidance Document.

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### Components of the SAVE legislation

Today's focus:

- District-wide School Safety Plan;
- District-wide School Safety Team;
- Building-level School Safety Plan;
- Building-level School Safety Team.

Also:

- Required a District-wide Code of Conduct;
- Allowed teacher removal of violent or disruptive students;
- Uniform Violent and Disruptive Incident Reporting system (VADIR);
- Civility, Citizenship, and Character Education;
- Health Curriculum to address violence prevention and mental health issues;
- Interpersonal Violence Prevention Education;

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### Components of the SAVE legislation

Components of SAVE, cont.:

- School Violence Prevention training for staff (initial certification and annually);
- Whistleblower protection;
- Fingerprinting of prospective employees;
- Assault on a teacher is a Class D felony (was a Class A misdemeanor);
- Required reporting for Child Abuse in an Educational Setting;
- Prohibited "silent resignations" (for allegations of child abuse in an ed. setting);
- Expanded options for discipline of teachers; and
- Improved coordination between schools and justice system - court notification to schools.

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### District-Wide School Safety Plan and Team

District-wide School Safety Plan must address:

1. Responding to threats
2. Responding to acts of violence
3. Appropriate prevention/intervention strategies, such as:
  - a. Training for security personnel
  - b. conflict resolution
  - c. peer mediation
  - d. youth courts
  - e. extended day programs
4. Contacting law enforcement
5. Contacting parents and/or guardians
6. School building security
7. Dissemination of informative materials regarding early detection of potentially violent behaviors
8. Annual school safety training for staff and students
9. Protocol for responding to bomb threats, hostage taking, intruders and kidnapers
10. Developing strategies to improve communication among students and between students and staff
11. Description of duties of hall monitors and other school safety personnel

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### District-Wide School Safety Plan and Team

What is the Board's role?

1. Appoint the district-wide school safety team (incl. board rep);
2. Make sure there is a district-wide School Safety Plan that includes the required elements (can have a policy about the plan, 8130), and make sure the plan is reviewed continually;
3. Make sure the appropriate training of staff and students is provided;
4. Make sure the district has hired appropriate staff for security;
5. Provide for programs that promote student-student and staff-student communication; and
6. Consider anonymous reporting system for school violence.

Other policy decisions: building security - ID cards, surveillance, metal detectors, locked doors, or just make sure eyes are open.

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### Building-Level School Safety Plan and Team

Components of Building-level School Safety Plan:

1. Safe evacuation, routes, shelter sites, medical needs, transportation, parent notification;
2. Designate an emergency response team;
3. Floor plans, blueprints, interior schematics, grounds, area road maps;
4. Internal and external communication system;
5. Implementation of Incident Command System (ICS);
6. Coordinate with Statewide Disaster Mental Health Plan;
7. Procedures to review and conduct drills and exercises to test plan components; and
8. Policies and Procedures for securing and restricting access to crime scene.

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### Building-Level School Safety Plan and Team

What is the Board's role?

1. Make sure there is a Building-Level Emergency Response Plan and Safety Team.
2. Safety team appointed by Building Principal, but the Board can add others as appropriate.
3. Board can establish other guidelines for team appointments.
4. Provide for adequate communication system.
5. Allow time in calendar for drills.

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### Emergencies and Policy Implications

Brainstorm examples:

- Person/Behavioral
- Natural
- Other

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### School Climate and Bullying Prevention

School climate:  
The learning environment created through the interaction of human relationships, physical setting and psychological atmosphere (Perkins 2006)

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### School Climate and Bullying Prevention

School climate (continued)

- How do we assess it?
- What resources are available to assess school climate?
- What is a 'discipline gap'?

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### School Climate and Bullying Prevention

- New Developments
  - The Dignity for All Students Act
    - Effective date July 1, 2012
    - Requirements include prohibition on harassment; a person in each school trained in human relations; guidelines for instruction on tolerance
  - SED Guidance on Bullying and Cyberbullying

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### School Climate and Bullying Prevention

- Programs and approaches to improve school climate
- What programs do you use in your district?

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### School Climate and Bullying Prevention

- Program Components – what are they typically?
- Bullying programs – what does the research say about effectiveness?
- SEDL – What is it?

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### School Climate and Bullying Prevention

Social Emotional Development and Learning

Examples:

1. Positive Behavioral Intervention and Supports
2. School-based Health Centers
3. School Safety/Violence Reduction programs
4. Response to Intervention (RTI)
5. Early Intervention
6. Character Education

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### School Climate and Bullying Prevention

SEDL:

15% - Targeted groups  
Programming can include: Friendship Circles, Nature helpers, Peer Leaders, Parent Training

5% - Selected individuals  
Activities can include: Counseling, EIP, alternative placement

100% - All students  
School-wide Programming/Policies, e.g., Peaceful School Bus, ELA curriculum components, Children's Aid Society, Community Schools

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### School Climate and Bullying Prevention

Beyond the school walls:

- Impact of Technology
- Off campus activities

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### School Climate and Bullying Prevention

Role of the School Board

- Set policy
- Put school climate and safety on the agenda
- Do you have a discipline gap?
- Support professional development and community engagement on this issue
- Ensure accountability

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### School Climate and Bullying Prevention

Board Policy and Building Safety

- Guiding Principles
- Maintenance and Inspection
- NYSSBA Policies
- The Board's Role

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## Guiding Principles

**Improving the Environmental Quality of Schools**

- Every child has a right to an environmentally safe and healthy learning environment which is clean and in good repair.
- Every child, parent and school employee has a right to know about environmental health issues and hazards in their school environment.
- School officials and appropriate public agencies should be held accountable for environmentally safe and healthy school facilities.
- Schools should serve as role models for environmental responsible behavior.
- Federal, state, local and private sector entities should work together to ensure that resources are used effectively and efficiently to address environmental health and safety concerns

*from the Regents Advisory Committee on Environmental Quality in Schools, 1994*

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## Maintenance and Inspection

**Uniform Code of Public School Building Inspections**  
(8 NYCRR 155.4)

- **Maintenance:**
  - Comprehensive Maintenance Plan
  - Integrated pest management
  - Maintenance procedures
  - Guidelines for acceptable indoor air quality
  - Budgetary Considerations
- **Inspection**
  - Building Condition Surveys
  - Annual Visual Inspections
  - Fire Safety
  - Principal inspections

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## NYSSBA Sample Policies

- **NYSSBA Sample 8112 – Health and Safety Committee**
  - Composition
  - Function
- **NYSSBA Sample 8220 – Building and Grounds Maintenance and Inspection**
  - Comprehensive Maintenance Plan
  - Building Condition Surveys
  - Annual Visual Inspections
  - Fire Safety Inspections
  - Safety Rating System

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## Board's Role

What is the Board's role in this whole process?

- Establish and Appoint a Health and Safety Committee
- Support professional development for staff
- Policy maintenance
- Allow for funding

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## Conclusion: Common Themes

- The Board has a critical role in all aspects of school safety
- Proposing a budget that connects funding to safety program priorities
- Adopting, reviewing and monitoring policies and their implementation
- Appointing committees
- Communicating with the community

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## Additional Resources

- Links to helpful websites
- Sample policies
- Training opportunities
- Binder materials

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**Thank you for attending!**  
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Section 5  
New Jersey School Boards Association

§2 -  
 C.18A:37-13.1  
 §1 -  
 C.18A:37-13.2  
 §16 -  
 C.18A:37-15.3  
 §§17 - 27, 29, 30 -  
 C.18A:37-20 to  
 18A:37-32  
 §28 -  
 C.18A:3B-68  
 §31 - Note

P.L.2010, CHAPTER 122, *approved January 5, 2011*  
 Assembly, No. 3466 (*First Reprint*)  
**(CORRECTED COPY)**

**AN ACT** concerning harassment, intimidation, and bullying in school settings <sup>1</sup>[and], <sup>1</sup>amending <sup>1</sup>[and supplementing] <sup>1</sup>various parts of the statutory law <sup>1</sup>and supplementing P.L.2002, c.83 (C.18A:37-13 et seq.) and chapter 3B of Title 18A of the New Jersey Statutes<sup>1</sup>.

**BE IT ENACTED** by the Senate and General Assembly of the State of New Jersey:

1. (New section) Sections 1, 2, and 16 through <sup>1</sup>[28] <sup>1</sup>30<sup>1</sup> of this act and P.L.2002, c.83 (C.18A:37-13 et seq.) shall be known and may be cited as the “Anti-Bullying Bill of Rights Act.”

2. (New section) The Legislature finds and declares that:

a. A 2009 study by the United States Departments of Justice and Education, “Indicators of School Crime and Safety,” reported that 32% of students aged 12 through 18 were bullied in the previous school year. The study reported that 25% of the responding public schools indicated that bullying was a daily or weekly problem;

b. A 2009 study by the United States Centers for Disease Control and Prevention, “Youth Risk Behavior Surveillance,” reported that the percentage of students bullied in New Jersey is 1 percentage point higher than the national median;

c. In 2010, the chronic persistence of school bullying has led to student suicides across the country, including in New Jersey;

d. Significant research has emerged since New Jersey enacted its public school anti-bullying statute in 2002, and since the State amended that law in 2007 to include cyber-bullying and in 2008 to require each school district to post its anti-bullying policy on its website and distribute it annually to parents or guardians of students enrolled in the district;

e. School districts and their students, parents, teachers, principals, other school staff, and board of education members would benefit by the establishment of clearer standards on what constitutes harassment, intimidation, and bullying, and clearer standards on how to prevent, report, investigate, and respond to incidents of harassment, intimidation, and bullying;

f. It is the intent of the Legislature in enacting this legislation to strengthen the standards and procedures for preventing, reporting, investigating, and responding to incidents of harassment, intimidation, and bullying of students that occur in school and off school premises;

g. Fiscal responsibility requires New Jersey to take a smarter, clearer approach to fight school bullying by ensuring that existing resources are better managed and used to make our schools safer for students;

h. In keeping with the aforementioned goal of fiscal responsibility and in an effort to minimize any burden placed on schools and school districts, existing personnel and resources shall be utilized in every possible instance to accomplish the goals of increased prevention, reporting, and responsiveness to incidents of harassment, intimidation, or bullying, including in the appointment of school anti-bullying specialists and district anti-bullying coordinators;

i. By strengthening standards for preventing, reporting, investigating, and responding to incidents of bullying this act will help to reduce the risk of suicide among students and avert not only the needless loss of a young life, but also the tragedy that such loss represents to the student's family and the community at large; and

j. Harassment, intimidation, and bullying is also a problem which occurs on the campuses of institutions of higher education in this State, and by requiring the public institutions to include in their student codes of conduct a specific prohibition against bullying, this act will be a significant step in reducing incidents of such activity.

3. Section 1 of P.L.1986, c.116 (C.18A:6-7.1) is amended to read as follows:

1. A facility, center, school, or school system under the supervision of the Department of Education and board of education which cares for, or is involved in the education of children under the age of 18 shall not employ for pay or contract for the paid services of any teaching staff member or substitute teacher, teacher aide, child study team member, school physician, school nurse, custodian, school maintenance worker, cafeteria worker, school law enforcement officer, school secretary or clerical worker or any other person serving in a position which involves regular contact with pupils unless the employer has first determined consistent with the requirements and standards of this act, that no criminal history record information exists on file in the Federal Bureau of Investigation, Identification Division, or the State Bureau of Identification which would disqualify that individual from being employed or utilized in such capacity or position. An individual employed by a board of education or a school bus contractor holding a contract with a board of education, in the capacity of a school bus driver, shall be required to meet the criminal history record requirements pursuant to section 6 of P.L.1989, c.104 (C.18A:39-19.1). A facility, center, school, or school system under the supervision of the Department of Education and board of education which cares for, or is involved in the education of children under the age of 18 may require criminal history record checks for individuals who, on an unpaid voluntary basis, provide services that involve regular contact with pupils. In the case of school districts involved in a sending-receiving relationship, the decision to require criminal history record checks for volunteers shall be made jointly by the boards of education of the sending and receiving districts.

An individual, except as provided in subsection g. of this section, shall be permanently disqualified from employment or service under this act if the individual's criminal history record check reveals a record of conviction for any crime of the first or second degree; or

a. An offense as set forth in chapter 14 of Title 2C of the New Jersey Statutes, or as set forth in N.J.S.2C:24-4 and 2C:24-7, or as set forth in R.S.9:6-1 et seq., or as set forth in N.J.S.2C:29-2; or

b. An offense involving the manufacture, transportation, sale, possession, distribution or habitual use of a "controlled dangerous substance" as defined in the "Comprehensive Drug Reform Act of 1987," N.J.S.2C:35-1 et al. or "drug paraphernalia" as defined pursuant to N.J.S.2C:36-1 et

seq.; or

c. (1) A crime involving the use of force or the threat of force to or upon a person or property including, but not limited to, robbery, aggravated assault, stalking, kidnapping, arson, manslaughter and murder; or

(2) A crime as set forth in chapter 39 of Title 2C of the New Jersey Statutes, a third degree crime as set forth in chapter 20 of Title 2C of the New Jersey Statutes, or a crime as listed below:

Recklessly endangering another person	N.J.S.2C:12-2
Terroristic threats	N.J.S.2C:12-3
Criminal restraint	N.J.S.2C:13-2
Luring, enticing child into motor vehicle, structure or isolated area	P.L.1993, c.291 (C.2C:13-6)
Causing or risking widespread injury or damage	N.J.S.2C:17-2
Criminal mischief	N.J.S.2C:17-3
Burglary	N.J.S.2C:18-2
Usury	N.J.S.2C:21-19
Threats and other improper influence	N.J.S.2C:27-3
Perjury and false swearing	N.J.S.2C:28-3
Resisting arrest	N.J.S.2C:29-2
Escape	N.J.S.2C:29-5
<u>Bias intimidation</u>	<u>N.J.S.2C:16-1;</u>

or

(3) Conspiracy to commit or an attempt to commit any of the crimes described in this act.

d. For the purposes of this section, a conviction exists if the individual has at any time been convicted under the laws of this State or under any similar statutes of the United States or any other state for a substantially equivalent crime or other offense.

e. Notwithstanding the provisions of this section, an individual shall not be disqualified from employment or service under this act on the basis of any conviction disclosed by a criminal record check performed pursuant to this act without an opportunity to challenge the accuracy of the disqualifying criminal history record.

f. When charges are pending for a crime or any other offense enumerated in this section, the employing board of education shall be notified that the candidate shall not be eligible for employment until the commissioner has made a determination regarding qualification or disqualification upon adjudication of the pending charges.

g. This section shall first apply to criminal history record checks conducted on or after the effective date of P.L.1998, c.31 (C.18A:6-7.1c et al.); except that in the case of an individual employed by a board of education or a contracted service provider who is required to undergo a check upon employment with another board of education or contracted service provider, the individual shall be disqualified only for the following offenses:

(1) any offense enumerated in this section prior to the effective date of P.L.1998, c.31 (C.18A:6-7.1c et al.); and

(2) any offense enumerated in this section which had not been enumerated in this section prior to the effective date of P.L.1998, c.31 (C.18A:6-7.1c et al.), if the person was convicted of that offense on or after the effective date of that act.

(cf: P.L.2007, c.82, s.1)

4. Section 2 of P.L.2005, c.310 (C.18A:6-112) is amended to read as follows:

2. The State Board of Education, in consultation with the New Jersey Youth Suicide Prevention

Advisory Council established in the Department of Children and Families pursuant to P.L.2003, c.214 (C.30:9A-22 et seq.), shall, as part of the professional development requirement established by the State board for public school teaching staff members, require each public school teaching staff member to complete at least two hours of instruction in suicide prevention, to be provided by a licensed health care professional with training and experience in mental health issues, in each professional development period. The instruction in suicide prevention shall include information on the relationship between the risk of suicide and incidents of harassment, intimidation, and bullying and information on reducing the risk of suicide in students who are members of communities identified as having members at high risk of suicide.  
(cf: P.L.2006, c.47, s.80)

5. Section 3 of P.L.1995, c.235 (C.18A:7E-3) is amended to read as follows:

3. Report cards issued pursuant to section 2 of this act shall include, but not be limited to, the following information for:

a. the school district and for each school within the district, as appropriate:

- (1) results of the elementary assessment programs;
- (2) results of the Early Warning Test;
- (3) results of the High School Proficiency Test;
- (4) daily attendance records for students and professional staff;
- (5) student graduation and dropout rates;
- (6) annual student scores on the Scholastic Aptitude Test;
- (7) total student enrollment, percentage of limited English proficient students, percentage of students in advanced placement courses, and any other school characteristics which the commissioner deems appropriate;

(8) instructional resources including teacher/student ratio, average class size and amount of instructional time per day, as calculated by formulas specified by the commissioner; **[and]**

(9) a written narrative by the school principal or a designee which describes any special achievements, events, problems or initiatives of the school or district; and

(10) data identifying the number and nature of all reports of harassment, intimidation, or bullying; and

b. the school district, as appropriate:

- (1) per pupil expenditures and State aid ratio;
- (2) percent of budget allocated for salaries and benefits of administrative personnel;
- (3) percent of budget allocated for salaries and benefits of teachers;
- (4) percentage increase over the previous year for salaries and benefits of administrative and instructional personnel;

(5) the number of administrative personnel and the ratio of administrative personnel to instructional personnel;

(6) a profile of the most recent graduating class concerning their educational or employment plans following graduation; and

(7) any other information which the commissioner deems appropriate.

For the purposes of this section, the Commissioner of Education shall establish a uniform methodology for the reporting of the data concerning administrative personnel on a full-time equivalent basis.

(cf: P.L.1995, c.235, s.3)

6. Section 13 of P.L.1991, c.393 (C.18A:12-33) is amended to read as follows:

13. a. Each newly elected or appointed board member shall complete during the first year of the

member's first term a training program to be prepared and offered by the New Jersey School Boards Association, in consultation with the New Jersey Association of School Administrators, the New Jersey Principals and Supervisors Association, and the Department of Education, regarding the skills and knowledge necessary to serve as a local school board member. The training program shall include information regarding the school district monitoring system established pursuant to P.L.2005, c.235, the New Jersey Quality Single Accountability Continuum, and the five key components of school district effectiveness on which school districts are evaluated under the monitoring system: instruction and program; personnel; fiscal management; operations; and governance.

The board member shall complete a training program on school district governance in each of the subsequent two years of the board member's first term.

b. Within one year after each re-election or re-appointment to the board of education, the board member shall complete an advanced training program to be prepared and offered by the New Jersey School Boards Association. This advanced training program shall include information on relevant changes to New Jersey school law and other information deemed appropriate to enable the board member to serve more effectively.

c. The New Jersey School Boards Association shall examine options for providing training programs to school board members through alternative methods such as on-line or other distance learning media or through regional-based training.

d. Within one year after being newly elected or appointed or being re-elected or re-appointed to the board of education, a board member shall complete a training program on harassment, intimidation, and bullying in schools, including a school district's responsibilities under P.L.2002, c.83 (C.18A:37-13 et seq.). A board member shall be required to complete the program only once.

e. Training on harassment, intimidation, and bullying in schools shall be provided by the New Jersey School Boards Association, in consultation with recognized experts in school bullying from a cross section of academia, child advocacy organizations, nonprofit organizations, professional associations, and government agencies.

(cf: P.L.2007, c.53, s.17)

7. Section 1 of P.L.1982, c.163 (C.18A:17-46) is amended to read as follows:

1. Any school employee observing or having direct knowledge from a participant or victim of an act of violence shall, in accordance with standards established by the commissioner, file a report describing the incident to the school principal in a manner prescribed by the commissioner, and copy of same shall be forwarded to the district superintendent.

The principal shall notify the district superintendent of schools of the action taken regarding the incident. Annually <sup>1</sup>Once during each semester of the school year Two times each school year, between September 1 and January 1 and between January 1 and June 30<sup>1</sup>, at a public hearing, the superintendent of schools shall report to the board of education all acts of violence and <sup>2</sup> vandalism, and harassment, intimidation, or bullying which occurred during the previous [school year] <sup>1</sup>[semester] reporting period<sup>1</sup>. The report shall include the number of reports of harassment, intimidation, or bullying, the status of all investigations, the nature of the bullying based on one of the protected categories identified in section 2 of P.L.2002, c.83 (C.18A:37-14), the names of the investigators, the type and nature of any discipline imposed on any student engaged in harassment, intimidation, or bullying, and any other measures imposed, training conducted, or programs implemented, to reduce harassment, intimidation, or bullying. The information shall also be reported once during each <sup>1</sup>[semester of the school year] reporting period<sup>1</sup> to the Department of Education. The report must include data broken down by the enumerated categories as listed in section 2 of P.L.2002, c.83 (C.18A:37-14), and data broken down by each school in the district, in



addition to district-wide data. It shall be a violation to improperly release any confidential information not authorized by federal or State law for public release.

The report shall be used to grade each school for the purpose of assessing its effort to <sup>1</sup> [identify harassment, intimidation, or bullying] implement policies and programs consistent with the provisions of P.L.2002, c.83 (C.18A:37-13 et seq.)<sup>1</sup>. The district shall receive a grade determined by averaging the grades of all the schools in the district. The commissioner shall promulgate guidelines for a program to grade schools for the <sup>1</sup> [purpose of assessing their efforts to identify harassment, intimidation, or bullying] purposes of this subsection<sup>1</sup>.

The grade received by a school and the district shall be posted on the homepage of the school's website. The grade for the district and each school of the district shall be posted on the homepage of the district's website. A link to the report shall be available on the district's website. The information shall be posted on the websites within 10 days of the receipt of a grade by the school and district.

Verification of the [annual report] reports on violence [and] , vandalism, and harassment, intimidation, or bullying shall be part of the State's monitoring of the school district, and the State Board of Education shall adopt regulations that impose a penalty on a school employee who knowingly falsifies the report. A board of education shall provide ongoing staff training, in cooperation with the Department of Education, in fulfilling the reporting requirements pursuant to this section. The majority representative of the school employees shall have access monthly to the number and disposition of all reported acts of school violence [and], vandalism, and harassment, intimidation, or bullying.

(cf: P.L.2007, c.42, s.1)

8. Section 3 of P.L.1982, c.163 (C.18A:17-48) is amended to read as follows:

3. The Commissioner of Education shall each year submit a report to the Education Committees of the Senate and General Assembly detailing the extent of violence [and] , vandalism, and harassment, intimidation, or bullying in the public schools and making recommendations to alleviate the problem. The report shall be made available annually to the public no later than October 1, and shall be posted on the department's website.

(cf: P.L.1982, c.163, s.3)

9. Section 13 of P.L.2007, c.53 (C.18A:26-8.2) is amended to read as follows:

13. a. As used in this section, "school leader" means a school district staff member who holds a position that requires the possession of a chief school administrator, principal, or supervisor endorsement.

b. A school leader shall complete training on issues of school ethics, school law, and school governance as part of the professional development for school leaders required pursuant to State Board of Education regulations. Information on the prevention of harassment, intimidation, and bullying shall also be included in the training. The training shall be offered through a collaborative training model as identified by the Commissioner of Education, in consultation with the State Advisory Committee on Professional Development for School Leaders.

(cf: P.L.2007, c.53, s.13)

10. N.J.S.18A:37-2 is amended to read as follows:

18A:37-2. Any pupil who is guilty of continued and willful disobedience, or of open defiance of the authority of any teacher or person having authority over him, or of the habitual use of profanity or of obscene language, or who shall cut, deface or otherwise injure any school property, shall be liable to punishment and to suspension or expulsion from school.



3. a. Each school district shall adopt a policy prohibiting harassment, intimidation or bullying on school property, at a school-sponsored function or on a school bus. The school district shall **[attempt to]** adopt the policy through a process that includes representation of parents or guardians, school employees, volunteers, students, administrators, and community representatives.

b. A school district shall have local control over the content of the policy, except that the policy shall contain, at a minimum, the following components:

(1) a statement prohibiting harassment, intimidation or bullying of a student;

(2) a definition of harassment, intimidation or bullying no less inclusive than that set forth in section 2 of P.L.2002, c.83 (C.18A:37-14);

(3) a description of the type of behavior expected from each student;

(4) consequences and appropriate remedial action for a person who commits an act of harassment, intimidation or bullying;

(5) a procedure for reporting an act of harassment, intimidation or bullying, including a provision that permits a person to report an act of harassment, intimidation or bullying anonymously; however, this shall not be construed to permit formal disciplinary action solely on the basis of an anonymous report.

All acts of harassment, intimidation, or bullying shall be reported verbally to the school principal on the same day when the school employee or contracted service provider witnessed or received reliable information regarding any such incident. The principal shall inform the parents or guardians of all students involved in the alleged incident, and may discuss, as appropriate, the availability of counseling and other intervention services. All acts of harassment, intimidation, or bullying shall be reported in writing to the school principal within two school days of when the school employee or contracted service provider witnessed or received reliable information that a student had been subject to harassment, intimidation, or bullying. <sup>1</sup> [In cases in which an incident of harassment, intimidation, or bullying occurs exclusively among or between special education students or students with developmental disabilities, in the context of a county special services school district or a separate program for special education students within a school district, the school employee who witnesses such an incident of harassment, intimidation, or bullying shall have discretion to determine whether the incident is necessary to report or whether the incident may have been affected by the condition of the students and thereby warrants an alternative approach more appropriate in the special education context.] <sup>1</sup>;

(6) a procedure for prompt investigation of reports of violations and complaints, **[identifying either the principal or the principal's designee as the person responsible for the investigation]** which procedure shall at a minimum provide that:

(a) the investigation shall be initiated by the principal or the principal's designee within one school day of the report of the incident and shall be conducted by a school anti-bullying specialist. The principal may appoint additional personnel who are not school anti-bullying specialists to assist in the investigation. The investigation shall be completed as soon as possible, but not later than 10 school days from the date of the <sup>1</sup> written <sup>1</sup> report of the incident of harassment, intimidation, or bullying <sup>1</sup>. In the event that there is information relative to the investigation that is anticipated but not yet received by the end of the 10-day period, the school anti-bullying specialist may amend the original report of the results of the investigation to reflect the information <sup>1</sup>;

(b) the results of the investigation shall be reported to the superintendent of schools within two school days of the completion of the investigation, and in accordance with regulations promulgated by the State Board of Education pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the superintendent may decide to provide intervention services, establish training programs to reduce harassment, intimidation, or bullying and enhance school climate, impose discipline <sup>1</sup> or <sup>1</sup> order counseling as a result of the findings of the investigation <sup>1</sup> or take

or recommend other appropriate action<sup>1</sup>;

(c) the results of each investigation shall be reported to the board of education no later than the date of the board of education meeting next following the completion of the investigation, along with information on any services provided, training established, <sup>1</sup>[or]<sup>1</sup> discipline imposed <sup>1</sup>, <sup>1</sup> or <sup>1</sup>other action taken or <sup>1</sup> recommended by the superintendent;

(d) parents or guardians of the students who are parties to the investigation shall be entitled to receive information about the investigation, in accordance with federal and State law and regulation, including the nature of the investigation, whether the district found evidence of harassment, intimidation, or bullying, or whether discipline was imposed or services provided to address the incident of harassment, intimidation, or bullying. This information shall be provided in writing within 5 school days after the results of the investigation are reported to the board. A parent or guardian may request a hearing before the board after receiving the information, and the hearing shall be held within 10 days of the request. The board shall meet in executive session for the hearing to protect the confidentiality of the students. At the hearing the board may hear from the school anti-bullying specialist about the incident, recommendations for discipline or services, and any programs instituted to reduce such incidents;

(e) at the next board of education meeting following its receipt of the report, the board shall issue a decision, in writing, to affirm, reject, or modify the superintendent's decision. The board's decision may be appealed to the Commissioner of Education, in accordance with the procedures set forth in law and regulation, no later than the 90 days after the issuance of the board's decision; and

(f) a parent, student, guardian, or organization may file a complaint with the Division on Civil Rights within 180 days of the occurrence of any incident of harassment, intimidation, or bullying based on membership in a protected group as enumerated in the "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.);

(7) the range of ways in which a school will respond once an incident of harassment, intimidation or bullying is identified, which shall be defined by the principal in conjunction with the school anti-bullying specialist, but shall include an appropriate combination of counseling, support services, intervention services, and other programs, as defined by the commissioner;

(8) a statement that prohibits reprisal or retaliation against any person who reports an act of harassment, intimidation or bullying and the consequence and appropriate remedial action for a person who engages in reprisal or retaliation;

(9) consequences and appropriate remedial action for a person found to have falsely accused another as a means of retaliation or as a means of harassment, intimidation or bullying;

(10) a statement of how the policy is to be publicized, including notice that the policy applies to participation in school-sponsored functions; [and]

(11) a requirement that [the] a link to the policy be prominently posted on the home page of the school district's website and distributed annually to parents and guardians who have children enrolled in a school in the school district; and

(12) a requirement that the name, <sup>1</sup>school<sup>1</sup> phone number, <sup>1</sup>school<sup>1</sup> address and <sup>1</sup>school<sup>1</sup> email address of the district anti-bullying coordinator be listed on the home page of the school district's website and that on the home page of each school's website the name, <sup>1</sup>school<sup>1</sup> phone number, <sup>1</sup>school<sup>1</sup> address and <sup>1</sup>school<sup>1</sup> email address of the school anti-bullying specialist and the district anti-bullying coordinator be listed. The information concerning the district anti-bullying coordinator and the school anti-bullying specialists shall also be maintained on the department's website.

c. A school district shall adopt a policy and transmit a copy of its policy to the appropriate executive county superintendent of schools by September 1, 2003. A school district shall annually conduct a re-evaluation, reassessment, and review of its policy, making any necessary revisions and

additions. The board shall include input from the school anti-bullying <sup>1</sup> [specialist] specialists<sup>1</sup> in conducting its re-evaluation, reassessment, and review. The district shall transmit a copy of the revised policy to the appropriate executive county superintendent of schools within 30 school days of the revision. The first revised policy following the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill) shall be transmitted to the executive county superintendent of schools by September 1, 2011.

d. [To assist school districts in developing policies for the prevention of harassment, intimidation or bullying, the Commissioner of Education shall develop a model policy applicable to grades kindergarten through 12. This model policy shall be issued no later than December 1, 2002.]

<sup>1</sup>[Deleted by amendment, P.L. , c. (C. ) (pending before the Legislature as this bill)]

(1) To assist school districts in developing policies for the prevention of harassment, intimidation, or bullying, the Commissioner of Education shall develop a model policy applicable to grades kindergarten through 12. This model policy shall be issued no later than December 1, 2002.

(2) The commissioner shall adopt amendments to the model policy which reflect the provisions of P.L. , c. (C. ) (pending before the Legislature as this bill) no later than 90 days after the effective date of that act and shall subsequently update the model policy as the commissioner deems necessary.<sup>1</sup>

e. Notice of the school district's policy shall appear in any publication of the school district that sets forth the comprehensive rules, procedures and standards of conduct for schools within the school district, and in any student handbook.

f. Nothing in this section shall prohibit a school district from adopting a policy that includes components that are more stringent than the components set forth in this section.

(cf: P.L.2007, c.303, s.7)

13. Section 4 of P.L.2002, c.83 (C.18A:37-16) is amended to read as follows:

4. a. A member of a board of education, school employee, student or volunteer shall not engage in reprisal, retaliation or false accusation against a victim, witness or one with reliable information about an act of harassment, intimidation or bullying.

b. A member of a board of education, school employee, contracted service provider, student or volunteer who has witnessed, or has reliable information that a student has been subject to, harassment, intimidation or bullying shall report the incident to the appropriate school official designated by the school district's policy, or to any school administrator or safe schools resource officer, who shall immediately initiate the school district's procedures concerning school bullying.

c. A member of a board of education or a school employee who promptly reports an incident of harassment, intimidation or bullying, to the appropriate school official designated by the school district's policy, or to any school administrator or safe schools resource officer, and who makes this report in compliance with the procedures in the district's policy, is immune from a cause of action for damages arising from any failure to remedy the reported incident.

d. A school administrator who receives a report of harassment, intimidation, or bullying from a district employee, and fails to initiate or conduct an investigation, or who should have known of an incident of harassment, intimidation, or bullying and fails to take sufficient action to minimize or eliminate the harassment, intimidation, or bullying, may be subject to disciplinary action.

(cf: P.L.2002, c.83, s.4)

14. Section 5 of P.L.2002, c.83 (C.18A:37-17) is amended to read as follows:

5. a. Schools and school districts [are encouraged to] shall annually establish, implement, document, and assess bullying prevention programs or approaches, and other initiatives involving school staff, students, administrators, volunteers, parents, law enforcement and community

members. The programs or approaches shall be designed to create school-wide conditions to prevent and address harassment, intimidation, and bullying.

A school district may apply to the Department of Education for a grant to be used for programs or approaches established pursuant to this subsection, to the extent funds are appropriated for these purposes or funds are made available through the Bullying Prevention Fund established pursuant to section 25 of P.L. , c. (C. ) (pending before the Legislature as this bill).

b. **【**To the extent funds are appropriated for these purposes, **a】** A school district shall: (1) provide training on the school district's harassment, intimidation, or bullying policies to school employees and volunteers who have significant contact with students; **【and】** (2) ensure that the training includes instruction on preventing bullying on the basis of the protected categories enumerated in section 2 of P.L.2002, c.83 (C.18A:37-14) and other distinguishing characteristics that may incite incidents of discrimination, harassment, intimidation, or bullying; and (3) develop a process for discussing the district's harassment, intimidation or bullying policy with students.

c. Information regarding the school district policy against harassment, intimidation or bullying shall be incorporated into a school's employee training program and shall be provided to full-time and part-time staff, volunteers who have significant contact with students, and those persons contracted by the district to provide services to students.

(cf: P.L.2002, c.83, s.5)

15. Section 2 of P.L.2005, c.276 (C.52:17B-71.8) is amended to read as follows:

2. a. The Police Training Commission in the Division of Criminal Justice in the Department of Law and Public Safety, in consultation with the Attorney General, shall develop a training course for safe schools resource officers and public school employees assigned by a board of education to serve as a school liaison to law enforcement. The Attorney General, in conjunction with the Police Training Commission, shall ensure that the training course is developed within 180 days of the effective date of this act. The course shall at a minimum provide comprehensive and consistent training in current school resource officer practices and concepts. The course shall include training in the protection of students from harassment, intimidation, and bullying, including incidents which occur through electronic communication. The course shall be made available to:

(1) any law enforcement officer or public school employee referred by the board of education of the public school to which assignment as a safe schools resource officer or school liaison to law enforcement is sought; and

(2) any safe schools resource officer or school liaison to law enforcement assigned to a public school prior to the effective date of P.L.2005, c.276 (C.52:17B-71.8 et al.).

b. The training course developed by the commission pursuant to subsection a. of this section shall be offered at each school approved by the commission to provide police training courses pursuant to the provisions of P.L.1961, c.56 (C.52:17B-66 et seq.). The commission shall ensure that an individual assigned to instruct the course is proficient and experienced in current school resource officer practices and concepts.

c. The commission shall award a certificate to each individual who successfully completes the course.

d. The Police Training Commission, in consultation with the Commissioner of Education, shall adopt rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to implement the provisions of this section.

(cf: P.L.2005, c.276, s.2)

16. (New section) The policy adopted by each school district pursuant to section 3 of P.L.2002, c.83 (C.18A:37-15) shall include provisions for appropriate responses to harassment, intimidation,



or bullying <sup>1</sup>, as defined in section 2 of P.L.2002, c.83 (C.18A:37-14),<sup>1</sup> that occurs off school grounds, in cases in which a school employee is made aware of such actions <sup>1</sup> [, and such actions create a hostile environment at school for the student, infringe on the rights of the student at school, or disrupt the education process or orderly operation of a school]<sup>1</sup>. The responses to harassment, intimidation, or bullying that occurs off school grounds shall be consistent with the board of education's code of student conduct and other provisions of the board's policy on harassment, intimidation, or bullying.

17. (New section) a. The principal in each school in a school district shall appoint a school anti-bullying specialist. When a school guidance counselor, school psychologist, or another individual similarly trained is currently employed in the school, the principal shall appoint that individual to be the school anti-bullying specialist. If no individual meeting this criteria is currently employed in the school, the principal shall appoint a school anti-bullying specialist from currently employed school personnel. The school anti-bullying specialist shall:

- (1) chair the school safety team as provided in section 18 of P.L. c. , (C. ) (pending before the Legislature as this bill);
- (2) lead the investigation of incidents of harassment, intimidation, and bullying in the school; and
- (3) act as the primary school official responsible for preventing, identifying, and addressing incidents of harassment, intimidation, and bullying in the school.

b. The superintendent of schools shall appoint a district anti-bullying coordinator. The superintendent shall make every effort to appoint an employee of the school district to this position. The district anti-bullying coordinator shall:

- (1) be responsible for coordinating and strengthening the school district's policies to prevent, identify, and address harassment, intimidation, and bullying of students;
- (2) collaborate with school anti-bullying specialists in the district, the board of education, and the superintendent of schools to prevent, identify, and respond to harassment, intimidation, and bullying of students in the district;
- (3) provide data, in collaboration with the superintendent of schools, to the Department of Education regarding harassment, intimidation, and bullying of students; and
- (4) execute such other duties related to school harassment, intimidation, and bullying as requested by the superintendent of schools.

c. The district anti-bullying coordinator shall meet at least twice a school year <sup>1</sup> [, once in the first semester and once in the second semester,]<sup>1</sup> with the school anti-bullying specialists in the district to discuss and strengthen procedures and policies to prevent, identify, and address harassment, intimidation, and bullying in the district.

18. (New section) a. A school district shall form a school safety team in each school in the district to develop, foster, and maintain a positive school climate by focusing on the on-going, systemic process and practices in the school and to address school climate issues such as harassment, intimidation, or bullying. A school safety team shall meet at least two times per school year <sup>1</sup> [, once in the first semester and once in the second semester]<sup>1</sup>.

b. A school safety team shall consist of the principal or his designee who, if possible, shall be a senior administrator in the school and the following appointees of the principal: a teacher in the school; a school anti-bullying specialist; a parent of a student in the school; and other members to be determined by the principal. The school anti-bullying specialist shall serve as the chair of the school safety team.

c. The school safety team shall:

- (1) receive any complaints of harassment, intimidation, or bullying of students that have been reported to the principal;
- (2) receive copies of any report prepared after an investigation of an incident of harassment, intimidation, or bullying;
- (3) identify and address patterns of harassment, intimidation, or bullying of students in the school;
- (4) review and strengthen school climate and the policies of the school in order to prevent and address harassment, intimidation, or bullying of students;
- (5) educate the community, including students, teachers, administrative staff, and parents, to prevent and address harassment, intimidation, or bullying of students;
- (6) participate in the training required pursuant to the provisions of P.L.2002, c.83 (C.18A:37-13 et seq.) and other training which the principal or the district anti-bullying coordinator may request;
- (7) collaborate with the district anti-bullying coordinator in the collection of district-wide data and in the development of district policies to prevent and address harassment, intimidation, or bullying of students; and
- (8) execute such other duties related to harassment, intimidation, and bullying as requested by the principal or district anti-bullying coordinator.

d. The members of a school safety team shall be provided professional development opportunities that address effective practices of successful school climate programs or approaches.

<sup>1</sup>e. Notwithstanding any provision of this section to the contrary, a parent who is a member of the school safety team shall not participate in the activities of the team set forth in paragraphs (1), (2), or (3) of subsection c. of this section or any other activities of the team which may compromise the confidentiality of a student.<sup>1</sup>

19. (New section) a. Beginning with the <sup>1</sup>[2011-2012] 2012-2013<sup>1</sup> school year, all candidates for teaching certification <sup>1</sup>who have completed a teacher preparation program at a regionally-accredited institution of higher education<sup>1</sup> shall <sup>1</sup>have<sup>1</sup> satisfactorily <sup>1</sup>[complete] completed<sup>1</sup> a program on harassment, intimidation, and bullying prevention.

b. Beginning with the <sup>1</sup>[2010-2011] 2011-2012<sup>1</sup> school year, any person seeking certification through the alternate route shall, within one year of being employed, satisfactorily complete a program on harassment, intimidation, and bullying prevention.

c. The State Board of Education shall establish the appropriate requirements of the program on harassment, intimidation, and bullying prevention.

d. The State board shall, as part of the professional development requirement established by the State board for public school teachers, require each public school teacher to complete at least two hours of instruction on harassment, intimidation, or bullying prevention in each professional development period.

20. (New section) Beginning with the <sup>1</sup>[2011-2012] 2012-2013<sup>1</sup> school year, all candidates for administrative <sup>1</sup>and supervisory<sup>1</sup> certification shall <sup>1</sup>have<sup>1</sup> satisfactorily <sup>1</sup>[complete] completed<sup>1</sup> a program on harassment, intimidation, and bullying prevention.



21. (New section) a. The Department of Education, in consultation with the Division on Civil Rights in the Department of Law and Public Safety shall develop a guidance document for use by parents or guardians, students, and school districts to assist in resolving complaints concerning student harassment, intimidation, or bullying behaviors and the implementation of P.L.2002, c.83 (C.18A:37-13 et seq.) by school districts. The document shall include:

- (1) a school district's obligations under P.L.2002, c.83 (C.18A:37-13 et seq.);
- (2) best practices for the prevention, intervention, and remediation of harassment, intimidation, or bullying in schools, including methods to identify and assist student populations at high risk for harassment, intimidation, or bullying;
- (3) a clear explanation of the procedures for petitioning the Commissioner of Education to hear and decide disputes concerning P.L.2002, c.83 (C.18A:37-13 et seq.);
- (4) a clear explanation of the Division on Civil Rights' jurisdiction and services in regard to specific types of harassment, intimidation, or bullying; and
- (5) a clear explanation of the process for appealing final agency determinations to the Appellate Division of the Superior Court.

b. The guidance document shall be available on the Department of Education's and the Division on Civil Rights' Internet sites and on every school district's Internet site at an easily accessible location.

22. (New section) a. The Commissioner of Education shall establish a formal protocol pursuant to which the office of the executive county superintendent of schools shall investigate a complaint that documents an allegation of a violation of P.L.2002, c.83 (C.18A:37-13 et seq.) by a school district located within the county, when the complaint has not been adequately addressed on the local level. The office of the executive county superintendent shall report its findings, and if appropriate, issue an order for the school district to develop and implement corrective actions that are specific to the facts of the case.

b. The commissioner shall ensure that the personnel of the office of the executive county superintendent of schools who are responsible for conducting the investigations receive training and technical support on the use of the complaint investigation protocol.

23. (New section) a. The Commissioner of Education, in consultation with recognized experts in school bullying from a cross section of academia, child advocacy organizations, nonprofit organizations, professional associations, and government agencies, shall establish inservice workshops and training programs to train selected public school employees to act as district anti-bullying coordinators and school anti-bullying specialists in accordance with the provisions of P.L. , c. (C. ) (pending before the Legislature as this bill). The commissioner shall seek to make the workshops and training programs available and administered online through the department's website or other existing online resources. The commissioner shall evaluate the effectiveness of the consulting group on an annual basis. The inservice training programs may utilize the offices of the executive county superintendent of schools, or such other institutions, agencies, or persons as the commissioner deems appropriate. Each board of education shall provide time for the inservice training during the usual school schedule in order to ensure that appropriate personnel are prepared to act in the district as district anti-bullying coordinators and school anti-bullying specialists.

b. Upon completion of the initial inservice training program, the commissioner shall ensure that programs and workshops that reflect the most current information on harassment, intimidation, and bullying in schools are prepared and made available to district anti-bullying coordinators and school anti-bullying specialists at regular intervals.

24. (New section) The Commissioner of Education shall develop, in consultation with the Division on Civil Rights, and make available on the Department of Education's Internet site, an online tutorial on harassment, intimidation, and bullying. The online tutorial shall, at a minimum, include best practices in the prevention of harassment, intimidation, and bullying, applicable laws, and such other information that the commissioner determines to be appropriate. The online tutorial shall be accompanied by a test to assess a person's understanding of the information provided in the tutorial.

25. (New section) There is created a special fund in the Department of Education, which shall be designated the "Bullying Prevention Fund." The fund shall be maintained in a separate account and administered by the commissioner to carry out the provisions of this act. The fund shall consist of: (1) any monies appropriated by the State for the purposes of the fund; (2) any monies donated for the purposes of the fund; and (3) all interest and investment earnings received on monies in the fund. The fund shall be used to offer grants to school districts to provide training on harassment, intimidation, and bullying prevention and on the effective creation of positive school climates.

26. (New section) The week beginning with the first Monday in October of each year is designated as a "Week of Respect" in the State of New Jersey. School districts, in order to recognize the importance of character education, shall observe the week by providing age-appropriate instruction focusing on preventing harassment, intimidation, or bullying as defined in section 2 of P.L.2002, c.83 (C.18A:37-14). Throughout the school year the school district shall provide ongoing age-appropriate instruction on preventing harassment, intimidation, and bullying in accordance with the core curriculum content standards.

27. (New section) Nothing contained <sup>1</sup>in<sup>1</sup> P.L. , c. (C. ) (pending before the Legislature as this bill) shall be construed as affecting the provisions of any collective bargaining agreement or individual contract of employment in effect on that act's effective date.

28. (New section) a. A public institution of higher education shall adopt a policy to be included in its student code of conduct prohibiting harassment, intimidation, or bullying. The policy shall contain, at a minimum:

(1) A statement prohibiting harassment, intimidation, or bullying;

(2) Disciplinary actions which may result if a student commits an act of harassment, intimidation, or bullying; and

(3) A definition of harassment, intimidation, or bullying that at a minimum includes any gesture, any written, verbal or physical act, or any electronic communication<sup>1</sup>, whether it be a single incident or a series of incidents,<sup>1</sup> that is reasonably perceived as being motivated either by any actual or perceived characteristic, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical or sensory disability, or by any other distinguishing characteristic, that takes place on the property of the institution of higher education or at any function sponsored by the institution of higher education<sup>1</sup>, that substantially disrupts or interferes with the orderly operation of the institution or the rights of other students<sup>1</sup> and that:

(a) a reasonable person should know, under the circumstances, will have the effect of physically or emotionally harming a student or damaging the student's property, or placing a student in reasonable fear of physical or emotional harm to his person or damage to his property;

(b) has the effect of insulting or demeaning any student or group of students<sup>1</sup> in such a way as

to cause disruption in, or interference with, the orderly operation of the institution of higher education]<sup>1</sup>; <sup>1</sup>or<sup>1</sup>

(c) creates a hostile <sup>1</sup>educational<sup>1</sup> environment for the student <sup>1</sup>[at the institution of higher education; or

(d) infringes on the rights of the student at the institution of higher education] by interfering with a student's education or by severely or pervasively causing physical or emotional harm to the student<sup>1</sup>.

b. The institution shall distribute the policy by email to each student within seven days of the start of each semester and shall post the policy on its website.

<sup>1</sup>29. (New section) a. Nonpublic schools are encouraged to comply with the provisions of the "Anti-Bullying Bill of Rights Act," P.L.2002, c.83 (C.18A:37-13 et seq.), as amended and supplemented by P.L. , c. (C. ) (pending before the Legislature as this bill).

b. In the case of a faith-based nonpublic school, no provision of the "Anti-Bullying Bill of Rights Act," P.L.2002, c.83 (C.18A:37-13 et seq.), as amended and supplemented by P.L. , c. (C. ) (pending before the Legislature as this bill), shall be interpreted to prohibit or abridge the legitimate statement, expression or free exercise of the beliefs or tenets of that faith by the religious organization operating the school or by the school's faculty, staff, or student body.<sup>1</sup>

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<sup>1</sup>30. (New section) Nothing contained in the "Anti-Bullying Bill of Rights Act," P.L.2002, c.83 (C.18A:37-13 et seq.), as amended and supplemented by P.L. , c. (C. ) (pending before the Legislature as this bill), shall alter or reduce the rights of a student with a disability with regard to disciplinary actions or to general or special educational services and supports.<sup>1</sup>

<sup>1</sup>[29.] <sup>1</sup>31.<sup>1</sup> This act shall take effect in the first school year following enactment, but the Commissioner of Education may take such anticipatory administrative action in advance thereof as shall be necessary for the implementation of this act.

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The "Anti-Bullying Bill of Rights Act."

**Sample Policy**

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HARASSMENT, INTIMIDATION AND BULLYING

The board of education believes that a safe and civil environment in school is necessary for students to learn and achieve high academic standards. Since students learn by example, school administrators, faculty, staff, and volunteers are required to demonstrate appropriate behavior, treating others with civility and respect, and refusing to tolerate harassment, intimidation or bullying. Harassment, intimidation or bullying, like other disruptive or violent behaviors, is conduct that disrupts both a student's ability to learn and a school's ability to educate its students in a safe environment. Therefore, the school district will not tolerate acts of harassment, intimidation or bullying.

The board of education expects all students to treat each other with civility and respect and not to engage in behavior that is disruptive or violent. The board expects students to conduct themselves in keeping with their level of maturity, with a proper regard for the rights and welfare of other students, for school personnel, for the educational purpose underlying all school activities, and for the care of school facilities and equipment.

The standards of character education are an essential component of the \_\_\_\_\_ School District's Code of Conduct. The board believes that with the appropriate infusion of character education into the school curriculum, modeling of appropriate behavior by adults; support and assistance of students in school, the community and home; our students will achieve the above standards of character education.

The board prohibits acts of harassment, intimidation or bullying against any student. School responses to harassment, intimidation and bullying shall be aligned with the board approved code of student conduct which establishes standards, policies and procedures for positive student development and student behavioral expectations on school grounds, including on a school bus or at school sponsored functions. The chief school administrator shall be responsible for ensuring the prompt investigation and response to all reports of harassment, intimidation and bullying committed on school grounds, at school activities and on school buses. In addition, the chief school administrator shall ensure that this policy is applied to incidents of harassment, intimidation and bullying that are committed off school grounds in cases where a school employee is made aware of such actions. The chief school administrator has the right and authority to impose a consequence on a student for conduct away from school grounds that is consistent with the board's approved code of student conduct, pursuant to N.J.A.C. 6A:16-7.1 and N.J.A.C. 6A:16-7.6.

This authority shall be exercised only when it is reasonably necessary for the student's physical or emotional safety, security and well-being or for reasons relating to the safety, security and well-being of other students, staff or school grounds, pursuant to N.J.S.A. 18A:25-2 and 18A:37-2, and when the conduct which is the subject of the proposed consequence materially and substantially interferes with the requirements of appropriate discipline in the operation of the school. The board directs the chief school administrator or his or her appropriately trained and qualified designee to develop detailed regulations suited to the age level of the students and the physical facilities of the individual schools.

"Harassment, intimidation or bullying" is defined as any gesture, any written, verbal or physical act, or any electronic communication, whether it be a single incident or a series of incidents, that is reasonably perceived as being motivated either by any actual or perceived characteristic, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical or sensory disability, or by any other distinguishing characteristic, that takes place on school grounds, at any school-sponsored function or on a school bus, or off school grounds, in accordance with law, that substantially

HARASSMENT, INTIMIDATION AND BULLYING (continued)

disrupts or interferes with the orderly operation of the school or the rights of other students, and that:

- A. A reasonable person should know, under the circumstances, will have the effect of physically or emotionally harming a student or damaging the student's property, or placing a student in reasonable fear of physical or emotional harm to his/her person or damage to his/her property; or
- B. Has the effect of insulting or demeaning any student or group of students; or
- C. Creates a hostile educational environment for the student by interfering with the student's education or by severely or pervasively causing physical or emotional harm to the student.

"Electronic communication" means a communication that is transmitted by means of an electronic device, including, but not limited to a telephone, cellular phone, computer, or pager.

Consequences and Remedial Measures for Acts of Harassment, Intimidation or BullyingStudents

Consequences and remedial measures for a student who commits an act of harassment, intimidation or bullying shall be varied and graded according to the nature of the behavior, the developmental age of the student and the student's history of problem behaviors and performance. Consequences shall be consistent with the board approved code of student conduct and N.J.A.C. 6A:16-7. Consequences and remedial measures shall be designed to:

- A. Correct the problem behavior;
- B. Prevent another occurrence of the problem;
- C. Protect and provide support for the victim of the act; and
- D. Take corrective action for documented systemic problems related to harassment, intimidation or bullying.

Consequences and appropriate remedial actions for a student who commits an act of harassment, intimidation or bullying may range from positive behavioral interventions up to and including short and long-term suspension or expulsion, as permitted by law. The consequences and remedial measures may include, but are not limited to:

**\*\*\*\*NOTE: THIS LIST CONTAINS SOME EXAMPLES AND SHOULD BE MODIFIED BY THE BOARD ACCORDING TO LOCAL DISTRICT PRACTICES. THE BOARD MAY WISH TO INCLUDE THE GRADING OF OFFENSES (e.g. First Offense, Second Offense, Third Offense).**

## A. Consequences

1. Admonishment;
2. Temporary removal from the classroom;
3. Deprivation of privileges;
4. Classroom or administrative detention;
5. Referral to disciplinarian;
6. In-school suspension during the school week or the weekend;
7. After-school programs;
8. Out-of-school suspension (short-term or long-term);
9. Legal action; and
10. Expulsion.

## B. Remedial Measures

HARASSMENT, INTIMIDATION AND BULLYING (continued)

## 1. Personal

- a. Restitution and restoration;
- b. Mediation;
- c. Peer support group;
- d. Recommendations of a student behavior or ethics council;
- e. Corrective instruction or other relevant learning or service experience;
- f. Supportive student interventions, including participation of the intervention and referral services team;
- g. Behavioral assessment or evaluation, including, but not limited to, a referral to the child study team, as appropriate;
- h. Behavioral management plan, with benchmarks that are closely monitored;
- i. Assignment of leadership responsibilities (e.g., hallway or bus monitor);
- j. Involvement of school disciplinarian;
- k. Student counseling;
- l. Parent conferences;
- m. Student treatment; or
- n. Student therapy.

## 2. Environmental (Classroom, School Building or School District)

- a. School and community surveys or other strategies for determining the conditions contributing to harassment, intimidation or bullying;
- b. School culture change;
- c. School climate improvement;
- d. Adoption of research-based, systemic bullying prevention programs;
- e. School policy and procedures revisions;
- f. Modifications of schedules;
- g. Adjustments in hallway traffic;
- h. Modifications in student routes or patterns traveling to and from school;
- i. Supervision of students before and after school, including school transportation;
- j. Targeted use of monitors (e.g., hallway, cafeteria, locker room, playground, school perimeter, bus);
- k. Teacher aides;
- l. Small or large group presentations for fully addressing the behaviors and the responses to the behaviors;
- m. General professional development programs for certificated and non-certificated staff;
- n. Professional development plans for involved staff;
- o. Disciplinary action for school staff who contributed to the problem;
- p. Supportive institutional interventions, including participation of the intervention and referral services team;
- q. Parent conferences;
- r. Family counseling;
- s. Involvement of parent-teacher organizations;

Classified students are subject to the same disciplinary procedures as nondisabled students and may be disciplined in accordance with their IEP. However, before disciplining a classified student, it must be determined that:

- A. The student's behavior is not primarily caused by his/her educational disability;
- B. The program that is being provided meets the student's needs.

Staff

Consequences and appropriate remedial actions for any staff member who commits an act of harassment,

HARASSMENT, INTIMIDATION AND BULLYING (continued)

intimidation or bullying may range from positive behavioral interventions up to disciplinary charges which could result in suspension or termination. The consequences and remedial measures may include, but are not limited to:

**\*\*\*\*NOTE: THIS LIST CONTAINS SOME EXAMPLES AND SHOULD BE MODIFIED BY THE BOARD ACCORDING TO LOCAL DISTRICT PRACTICES. THE BOARD MAY WISH TO INCLUDE THE GRADING OF OFFENSES (e.g. First Offense, Second Offense, Third Offense).**

## A. Consequences

1. Admonishment;
2. Temporary removal from the classroom;
3. Deprivation of privileges;
4. Referral to disciplinarian;
5. Withholding of Increment
6. Suspension;
7. Legal action; and
8. Termination

## B. Remedial Measures

## 1. Personal

- a. Restitution and restoration;
- b. Mediation;
- c. Support group;
- d. Recommendations of behavior or ethics council;
- e. Corrective action plan;
- f. Behavioral assessment or evaluation;
- g. Behavioral management plan, with benchmarks that are closely monitored;
- h. Involvement of school disciplinarian;
- i. Counseling;
- j. Conferences;
- k. Treatment; or
- l. Therapy.

## 2. Environmental (Classroom, School Building or School District)

- a. School and community surveys or other strategies for determining the conditions contributing to harassment, intimidation or bullying;
- b. School culture change;
- c. School climate improvement;
- d. Adoption of research-based, systemic bullying prevention programs;
- e. School policy and procedures revisions;
- f. Modifications of schedules;
- g. Supervision;
- h. Small or large group presentations for fully addressing the behaviors and the responses to the behaviors;
- i. General professional development programs for certificated and non-certificated staff;
- j. Professional development plans for involved staff;
- k. Disciplinary action;
- l. Supportive institutional interventions, including participation of the intervention and referral services team;
- m. Conferences;
- n. Counseling;

HARASSMENT, INTIMIDATION AND BULLYING (continued)Reporting Harassment, Intimidation and Bullying Behavior

The chief school administrator, principal and/or their designee shall be responsible for receiving complaints alleging violations of this policy.

The board shall allow reports to be anonymous, but no formal disciplinary action shall be based solely on an anonymous report. Any school employee, board member, contracted service provider, student, visitor or volunteer who has witnessed, or has reliable information that a student has been subject to harassment, intimidation or bullying, must report the incident to the building principal or his/her designee.

The following procedures shall apply to the reporting of incidents of harassment, intimidation and bullying:

- A. All acts of harassment, intimidation, or bullying shall be reported verbally to the school principal on the same day when the school employee or contracted service provider witnessed or received reliable information regarding any such incident;
- B. The principal shall inform the parents or guardians of all students involved in the alleged incident, and may discuss, as appropriate, the availability of counseling and other intervention services; and
- C. All acts of harassment, intimidation, or bullying shall be reported in writing to the school principal within two school days of when the school employee or contracted service provider witnessed or received reliable information that a student had been subject to harassment, intimidation, or bullying.

A board member, school employee, contracted service provider, student or volunteer who has witnessed, or has reliable information that a student has been subject to, harassment, intimidation or bullying shall report the incident to the building principal and any appropriate school official, or to any school administrator or safe schools resource officer, who shall immediately initiate the school district's procedures concerning school bullying.

A board member or a school employee who promptly reports an incident of harassment, intimidation or bullying, to the appropriate school official designated by the school district's policy, or to any school administrator or safe schools resource officer, and who makes this report in compliance with the procedures in this policy, shall be immune from a cause of action for damages arising from any failure to remedy the reported incident.

A school administrator who receives a report of harassment, intimidation, or bullying from a district employee, and fails to initiate or conduct an investigation, or who should have known of an incident of harassment, intimidation, or bullying and fails to take sufficient action to minimize or eliminate the harassment, intimidation, or bullying, may be subject to disciplinary action.

District Anti-Bullying Coordinator

The chief school administrator shall appoint a district anti-bullying coordinator. The chief school administrator shall make every effort to appoint an employee of the school district to this position. The district anti-bullying coordinator shall:

- A. Be responsible for coordinating and strengthening the school district's policies to prevent, identify, and address harassment, intimidation, and bullying of students;
- B. Collaborate with school anti-bullying specialists in the district, the board of education, and the chief school administrator to prevent, identify, and respond to harassment, intimidation, and bullying of students in the district;
- C. Provide data, in collaboration with the chief school administrator, to the Department of Education regarding harassment, intimidation, and bullying of students; and



HARASSMENT, INTIMIDATION AND BULLYING (continued)

- D. Execute such other duties related to school harassment, intimidation, and bullying as requested by the chief school administrator.

The district anti-bullying coordinator shall meet at least twice a school year with the school anti-bullying specialists in the district to discuss and strengthen procedures and policies to prevent, identify, and address harassment, intimidation, and bullying in the district.

School Anti-Bullying Specialist

The principal in each school shall appoint a school anti-bullying specialist. When a school guidance counselor, school psychologist, or another individual similarly trained is currently employed in the school, the principal shall appoint that individual to be the school anti-bullying specialist. If no individual meeting these criteria is currently employed in the school, the principal shall appoint a school anti-bullying specialist from currently employed school personnel. The school anti-bullying specialist shall:

- A. Chair the school safety team;
- B. Lead the investigation of incidents of harassment, intimidation, and bullying in the school; and
- C. Act as the primary school official responsible for preventing, identifying, and addressing incidents of harassment, intimidation, and bullying in the school.

School Safety Team

The district shall form a school safety team in each school to develop, foster, and maintain a positive school climate by focusing on the on-going, systemic process and practices in the school and to address school climate issues such as harassment, intimidation, or bullying. The school safety team shall meet at least two times per school year.

The school safety team shall be appointed by the principal and consist of the principal or his or her designee who, if possible, shall be a senior administrator; a teacher in the school; the school anti-bullying specialist; a parent of a student in the school; and other members to be determined by the principal. The school anti-bullying specialist shall serve as the chair of the school safety team.

The school safety team shall:

- A. Receive any complaints of harassment, intimidation, or bullying of students that have been reported to the principal;
- B. Receive copies of any report prepared after an investigation of an incident of harassment, intimidation, or bullying;
- C. Identify and address patterns of harassment, intimidation, or bullying of students in the school;
- D. Review and strengthen school climate and the policies of the school in order to prevent and address harassment, intimidation, or bullying of students;
- E. Educate the community, including students, teachers, administrative staff, and parents, to prevent and address harassment, intimidation, or bullying of students;
- F. Participate in the training required pursuant to the provisions of (N.J.S.A.18A:37-13 et seq.) and other training which the principal or the district anti-bullying coordinator may request;
- G. Collaborate with the district anti-bullying coordinator in the collection of district-wide data and in the development of district policies to prevent and address harassment, intimidation, or bullying of students; and

HARASSMENT, INTIMIDATION AND BULLYING (continued)

- H. Execute such other duties related to harassment, intimidation, and bullying as requested by the principal or district anti-bullying coordinator.

No parent/guardian who is a member of the school safety team shall:

- A. Receive complaints of harassment, intimidation or bullying of students that have been reported to the principal;
- B. Receive copies of reports prepared after an investigation of a harassment, intimidation or bullying incident;
- C. Identify and address patterns of harassment, intimidation or bullying of students; or
- D. Participate in any other activities of the team which may compromise the confidentiality of a student.

Investigating Reported Harassment, Intimidation and Bullying

All reported incidents of harassment, intimidation and bullying shall be investigated promptly and in accordance with law and the following procedures:

- A. All investigations shall be thorough and complete, and documented in writing, and shall include, but not be limited to:
  - 1. Taking of statements from victims, witnesses and accused;
  - 2. Careful examination of the facts;
  - 3. Support for the victim; and
  - 4. Determination if alleged act constitutes a violation of this policy.
- B. The investigation shall be initiated by the principal or the principal's designee within one school day of the report of the incident and shall be conducted by a school anti-bullying specialist. The principal may appoint additional personnel who are not school anti-bullying specialists to assist in the investigation.
- C. The investigation shall be completed as soon as possible, but not later than 10 school days from the date of the written report of the incident of harassment, intimidation, or bullying. In the event that there is information relative to the investigation that is anticipated but not yet received by the end of the 10-day period, the school anti-bullying specialist may amend the original report of the results of the investigation to reflect the information.
- D. The results of the investigation shall be reported to the chief school administrator within two school days of the completion of the investigation, and in accordance with law and board policy. The chief school administrator may initiate intervention services, establish training programs to reduce harassment, intimidation, or bullying and enhance school climate, impose discipline, order counseling as a result of the findings of the investigation, or take or recommend other appropriate action.
- E. The results of each investigation shall be reported to the board of education no later than the date of the next board meeting following the completion of the investigation, and include:
  - 1. Any services provided;
  - 2. Training established;
  - 3. Discipline imposed; or
  - 4. Other action taken or recommended by the chief school administrator.

HARASSMENT, INTIMIDATION AND BULLYING (continued)

- F. The chief school administrator or his or her designee shall ensure that parents or guardians of the students who are parties to the investigation shall receive information about the investigation. This information shall be provided in writing within 5 school days after the results of the investigation are reported to the board and include:
1. The nature of the investigation;
  2. Whether the district found evidence of harassment, intimidation, or bullying; or
  3. Whether discipline was imposed or services provided to address the incident of harassment, intimidation, or bullying.

Range of Ways to Respond to Harassment, Intimidation or Bullying

The board of education recognizes that some acts of harassment, intimidation or bullying may be isolated incidents requiring that the school officials respond appropriately to the individuals committing the acts and provide support programs for victims. Other acts may be so serious or parts of a larger pattern of harassment, intimidation or bullying that they require a response either at the classroom, school building or school district levels or by law enforcement officials.

In considering whether a response beyond the individual is appropriate, the administrator shall consider the nature and circumstances of the act, the degree of harm, the nature and severity of the behavior, past incidences or past or continuing patterns of behavior, and the context in which the alleged incident(s) occurred. Institutional (i.e., classroom; school building; school district) responses include:

- A. School and community surveys;
- B. Mailings;
- C. Focus groups;
- D. Adoption of research-based bullying prevention program models;
- E. Training for certificated and non-certificated staff;
- F. Participation of parents and other community members and organizations;
- G. Small or large group presentations for staff, students, and the community for fully addressing a positive school climate and culture as well as the issues surrounding harassment, intimidation and bullying in the school community; and
- H. The involvement of law enforcement officers, including school resource officers.

For every incident of harassment, intimidation or bullying, the district shall respond to the individual who committed the act. Responses may include:

- A. Individual responses can include positive behavioral interventions (e.g., peer mentoring, short-term counseling, life skills groups) and punitive actions (e.g., detention, in-school or out-of-school suspension, expulsion);
- B. Classroom responses can include class discussions about an incident of harassment, intimidation or bullying, role plays, research projects, observing and discussing audio-visual materials on these subjects and skill-building lessons in courtesy, tolerance, assertiveness and conflict management;
- C. School responses can include theme days, learning station programs, parent programs and information disseminated to students and parents, such as fact sheets or newsletters explaining acceptable uses of electronic and wireless communication devices;

HARASSMENT, INTIMIDATION AND BULLYING (continued)

- D. District-wide responses can include community involvement in policy review and development, professional development programs, adoption of curricula and school-wide programs and coordination with community-based organizations (e.g., mental health; health services; health facilities; law enforcement; faith-based).

The range of ways in which the school shall respond once an incident of harassment, intimidation or bullying is identified shall be defined by the principal in conjunction with the school anti-bullying specialist, and shall include an appropriate combination of counseling, support services, intervention services, and other programs as defined by the commissioner.

Retaliation and Reprisal Prohibited

The board prohibits reprisal or retaliation or false accusation against any person who witnesses and/or reports an act of harassment, intimidation or bullying by any student, school employee, board member, contracted service provider, visitor or volunteer. The consequence and appropriate remedial action for a person who engages in reprisal or retaliation or false accusation shall be determined by the chief school administrator and/or principal or their designee after consideration of the nature, severity and circumstances of the act, in accordance with case law and board policies and procedures.

Any act of retaliation or reprisal or false accusation against any person who reports an act of harassment, intimidation or bullying shall not be tolerated. Any student, school employee, board member, contracted service provider, volunteer or visitor who engages in the act of retaliation or reprisal or who falsely accuses another shall be subjected to consequence and appropriate remedial action. In cases where any state or federal law has allegedly been violated, the local law enforcement agency shall be notified.

## A. Students

The consequences and appropriate remedial action for a student found to have engaged in retaliation, reprisal and/or falsely accused another as a means of harassment, intimidation or bullying shall be varied and graded according to the nature of the behavior, the developmental age of the student and the student's history of problem behaviors and performance, and shall be consistent with this policy. Consequences may include positive behavioral interventions, notification of the parents/guardians, up to and including short or long-term suspension or expulsion, as permitted by law;

## B. School Employees

Consequences and appropriate remedial action for a school employee found to have engaged in retaliation, reprisal and/or falsely accused another as a means of harassment, intimidation or bullying shall be determined in accordance with district policies, procedures and agreements, up to and including suspension or dismissal from service;

## C. Board Members

Consequences and appropriate remedial action for a board member found to have committed an act of harassment, intimidation, or bullying; or found to have engaged in retaliation, reprisal and/or falsely accused another as a means of harassment, intimidation or bullying shall be determined in accordance with district policies, procedures and agreements, up to and including a public sanction or filed ethics charges;

## D. Visitors, Volunteers, Contracted Service Providers, and All Other Persons

Consequences and appropriate remedial action for a visitor, volunteer, contracted service providers and all other persons found to have engaged in harassment, intimidation or bullying; or engaged in retaliation, reprisal and/or falsely accused another as a means of harassment, intimidation or bullying shall be determined by the chief school administrator after consideration of the nature, severity and circumstances of the act, including reports to appropriate law enforcement officials.

HARASSMENT, INTIMIDATION AND BULLYING (continued)

Consequences and remediation for students, employees, board members, visitors, volunteers, and contracted service providers, engaging in harassment, intimidation or bullying or engaged in retaliation, reprisal and/or false accusations may include the following:

**\*\*\*\*NOTE: THIS LIST CONTAINS SOME EXAMPLES AND SHOULD BE MODIFIED BY THE BOARD ACCORDING TO LOCAL DISTRICT PRACTICES. THE BOARD MAY WISH TO INCLUDE THE GRADING OF OFFENSES (e.g. First Offense, Second Offense, Third Offense).**

## A. Consequences

1. Admonishment;
2. Temporary removal from the classroom or school;
3. Deprivation of privileges
4. Prohibited from access to the school facilities (visitors, vendors, board members, all other people);
5. Classroom or administrative detention;
6. Referral to disciplinarian;
7. In-school suspension during the school week or the weekend;
8. After-school programs;
9. Out-of-school suspension (short-term or long-term);
10. Legal action;
11. Withholding of Increment;
12. Suspension;
13. Expulsion;
14. Termination;
15. Termination of service agreements or contracts (vendors, volunteers);
16. Public sanction (board members);
17. Ethics charges (some administrators, board members).

## B. Remedial Measures

1. Personal
  - a. Restitution and restoration;
  - b. Mediation;
  - c. Peer support group;
  - d. Recommendations of a student behavior or ethics council;
  - e. Corrective instruction or other relevant learning or service experience;
  - f. Supportive student interventions, including participation of the intervention and referral services team;
  - g. Behavioral assessment or evaluation, including, but not limited to, a referral to the child study team, as appropriate;
  - h. Behavioral management plan, with benchmarks that are closely monitored;
  - i. Assignment of leadership responsibilities (e.g., hallway or bus monitor);
  - j. Involvement of school disciplinarian;
  - k. Counseling;
  - l. Conferences;
  - m. Treatment; or
  - n. Therapy.
2. Environmental (Classroom, School Building or School District)
  - a. School and community surveys or other strategies for determining the conditions contributing to harassment, intimidation or bullying;
  - b. School culture change;
  - c. School climate improvement;
  - d. Adoption of research-based, systemic bullying prevention programs;
  - e. School policy and procedures revisions;

HARASSMENT, INTIMIDATION AND BULLYING (continued)

- f. Modifications of schedules;
- g. Supervision;
- h. Small or large group presentations for fully addressing the behaviors and the responses to the behaviors;
- i. General professional development programs for certificated and non-certificated staff;
- j. Professional development plans for involved staff;
- k. Disciplinary action;
- l. Supportive institutional interventions, including participation of the intervention and referral services team;
- m. Conferences;
- n. Counseling;

Appeal Process

The parent or guardian may request a hearing before the board after receiving the information from the chief school administrator regarding the investigation. The hearing shall be held within 10 days of the request. The board shall meet in executive session for the hearing to protect the confidentiality of the students. At the hearing the board may hear from the school anti-bullying specialist about the incident, recommendations for discipline or services, and any programs instituted to reduce such incidents.

At the next board of education meeting following its receipt of the report, the board shall issue a decision, in writing, to affirm, reject, or modify the chief school administrator's decision. The board's decision may be appealed to the Commissioner of Education, in accordance with law, no later than the 90 days after the issuance of the board's decision.

A parent, student, guardian, or organization may file a complaint with the Division on Civil Rights within 180 days of the occurrence of any incident of harassment, intimidation, or bullying based on membership in a protected group as enumerated in the "Law Against Discrimination."

Week of Respect

The week beginning with the first Monday in October of each year is designated as a "Week of Respect" in the State of New Jersey. The district, in order to recognize the importance of character education, shall observe the week by providing age-appropriate instruction focusing on preventing harassment, intimidation, or bullying as defined by law (N.J.S.A. 18A:37-14). Throughout the school year the district shall provide ongoing age-appropriate instruction focusing on preventing harassment, intimidation, and bullying in accordance with the Core Curriculum Content Standards.

Training

## A. School Leaders

Any school leader who holds a position that requires the possession of a chief school administrator, principal, or supervisor endorsement shall complete training on issues of school ethics, school law, and school governance as part of the professional development for school leaders required in accordance with State Board of Education regulations. This training shall also include information on the prevention of harassment, intimidation, and bullying (N.J.S.A. 18A:26-8.2).

## B. Teaching Staff Development

Each public school teaching staff member shall complete at least two hours of instruction in suicide prevention, to be provided by a licensed health care professional with training and experience in mental health issues, in each professional development period. The instruction in suicide prevention shall include information on the relationship between the risk of suicide and incidents of harassment, intimidation, and bullying and information on reducing the risk of suicide in students who are members of communities identified as having members at high risk of suicide (N.J.S.A. 18A:6-112).

HARASSMENT, INTIMIDATION AND BULLYING (continued)

## C. Board Members

Within one year after being newly elected or appointed or being re-elected or re-appointed to the board of education, a board member shall complete a training program on harassment, intimidation, and bullying in schools, including a school district's responsibilities as required by law (N.J.S.A. 18A:37-13 et seq.). A board member shall be required to complete the program only once (N.J.S.A. 18A:12-33).

## D. Staff, Student and Volunteer Training

The school district shall:

1. Provide training on the school district's harassment, intimidation, or bullying policy to school employees and volunteers who have significant contact with students;
2. Provide ongoing staff training, in cooperation with the Department of Education, in fulfilling the reporting requirements;
3. Ensure that the training includes instruction on preventing bullying on the basis of the protected categories as required by law (N.J.S.A. 18A:37-14) and other distinguishing characteristics that may incite incidents of discrimination, harassment, intimidation, or bullying; and
4. Develop a process for discussing the district's harassment, intimidation or bullying policy with students.

Information regarding the school district policy against harassment, intimidation or bullying shall be incorporated into a school's employee training program and shall be provided to full-time and part-time staff, volunteers who have significant contact with students, and those persons contracted by the district to provide services to students.

Throughout the school year, the district shall provide ongoing age-appropriate instruction on preventing harassment, intimidation and bullying, consistent with the Core Curriculum Content Standards.

Reporting to the Board

Two times each year between September 1 and January 1 and between January 1 and June 30, the school board shall hold a public hearing at which the chief school administrator will report to the board of education all acts of violence, vandalism, and harassment, intimidation, or bullying (HIB) which occurred during the previous reporting period. The report shall include the number of HIB reports in the schools, the status of all investigations, the nature of the HIB, and other data required by law.

- A. The number of reports of harassment, intimidation, or bullying;
- B. The status of all investigations;
- C. The nature of the bullying based on one of the protected categories identified in N.J.S.A. 18A:37-14 such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical or sensory disability, or by any other distinguishing characteristic;
- D. The names of the investigators;
- E. The type and nature of any discipline imposed on any student engaged in harassment, intimidation, or bullying; and
- F. Any other measures imposed, training conducted, or programs implemented, to reduce harassment, intimidation, or bullying.

Reporting to the Department of Education

The information, including but not limited to, oral reports, written reports or electronic reports shall also be reported once during each reporting period between September 1 and January 1 and between January 1 and

HARASSMENT, INTIMIDATION AND BULLYING (continued)

June 30, to the Department of Education. The report shall include:

- A. Data broken down by the enumerated categories including the protected categories as listed above and the type of harassment, intimidation and bullying (any gesture; any written, verbal or physical act; or any electronic communication, whether it be a single or series of incidents); and
- B. Data broken down by each school in the district, in addition to district-wide data.

The report shall be used to grade each school for the purpose of assessing its effort to implement policies and programs consistent with law (N.J.S.A. 18A:37-13 et seq.). The district shall receive a grade determined by averaging the grades of all the schools in the district.

Each school shall post the grade received by the school and the overall district grade on the homepage of the school's website. The district shall post all the grades for each school of the district and the overall district grade on the homepage of the district's website. A link to the report shall be available on the district's website. The information shall be posted on the websites within 10 days of the receipt of a grade by the school and district.

It shall be a violation to improperly release any confidential information not authorized by federal or State law for public release.

The chief school administrator will annually submit the report to the Department of Education utilizing the Electronic Violence and Vandalism Reporting system (EVVRS). The chief school administrator shall accurately report on each incident of violence, vandalism, alcohol and other drug abuse, and incident of harassment intimidation and bullying within the school district. Any allegations of falsification of data will be reviewed by the board of education using the requirements and procedures set forth in N.J.A.C. 6A:16-5.3(g).

The State Board of Education shall impose penalties on any school employee who knowingly falsifies the report. Therefore, the chief school administrator shall make a reasonable effort to verify reports of violence, vandalism, and harassment, intimidation, or bullying. The board shall provide ongoing staff training, in cooperation with the Department of Education, in fulfilling the reporting requirements. The majority representative of the school employees shall have access monthly to the number and disposition of all reported acts of school violence, vandalism, and harassment, intimidation, or bullying.

Program Assessment and Review

Schools and school districts shall annually establish, implement, document, and assess bullying prevention programs or approaches, and other initiatives involving school staff, students, administrators, volunteers, parents, law enforcement and community members. The programs or approaches shall be designed to create school-wide conditions to prevent and address harassment, intimidation, and bullying.

Policy Development and Review

The district harassment, intimidation and bullying policy shall be adopted through a process that includes representation of parents or guardians, school employees, volunteers, students, administrators, and community representatives.

The district shall annually conduct a re-evaluation, reassessment, and review of this policy, making any necessary revisions and additions. The board shall include input from the school anti-bullying specialists in conducting its re-evaluation, reassessment, and review. The district shall transmit a copy of the revised policy to the appropriate executive county superintendent within 30 school days of the revision (beginning September 1, 2011).

Publication, Dissemination and Implementation

In publicizing this policy, the community including students, staff, board members, contracted service



HARASSMENT, INTIMIDATION AND BULLYING (continued)

providers, visitors and volunteers, shall be duly notified that the rules detailed within apply to any incident of harassment intimidation and bullying that takes place on school grounds, at any school-sponsored function or on a school bus, or off school grounds that substantially disrupts or interferes with the orderly operation of the school or the rights of other students in accordance with law.

The chief school administrator shall take the following steps to publicize this policy:

- A. Provide a link to this policy on a prominent place on the district website;
- B. Provide a link to this policy on a prominent place on each school's website;
- C. Distribute this policy annually to all staff, students and parents/guardians; and
- D. Print this policy in any district publication that sets forth the comprehensive rules, procedures and standards of student conduct and in student handbooks;

The district shall notify students and parents/guardians that the policy is available on the district's website. The district shall publish the name, school phone number, school address and school email address of the district anti-bullying coordinator on the home page of the district website. Each school within the district shall publish the name, school phone number, school address and school email address of the district anti-bullying coordinator and their school anti-bullying specialist on the home page of the school's website. The information concerning the district anti-bullying coordinator and the school anti-bullying specialists shall also be maintained on the Department of Education's website.

Additionally, the district shall make available, in an easily accessible location of its website, the Department of Education's guidance document for the use by parent/guardians, students and district staff to assist in resolving complaints concerning student harassment, intimidation or bullying.

The chief school administrator shall ensure that the rules for this policy are applied consistently with the district's code of student conduct (N.J.A.C. 6A:16-7) and all applicable laws and regulations. All disciplinary sanctions shall be carried out with necessary due process.

This and all related policies shall be reviewed on a regular basis.

Date:

Legal References: Use legal reference sheet.

Cross References: List your appropriate policies. See legal reference sheet for possibilities.

Key Words

Harassment, Intimidation, Bullying, False Accusation, Retaliation, Reprisal, Conduct, Discipline, Student Conduct,

## Commentary by the New Jersey School Boards Association

### NJDOE Safe and Supportive Schools Anti-Bullying Guidance Document Subcommittee

#### Intervention – Complaint Procedure

The following is a commentary on the complaint procedure under the Anti-Bullying Bill of Rights Act. Each part of the process will be set forth with issues for guidance consideration for students, parents, school staff and board members.

#### General Considerations

- Having done a series of presentations on the Anti-Bullying Bill of Rights Act, I have heard a common theme from the board of education member, central office administrator and building level school staff (principal, vice principal, teacher) audience. They all are looking for concrete examples and/or case studies to follow to assist them in their respective roles; teacher, school staff, central office staff, board member. To the extent that the guidance document can provide such examples, that would be very helpful to all concerned.
- The most frequently asked question is how to distinguish HIB from other behavior. The Model Policy and Guidance suggests that the students and staff, and I would add parents and board members, be able to distinguish bullying from "friendly teasing" or "rough and tumble play" through explanation, dialogue and skill building. I would strongly agree. It is the most commonly asked question throughout the state by my presentation attendees. It would be helpful if the guidance document could provide such methods and examples, so that all parties are as clear as possible on what to report as HIB and what to report as some other possible violation of the code of student conduct.
- You may wish to use real life examples for discussion purposes. A recent Commissioner decision, which I had forwarded to the subcommittee, created a fact pattern, which could serve to illustrate several concepts. For example, was the sexually harassing language an example of HIB? Did the student's "failure to discourage" rise to the level of an example of HIB? What is the interplay of the student code of conduct with the HIB complaint process? We could find other actual Commissioner decisions that addressed HIB-type offenses and examine those fact patterns.

*One day out of school suspension for violation of board misconduct policy deemed excessive. Board had affirmative right to require that all students understand the severity of harassing language between students. When student did not discourage other student from asking student's girlfriend if she performed certain sexual acts, such behavior constituted misconduct. However chart of offenses and corresponding disciplinary action in Code of Discipline established that first offense for misconduct should have been teacher detention. W.C. o/b/o M.C., Commissioner 2011: March 21*

- Another real life example, in the news today, is the “sexting” incident involving a middle school girl’s nude photo that has been circulated among students in the Wyckoff community. My understanding from media reports is that the photo has made its way onto various Facebook pages and cell phones. The chief of police has advised the students in Wyckoff that they needed to delete the photo from their electronic devices or face possible child pornography charges. Here is another teachable moment for the guidance document. It could involve the interaction of law enforcement and the schools through the model agreement. It could advise students of the dangers of the internet, its’ appropriate and inappropriate use and the various criminal aspects of certain behaviors, including various sexual, bias and hate crimes. If nothing more, it tells the story of, once it’s out there, it’s out there for all to see, good and bad.
- The “off campus” aspect of reporting and school district responsibility should be addressed. A review of the law in this area and the most recent third circuit cases of Lay shock and J.S. should be part of the discussion. While the third circuit court of appeals heard the case en banc on June 3, 2010, there has yet to be a decision. These decisions, which both addressed student discipline in off campus my space profiles, will hopefully provide guidance on school district authority in off campus, electronic media behavior by students. The recent Commissioner decision on 24/7 student discipline policies in Ramapo Indian Hills should be highlighted as well.
- Electronic media use by students and staff should be addressed as well. Be it Facebook, my space, text messaging, email, form spring, tumbler or whatever the most recent developments may bring, HIB through the use of electronic media is and will be even more challenging for students, parents, school staff and board members.
- The concept of “hostile educational environment” and its connection to “hostile work environment” under the LAD should be addressed. Once again, examples of what would constitute a hostile educational environment should be provided. I have received questions at every presentation on this one.

### Complaint Process

***All acts of HIB must be reported verbally to principal on the same day school employee or contracted service provider witnessed or received reliable information regarding the incident; in writing within two school days; N.J.S.A. 18A:37-15***

***Board members, school employees, students and volunteers who witness or have reliable information that a student has been subject to HIB, must report incidents of HIB to the appropriate school official or to any school administrator or safe schools resource officer who shall immediately initiate the school district’s procedures concerning school bullying. N.J.S.A.18A:37-16***

- For all – clarification, as set forth above as to what is HIB and what is not, both on campus and off campus. Examples and case studies should be used.
- For all – what constitutes “reliable information?” Examples and case studies should be used.
- For all – what if the incident involves a district student and a non-student, or a student from another school district? What if it is a sending-receiving relationship? A charter or choice school relationship? A constituent-regional relationship? A vo-tech relationship or any other public education alternative relationship of students?
- For students and parents – the guidance document should address appropriate expectations. Every incident report will not become part of the HIB process. Many incident reports will simply proceed through the normal student discipline code of student conduct process. If it is HIB, the recipient of the report will need to proceed with the process. At one of our recent presentations, a vice principal reported on how she received information from a parent who advised that the vice principal that her daughter did not know she was calling, and that the parent did not want the vice principal to do anything, she just wanted the VP to “know about it.” After the VP investigated, ascertained that HIB had occurred and disciplined the offending student, the parent called back and advised that if she had known that the VP was actually going to do something, the parent never would have called. Another incident involved an investigation of HIB that uncovered that the victim had knocked the alleged bully on the seat of his pants with a left hook. While the bully was disciplined for the acts of HIB, so was the victim, who retaliated in a physical way. The parent of the victim was not happy.
- For board members, students and volunteers (would volunteers include parents?) – Does the written report requirement apply? Or is that only for school employees and contracted service providers? If so, would the school official to whom the report was made have the responsibility for the written report?

***Principal informs parent/guardian of all involved in the alleged incident; may discuss as appropriate, availability of counseling and other intervention services. N.J.S.A.18A:37-15***

- For students and parents - the guidance document should address appropriate expectations. How much information? Privacy rights of the parties involved, particularly as to the immediate discipline of the alleged HIB provider. Best practices will be very important here. Good communication will be vital.
- For school staff – Where are the legal boundaries on providing information? What can be said and/or written? What should be said and/or written? What is the vehicle for “inform” and “discuss?” Should it be verbal only? Should a voice mail be left if there is no answer? Should you use email, twitter, etc.? Once again, the answers to these questions take us to parent and student expectations, which must be clearly communicated.

- For board members – what aspects of this should be contained in board policy? What should be in regulations, which are typically developed by the administration and provided to the board as information, but not for review and approval?

***Principal or principal designee initiates investigation within one school day of report of the incident, which shall be conducted by a school anti-bullying specialist. N.J.S.A. 18A:37-15***

- For all – clarification as to the beginning of the investigation. The investigation must begin within one school day of "the report." Which report, the verbal report or the written report? For the board member, student or volunteer who may or may not have a written report requirement, does the answer change? What if the student reports to a teacher or guidance counselor?
- For all - the interaction between law enforcement and the schools regarding HIB. School staff, contracted service providers and board members need to know the parameters within which they will act. Parents and students need to know what will and will not happen when they report to school officials. Requirements and expectations need to be clearly communicated. Parents and students need to know that certain incidents that are reported to school officials will be sent to law enforcement, regardless of whether the parent and/or student want them to be so reported. School staff and board members need to know what rises to the level of a law enforcement reportable offense, so they can proceed in the proper fashion. Training will be the key for all. Specific examples and case studies are needed.
- For all - What happens if there is an incident that rises to the level of a potential sexual, hate or bias crime and it needs to be reported to law enforcement? See "sexting" incident above. What is the interaction with the Model Agreement between Law Enforcement and the Schools? Should these items be discussed and agreed upon at the September agreement review meeting? What is the interaction between local law enforcement and the county prosecutor's office? We have been made aware at one of our county presentations where the local law enforcement agency advised the board that there was no need to report only to have the board be excoriated by the county prosecutor's office for not reporting every alleged HIB incident. Should the DOE receive input from the Education and Law Enforcement Working Group on this issue and other issues between law enforcement and the schools regarding HIB?
- For all - When law enforcement advises a school district to stop the in-district investigation and to do nothing until the criminal investigation is completed, what happens to the investigation and report time frames in the reporting sequence? Are they tolled, as in tenure proceedings for staff members? What does a school district do when law enforcement says STOP! All parties need to fully understand those parameters.
- For all – What happens when an incident occurs on the last day of school for the year? The last day of school before winter or spring break? What happens if the next day of school is a massive snow storm, hurricane or declared state of emergency where schools are closed? How do you comply with the one school day requirement when the next school day may be a significant time into the future?

- For school staff and board members – the investigation shall be conducted by a school anti-bullying specialist. Must it be the designated school anti bullying specialist for the school? Could it be another school’s anti-bullying specialist, given workload and/or conflict? Could a person be a school anti-bullying specialist for more than one school? Could the principal be the school anti-bullying specialist, particularly in a small school district?

***The principal may appoint additional personnel, who are not school anti-bullying specialists to participate in the investigation. N.J.S.A. 18A:37-15***

- For school staff - What about contracted service providers; cafeteria workers, custodians, bus drivers who may have information on the incident? What about law enforcement personnel who may be in the school? Could they be appointed? Depending on the nature of the alleged incident and the location of the alleged incident, these non-school employees might be vital to the investigation? What arrangements should be made with the contracted service providers and the contracts by which they are employed regarding these additional duties and responsibilities?
- For all - What is the principal's role during the investigation, particularly regarding student discipline? Should the principal follow the usual procedures under the code of student conduct and discipline as appropriate? How does the code of student conduct interact with the HIB investigation? Since the superintendent is charged with recommendations regarding discipline, is the principal precluded from disciplining a student until the superintendent and board decide? That doesn't really make sense, but it is not clear. In fact, the report that ultimately goes to the board includes the reporting of discipline that has been imposed, implying that discipline, presumably by the principal, has already occurred.
- For all – Assuming that normal disciplinary procedures under the code of student conduct can occur, does that mean that discipline can be effected before the superintendent recommendations? If so, by the time the 10 school day period for the investigation report is completed, the three-day suspension may very well be over. The superintendent and board review becomes essentially an appellate panel review. If discipline cannot be imposed during the investigation period, we could be in a period of home instruction of the accused bully and another expense for the school district. Guidance would be very helpful.

***The investigation shall be completed ASAP; not later than 10 school days from written report of alleged HIB. N.J.S.A. 18A:37-15***

- For all – What happens when an incident occurs on the last day of school for the year? The last day of school before winter or spring break? What happens if the next day of school is a massive snow storm, hurricane or declared state of emergency where schools are closed? How do you comply with the ten school day requirement when the following period of time may preclude timely compliance? What if it is the end of the year or before a long vacation break and no staff are available to investigate?

- For all – Consider the written report requirement set forth above. What if the reporting person has no such requirement? How is the time frame addressed? When does it start? With the verbal report?

***Investigation results are reported to superintendent within two school days of completion of the investigation. N.J.S.A. 18A:37-15***

- For all – Consider again what happens when the investigation completion occurs on the last day of school for the year? The last day of school before winter or spring break? What happens if the next day of school is a massive snow storm, hurricane or declared state of emergency where schools are closed? How do you comply with the two school day requirement when the following period of time may preclude timely compliance? What if it is the end of the year or before a long vacation break and no staff are available to report?
- For all – How are the results to be reported? Written, electronic? Consider OPRA and FERPA privacy issues. Access by the press, public, parents, etc. At what juncture? When are the reports ACD and when do they become permanent? When the superintendent reports to the board and makes recommendations? When the board acts? Ever?

***Superintendent makes recommendations on intervention services, establish training programs to reduce HIB, impose discipline, order counseling, or other action. N.J.S.A. 18A:37-15***

- For all – consider the principal's role in disciplining students under the code of student conduct and the interplay with the superintendent's recommendations.

***Results reported to board of education no later than the date of the next meeting following investigation completion along with information on any services provided, training established, discipline imposed and other action taken or recommended by the superintendent. N.J.S.A. 18A:37-15***

- For all – How are the results to be reported? Written, electronic? Consider OPRA and FERPA privacy issues. Access by the press, public, parents, etc. At what juncture? When are the reports ACD and when do they become permanent? When the superintendent reports to the board and makes recommendations? When the board acts? Ever?

***Five school days after results of the investigation are reported to the board - Parents/guardians who are parties to the investigation, are entitled to receive information in writing – findings, discipline, services to address the incident of HIB.***

- For all – but particularly for students and parents - the guidance document should address appropriate expectations. How much information? Privacy rights of the parties involved, particularly as to the immediate discipline of the alleged HIB provider. Best practices will be very important here. Good communication will be vital.
- Parent access to information about the investigation. Must the parent request the information, which will be made available? Is it provided to the parent automatically

whether she asks for it or not? How would the school district protect student privacy interests within the process? Can the “in writing” requirement be satisfied by electronic communication? Should it? What will be the best practice?

***Parent/guardian may request board hearing after receiving the information; held within 10 days of request; board meets in executive session to protect the confidentiality of the students. N.J.S.A. 18A:37-15***

- For all – Is there a time period for requesting a hearing before the board? The law does not indicate any time limitation; it could be ten minutes after receipt of the information, ten days or ten months. The statute does not say.
- For all - Hearing to be held within 10 days of the request by parent. Calendar days? School Days? Presumably calendar days.
- For all – guidance document should address OPMA closed session concerns so that all are on the same page. *N.J.S.A. 10:4-12(b)3* and 8 provide for a person who is being discussed in closed session to request a public discussion. Case law explains the parameters when there are multiple persons involved in the incident under discussion; who can request a public discussion; do you need all to agree? When or when not? FERPA issues should be clarified so all participants will fully understand their rights in this area.
- For all – but particularly board members and school staff - Board hearing - board may hear from the anti-bullying specialist. What about other persons who might have information regarding the incident? Teachers? Principal? Contracted service providers? District anti-bullying coordinator? Can the board hear from them or not? I would think yes, but the statute only lists the specialist. It will be important for all parties (student, parent, school staff, board members) to know all parameters of the hearing; all due process rights for all concerned. Will there be attorneys allowed? Will the hearing be adversarial or informational? Will examination of witnesses be permitted? Cross examination? Will this follow the usual rules and regulations of a long term suspension/expulsion hearing? All to be clarified.

***Board issues written decision affirming, rejecting, modifying CSA’s decision; next meeting following receipt of report by board. N.J.S.A. 18A:37-15***

- For all – what would the “writing” contain? Who would have access? Can the written decision be OPRAed by the media? If so, what, if anything can be redacted? What privacy interests are available to students and staff? Can the discipline effected on the alleged bully be made public? Can the discipline that may be taken against a school employee be made public? It would be good for all parties to understand the rules of the game and could play into how the decision would be written. Good for school staff who will be writing the decision to know who will have access.

***Appeal of board decision to Commissioner (90 days); Complaint with Division on Civil Rights; HIB of protected class, Law Against Discrimination (180 days) N.J.S.A. 18A:17-15***

- At some point in the guidance document, the possibility of litigation under the LAD should be discussed, particularly the issue of punitive damages and the lack of insurance coverage and probable lack of indemnification under *N.J.S.A. 18A:12-20* for board members and *N.J.S.A. 18A:16-6* and 6.1 for employees.



***Board members or school employees who promptly report incident of HIB to appropriate school official designated by board policy or to any school administrator or safe schools resource officer , immune from damages from failure to remedy reported incident. N.J.S.A. 18A:37-16***

- For board members and school employees - What does it mean to "promptly" report? Is there a definition of "promptly" that can be provided in the guidance?
- For all - Immunity - what about volunteers, students, and contracted service providers? Where do they stand?
- For all - Immunity - what about a lawsuit from a parent of an accused bully who is found to have done nothing wrong? The parent sues the reporting person and the district for permanently damaging the reputation of the accused bully. The parent says that her daughter can never get her reputation, which has forever been sullied as an accused bully, back. The law does not provide for immunity for this event. If it's a board member or employee, N.J.S.A. 18A:12-20 and/or N.J.S.A 18A:16-6 and N.J.S.A. 18A:16-6.1 would apply, except for punitive damages. We have been advising board members and school administrators to contact their insurance carriers to confirm coverage. But what about others players? Is there a need to address it in contracts with contracted service providers? Our sense is that the legislature intended a child abuse-like reporting and immunity requirement. It appears that they did not quite get there.
- For board members and school staff - school administrator discipline - Who disciplines? The board? The ECS? The Commissioner?

**Anti-Bullying Bill of Rights Act**

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**Atlantic County  
School Boards Association**  
May 12, 2011

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**Anti-Bullying Bill of Rights Act**

**P.L. 2010, Chapter 122**  
Approved January 5, 2011  
Amending

**P.L. 2002, Chapter 83**  
**P.L. 2007, Chapter 129**  
**P.L. 2007, Chapter 303**

**N.J.S.A. 18A:37-13 et. seq.**

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**Harassment, Intimidation and Bullying  
Definition – What’s New?**

- Includes gestures, written, verbal or physical acts or electronic communication
- *Single incident or series of incidents*
- Reasonably perceived to be motivated by any actual or perceived characteristic

New Jersey School Boards Association – Serving Local Boards of Education Since 1914

**Harassment, Intimidation and Bullying  
Definition – What’s New?**

- Race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, mental, physical or sensory disability or any other characteristic
- Takes place on school property, school-sponsored function or school bus
- *Off school grounds when school employee is made aware*

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**Harassment, Intimidation and Bullying  
Definition – What’s New?**

- Substantially disrupts or interferes with the orderly operation of the school *or the rights of other students and*
- Effect or reasonable fear of *physical or emotional* harm to student or damage to student’s property
- Effect of insulting or demeaning any student or group of students

New Jersey School Boards Association – Serving Local Boards of Education Since 1914

**Harassment, Intimidation and Bullying  
Definition – What’s New?**

- *Creates a hostile educational environment for the student by interfering with a student’s education or by severely or pervasively causing physical or emotional harm to the student.*

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**Harassment, Intimidation and Bullying  
Definition – What's New?**

**Shall** adopt policy through process which includes representation of parents/guardians, school employees, volunteers, students, administrators and community representatives

**Harassment, Intimidation and Bullying  
Board Policy – What's New?**

- *All acts of HIB must be reported verbally to principal on the same day school employee or contracted service provider witnessed or received reliable information regarding the incident; in writing within two school days*
- *Principal informs parent/guardian; initiates investigation within one day of report; conducted by school anti-bullying specialist*

**Harassment, Intimidation and Bullying  
Board Policy – What's New?**

**Prompt Investigation of Reports of  
Violations and Complaints**

- *Investigation completed ASAP; maximum 10 school days from written report*
- *Results reported to superintendent; two school days from investigation completion*
- *Superintendent makes recommendations on intervention services, training, discipline, counseling, other action*

**Harassment, Intimidation and Bullying  
Board Policy – What's New?**

**Prompt Investigation of Reports of  
Violations and Complaints**

- *Results reported to board of education; next meeting following investigation completion*
- *Five school days after board report - Parents/guardians entitled to receive information – findings, discipline, services*
- *Parent/guardian may request board hearing; held within 10 days of request; executive session*

**Harassment, Intimidation and Bullying  
Board Policy – What's New?**

**Prompt Investigation of Reports of  
Violations and Complaints**

- *Board issues written decision affirming, rejecting, modifying CSA's decision; next meeting following receipt of report by board*
- *Appeal of board decision to Commissioner*
- *Complaint with Division of Civil Rights; HIB of protected class, Law Against Discrimination*

**Harassment, Intimidation and Bullying  
Board Policy – What's New?**

**Prompt Investigation of Reports of  
Violations and Complaints**

- *District website home page – link to policy, name, school phone, school address and school email address of district anti-bullying coordinator*
- *School website home page - name, school phone, school address and school email address of school anti-bullying specialist and district anti-bullying coordinator*

### Harassment, Intimidation and Bullying Board Policy – What's New?

- *First revised HIB policy to Executive County Superintendent, September 1, 2011*
- *Commissioner to adopt amendments to HIB model policy; 90 days after effective date – first school year following enactment*
- *Board may have more stringent policy components*

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### Harassment, Intimidation and Bullying Board Members

- *Board members must report incidents of HIB to school administration; witness, reliable information*
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**Anti-Bullying Bill of Rights Act**

**The Known and the Unknown**

**ERIC Academy of Teaching and Learning**  
May 24, 2011

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**Anti-Bullying Bill of Rights Act**

**P.L. 2010, Chapter 122**  
Approved January 5, 2011  
Amending

**P.L. 2002, Chapter 83**  
**P.L. 2007, Chapter 129**  
**P.L. 2007, Chapter 303**

**N.J.S.A. 18A:37-13 et. seq.**

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**Harassment, Intimidation and Bullying Definition - What's New?**

- Includes gestures, written, verbal or physical acts or electronic communication
- *Single incident or series of incidents*
- Reasonably perceived to be motivated by any actual or perceived characteristic

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**Harassment, Intimidation and Bullying  
Definition – What's New?**

- Race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, mental, physical or sensory disability or any other characteristic
- Takes place on school property, school-sponsored function or school bus
- *Off school grounds when school employee is made aware*

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**Harassment, Intimidation and Bullying  
Definition – What's New?**

- Substantially disrupts or interferes with the orderly operation of the school *or the rights of other students and*
- Effect or reasonable fear of *physical or emotional* harm to student or damage to student's property
- Effect of insulting or demeaning any student or group of students

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**Harassment, Intimidation and Bullying  
Definition – What's New?**

- *Creates a hostile educational environment for the student by interfering with a student's education or by severely or pervasively causing physical or emotional harm to the student.*

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**Harassment, Intimidation and Bullying  
Definition – What's New?**

**Shall adopt policy through process  
which includes representation of  
parents/guardians, school employees,  
volunteers, students, administrators  
and community representatives**

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**Harassment, Intimidation and Bullying  
Board Policy – What's New?**

- All acts of HIB must be reported verbally to principal on the same day school employee or contracted service provider witnessed or received reliable information regarding the incident; in writing within two school days*
- Principal informs parent/guardian; initiates investigation within one day of report; conducted by school anti-bullying specialist*

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**Harassment, Intimidation and Bullying  
Board Policy – What's New?**

**Prompt Investigation of Reports of  
Violations and Complaints**

- Investigation completed ASAP; maximum 10 school days from written report*
- Results reported to superintendent; two school days from investigation completion*
- Superintendent makes recommendations on intervention services, training, discipline, counseling, other action*

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**Harassment, Intimidation and Bullying Board Policy – What's New?**

**Prompt Investigation of Reports of Violations and Complaints**

- *Results reported to board of education; next meeting following investigation completion*
- *Five school days after board report - Parents/guardians entitled to receive information – findings, discipline, services*
- *Parent/guardian may request board hearing; held within 10 days of request; executive session*

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**Harassment, Intimidation and Bullying Board Policy – What's New?**

**Prompt Investigation of Reports of Violations and Complaints**

- *Board issues written decision affirming, rejecting, modifying CSA's decision; next meeting following receipt of report by board*
- *Appeal of board decision to Commissioner*
- *Complaint with Division on Civil Rights; HIB of protected class, Law Against Discrimination*

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**Harassment, Intimidation and Bullying Board Policy – What's New?**

**Prompt Investigation of Reports of Violations and Complaints**

- *District website home page – link to policy, name, school phone, school address and school email address of district anti-bullying coordinator*
- *School website home page - name, school phone, school address and school email address of school anti-bullying specialist and district anti-bullying coordinator*

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**Harassment, Intimidation and Bullying  
Board Policy – What's New?**

- *First revised HIB policy to Executive County Superintendent, September 1, 2011*
- *Commissioner to adopt amendments to HIB model policy; 90 days after effective date – first school year following enactment*
- *Board may have more stringent policy components*

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Section 1  
Longview Independent School District, Texas

Longview ISD:  
ELA/Bully Prevention  
Implementation  
TASA/TASB Presentation  
October 2009

LISD Presenters:

- Mr. Ted Beard, LISD School Board Member
- Dr. James Wilcox, LISD Superintendent



## LISD Student Demographics

- 46.37% African American
- 29.34% Hispanic
- 22.99% White
- 49.20% At Risk
- 65.96% Economic Disadvantage
- 65.92% Free/Reduced Lunch
- 11.38% Special Education
- 11.04 Bilingual
- 5.25% Gifted and Talented

## LISD is proactive:

- Address student needs for safety, security and well being
- Improve academic skill acquisition
- Improve academic performance
- And..

## LISD is proactive

- LISD is the first district in the State of Texas to implement district-wide intervention through a systematic and systemic ELA/Bully Prevention curriculum district wide.

## Bullying is Pervasive

- Only 38% of US students always feel safe at school and 30% rarely or never feel safe.  
US Dept of Health and Human Services, 2003
- One out of five children admits to being a bully. Noll & Carter, 1997
- 25% to 50% of children report being bullied. Janis Bullock, 2002

## Bullying is Pervasive

- 43% of children have a fear of being harassed in the school bathroom.

Noll & Carter, 1997

- Bullying can be physical or psychological.

Janis Bullock, 2002

## The wrong skill set

- Many young children who bully lack empathy, problems solving skills and learn from parents to hit back in response to problems. Vladimir and Brubach, 2000.

## What is Bullying?

- (a) repeated (not just once) harm to others by hurting others' feelings through words or by attacking and physically hurting others;
- (b) it may be done by one person or by a group;
- (c) it happens on the school grounds or on the way to and from school; and
- (d) it is an unfair match (i.e., the person doing the bullying is physically stronger or better with words or making friends than the person being bullied)

JoLynn V. Carney 2008

## No Quick Fix

“What is clear from a review of existing bullying prevention programs is that 1-shot workshops don't work. There are no quick fixes; success requires remaking of the entire school climate: Effective bullying programs are on-going and are integrated with the curriculum, school discipline policies, and other violence prevention”

Hennepin Lawyer County Bar Association

## Setting the LISD Course

Making sure we:

- Address student needs for safety, security and well being
- Improve academic skill acquisition
- Improve academic performance

## LISD's Objective

- Our objective was to positively teach bullying prevention and behavior management skills AND increase ELA skills acquisition.

## Our dilemma

- How could we continue to increase ELA skills acquisition in:
- Reading comprehension
- Vocabulary development
- Writing
- ....and...

## Our dilemma

- ***and*** simultaneously integrate a comprehensive, structured bullying prevention curriculum without sacrificing “seat time” on academics? How could we measure progress in both areas? How could we evaluate gains?

## We Wanted a Bully Prevention Curriculum that would:

- Be comprehensive
- Integrate into the daily *existing* curriculum
- Provide a common framework and language within the district among students, teachers, and parents
- Be researched-based
- Have clear achievable objectives and goals
- Be measurable both quantitatively and qualitatively

## We Wanted a Bully Prevention Curriculum that would:

- Supplement not supplant
- Improve ELA academic skill acquisition and performance in reading, writing and vocabulary development;
- Develop vital self-management and interpersonal relationship skills by combining a systematic reading and writing curriculum with a theme-based bully prevention content.

## And give us a TAKS Performance Edge

- TEKS and NCTE correlated supplemental ELA curriculum
- Increase writing skills (NAEP)
- Improve reading comprehension (NRP)
- Improve vocabulary development (NRP)

## Curriculum Structure

- 9 weeks
- 9 units
- 5 days a week
- Day 1 – Reading Passages
- Day 2 – Vocabulary
- Day 3 – Reading Comprehension
- Day 4 – Writing
- Day 5 – Assessment/ Drawing Conclusions



## Curriculum Structure

- 20 minutes a day
- Integrated into existing curriculum
- Self contained
- 9 unit quizzes
- 1 cumulative ELA mastery test
- Pre and Post Test “Bully” assessments

## Writing

- Student Workbook exercises – speeches, plays, create labels, develop advertisements,
- Journal writing – open ended prompts
- NAEP 2011 Frameworks

## Vocabulary

- Direct and Indirect
- Explanations/definitions
- Synonyms
- Antonyms
- On grade

## Reading

- A different comprehension skill is practiced in each unit
- Discussion questions

## ELL Support

- Spanish translations for:
- Leveled Reader
- DVD
- Student Workbooks
- Student Journals

## What Teachers Said

- “We have used the vocabulary words in other instances in our school day and the students understand and recognize the words.”  
Gwen Skinner, Teacher, Hudson, PEP
- “The Spanish translations for the workbooks and journals are very helpful for the students. They also like that the illustrations aren’t “babyish”.  
Erika Guerra, Teacher, South Ward Elementary

## What Principals Said

- We are pleased with the increased acquisition of ELA skills that our students have demonstrated. The reading and writing materials about bullies are very engaging and are making a difference in developing positive student behavior.

– Ms. Sarah Sheppard, Principal  
Mozelle Johnston Elementary, LISD

## What Principals Said

- “Overall, the bullying curriculum has had its greatest effect in the area of helping students to recognize the behavior of a bully and feeling comfortable and not afraid of retaliation when reporting incidents of bullying; as well as, knowing that there will be follow through by the adult the incident reported to.” Cynthia Wise, Principal, McClure Elementary

## Effectiveness Evaluation

- Evaluation of Bully Prevention Component Effectiveness
- Evaluation of ELA Component Effectiveness
- Treatment Groups
- Control Groups

## Bully Prevention Component

- Focus:
- What constitutes a “bully” and bullying behavior
- Managing interactions with bullies

## Bully Prevention Component

- Student Pre Test
- Student Post Test
- 15-item
- TAKS format

## Bully Prevention Component

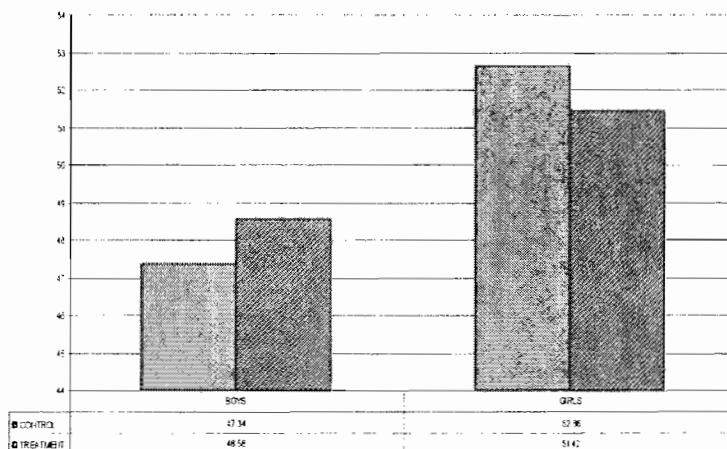
- Parent Survey
- 12 questions
- how parents perceive their child's feelings and interactions with bullies

## ELA Effectiveness Component

- 9 unit quizzes
- One 25-item ELA cumulative mastery test
- TAKS format

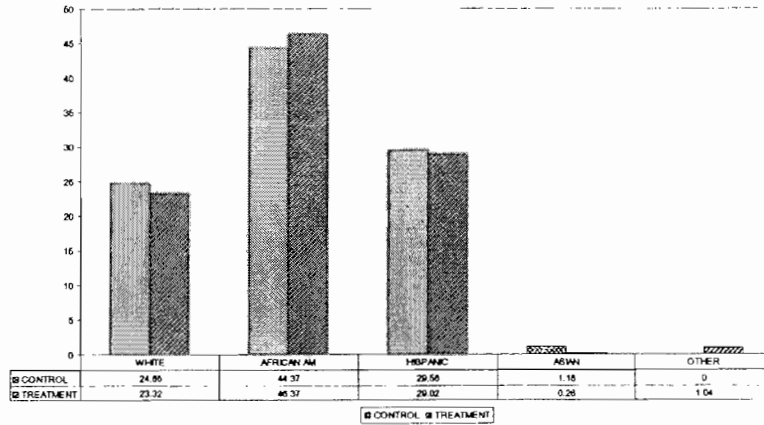
### Treatment and Control Groups by Gender

\* No statistically significant differences ( $p= .05$  or less) between Control and Treatment groups



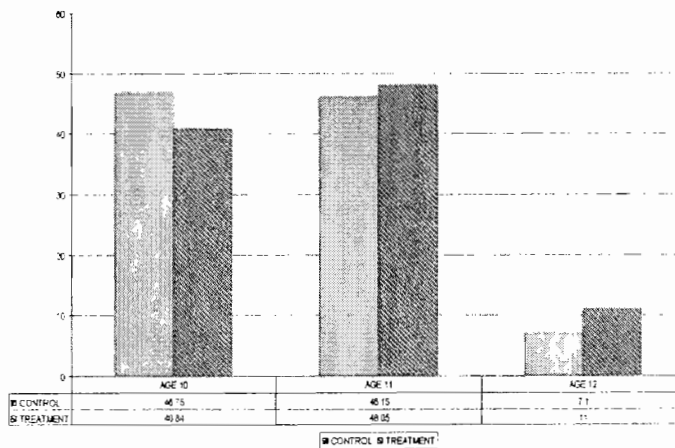
## TREATMENT AND CONTROL GROUP BY ETHNIC

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## TREATMENT AND CONTROL GROUP BY AGE

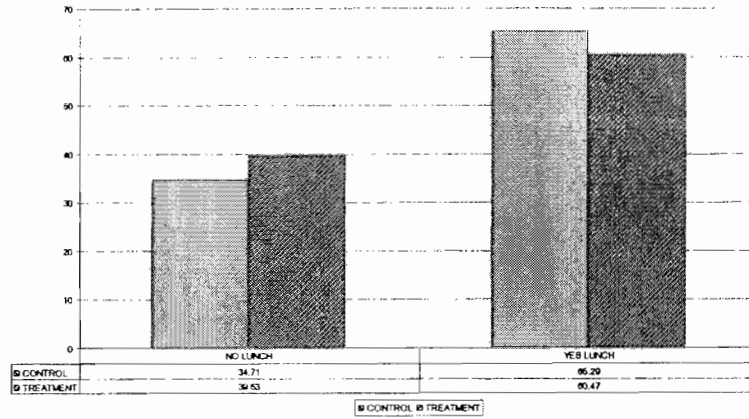
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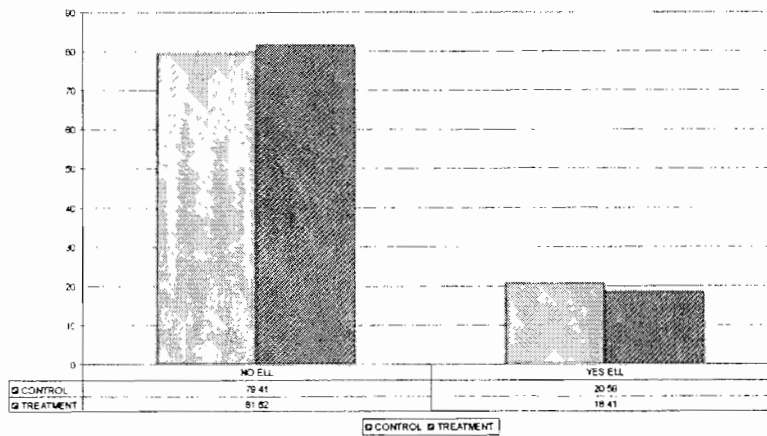
### TREATMENT AND CONTROL GROUP BY FREE OR REDUCED LUNCH

\* No statistically significant differences ( $p < .05$  or less) between Control and Treatment groups



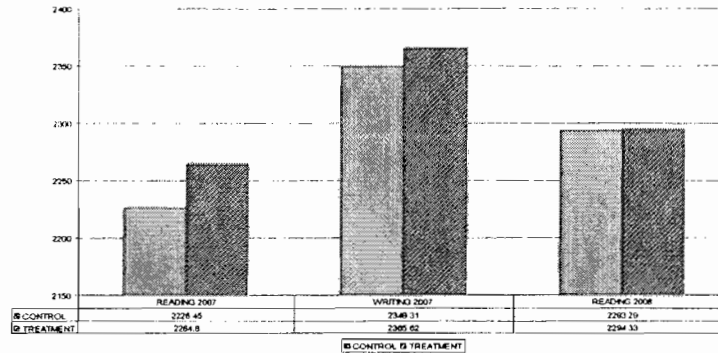
### TREATMENT AND CONTROL GROUP BY ENGLISH LANGUAGE LEARNERS

\* No statistically significant differences ( $p < .05$  or less) between Control and Treatment groups



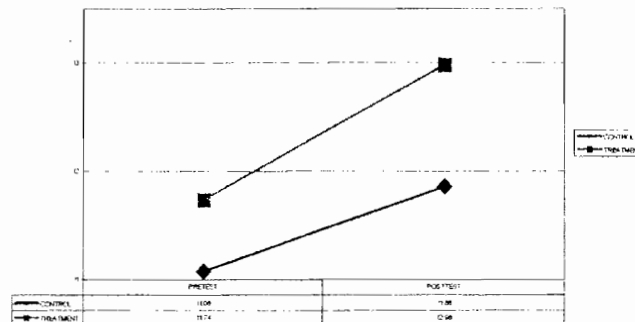
## TREATMENT AND CONTROL GROUP READING, WRITING 2007 AND READING 2008 MEANS

\* No statistically significant differences ( $p < .05$  or less) between Control and Treatment groups



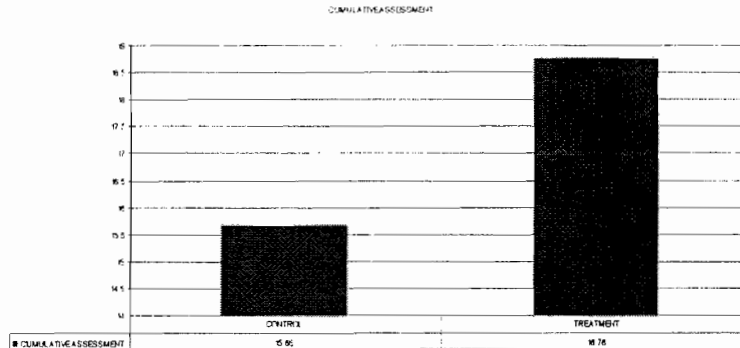
READING 2007 ( $F(1, 196) = 1.13, p = .2901$ )  
 WRITING 2007 ( $F(1, 193) = 0.15, p = .6944$ )  
 READING 2008 ( $F(1, 221) = 0.00, p = .9784$ )

## TREATMENT AND CONTROL GROUP - CHANGE BETWEEN PRETEST AND POSTTEST



The Treatment group made statistically significant change over the course of the program when their pretest scores were used as a covariate ( $F(1) = 20.59, p < .001$ ). There was some change in the Control group but it was not statistically significant.

**TREATMENT AND CONTROL GROUP -  
COMPARISON OF MEAN SCORES ON THE  
CUMULATIVE TEST**



There were statistically significant differences on the Cumulative test for the Treatment and Control groups ( $F(1, 223) = 18.10, p < .001$ ) indicating the Treatment group had significantly higher scores than did the Control group and were able to apply what they had learned.

**DO THE PRETEST, POSTTEST, OR CUMULATIVE  
TESTS PREDICT THE TAKS READING 2008 SCORES  
FOR THE TREATMENT?**

REGRESSION ANALYSIS – STEPWISE MODEL

**TREATMENT GROUP**

PRETEST AND CUMULATIVE PREDICTED READING 2008 SCORES ( $F(2, 168) = 16.78, p < .001$ ) and accounted for 16% of the variance in Reading 2008 scores for the Treatment group

## WHAT DO TEACHERS SAY ABOUT THE PROGRAM?

Liked professional quality of videos, lessons, and materials  
Thought the subject matter was interesting  
Liked the integration of knowledge, vocabulary, reading, writing  
Liked the role playing as an effective way for students to learn and kept them involved  
Liked how students had to draw conclusions from learning  
The *Bullies are a Pain in the Brain* curriculum had a real life connection for students  
Students were actively engaged, motivated, excited, and interested in the lessons  
Students were eager to write in their journals  
Students were able to identify with characters  
Students learned new skills they could use on the TAKS  
Curriculum promoted lively class discussions and questions  
Curriculum had interesting and challenging vocabulary words for students  
Students had an awakening about bullies  
Program had a real life connection  
Students really liked reading the book, liked watching the video, and using the poem as a 'rap' song

## WHAT DO TEACHERS THINK STUDENTS LEARNED?

Students learned to relate to each other  
Some people did not realize they were being bullies  
Students began to work with each other better  
Students were very interested in discussing bullying and were open to revealing bullying instances  
Students began to understand everyone needs to be treated with dignity  
Students learned to cope better with the people around them.  
Students realized gangs were also bullies and should be avoided  
Students realized a bully's power comes from the fear he senses in him victims  
The program gave students a chance to develop their own rules  
Students began to understand how some behaviors might cause a student to be a bully magnet  
Students realized how peer pressure affects behavior

## MORE STUDENT LEARNING

Students were not afraid to talk to one of their classmates about provoking them for no reason

Students wanted to enact anti-bullying rules for the school campus and made up a set of rules

Students began to handle problems on their own

Students had good comprehension – some have been cyber-bullied

Students understood being apologetic and admitting or recognizing when you have done something wrong is a sign of maturity

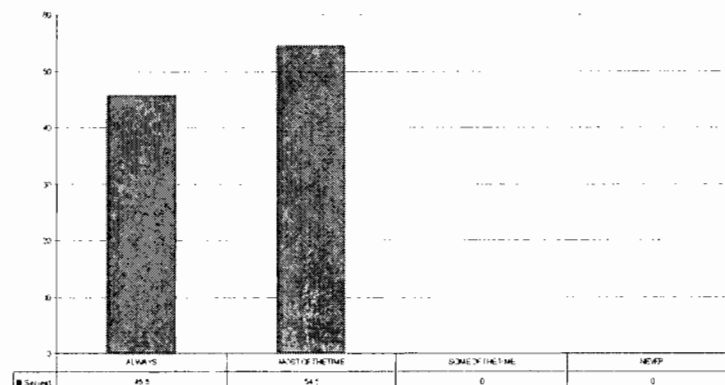
Students were shocked a bully would admit their faults and apologize

Students realized bullies sometimes dislike themselves and bullies are often insecure about themselves

Students concluded that just because someone is a bully now does not mean they will always be a bully

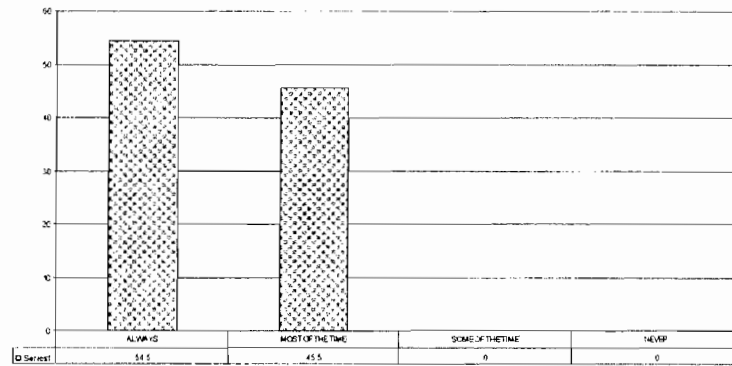
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I HAVE CONTROL OF MY CLASSROOM OF STUDENTS.



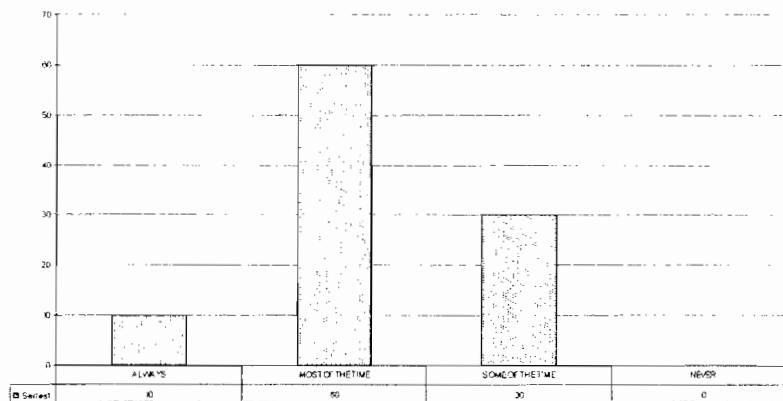
### TREATMENT TEACHER PERCEPTIONS

STUDENTS KNOW THEY CAN SEEK HELP IF THEY NEED IT.



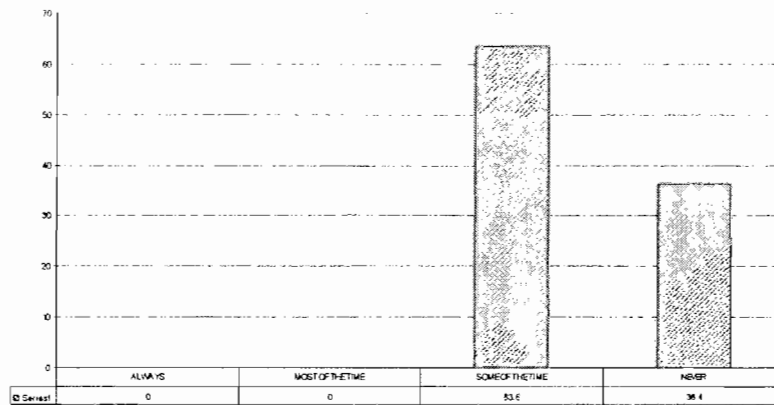
### TREATMENT TEACHER PERCEPTIONS

STUDENTS KNOW HOW TO BE A FRIEND TO OTHERS.



## TREATMENT TEACHER PERCEPTIONS

### INSTRUCTION TIME IS AFFECTED BY BULLYING BEHAVIORS



## Summary

- LISD believes it has been a worthwhile effort to implement this cross-curricular program

## Q & A

Contact Us:

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Section 2  
Williamsport Area School District, Pennsylvania

# Williamsport Area School District

PASA and PSBA conference  
2010

## A Comprehensive District-Wide Positive Behavior Programming Set


- ▶ Second Step – a violence prevention, social skills-building program
- ▶ Olweus Bully Prevention Program – impacts school culture
- ▶ SWPBS–School–Wide Positive Behavior Support – a change in philosophy

## Why these programs?

- ▶ Evidence-based programs
- ▶ Easy implementation
  - Culture change
  - Not curriculums that teachers have to learn
- ▶ Build upon each other
- ▶ Intertwined – not all of these “additional” things
- ▶ Very little cost
- ▶ Good things for kids!

## Second Step

- ▶ Violence Prevention Program
  - Consistency
  - Common language
  - Universal expectations – ALL staff have same expectations



## Second Step

- ▶ **Improve behavior and reduce classroom disruptions**
- ▶ Create the best environment for learning
- ▶ Grades Pre K-5 (and middle school)
- ▶ Components:
  - Develop strong bonds to school
  - Impulse control
  - Anger management
  - Calming down techniques
  - Solve problems without anger
  - Treat others with compassion

## Second Step

- ▶ Scripted lesson cards (PDF)
  - Makes it EXTREMELY easy to use
- ▶ DVDs lead to thought-provoking role plays, engrossing discussions, and positive results in your classroom
  - Research shows the importance of:
    - Teaching expectations
    - Modeling those expectations
    - Students then practice those expectations

## Second Step

- Establish context (need) for program
- Professional development for teachers
- Piloted in classrooms by counselors with teachers present
- Transfer to teachers
- Class meetings establish venue for relationship development, early intervention for problems

## Olweus Bully Prevention Program



- Improve peer relations
- Make schools safer
- More positive places for students to learn and develop
- Common language
- School-wide culture change
  - Consistency
  - Universal expectations - ALL staff have same expectations

## Olweus Bully Prevention

Goals of the program include:

- Reducing existing bullying problems among students
- Preventing new bullying problems
- Achieving better peer relations at school
- Building a culture that supports children

## Olweus Bullying Prevention Installation

- All staff involved and responding to bullying issues
- Explicit, consistent expectations, including 'by-standers'
- Formal kick-off, signage & reminders
- Parents included
- 'Keep it simple' operational structure
- Multipurpose meetings

## Recognition of the Olweus Bully Prevention Program

- Blueprints Model Program (Center for the Study and Prevention of Violence)
- Model Program (SAMHSA)
- Effective Program (OJJDP)
- Level 2 Program (U.S. Department of Education)

## School-Wide Positive Behavior Support

- Philosophical shift from remediation to instruction/prevention
- Teach desired behaviors
- Energy focused on positive behavior
- All facets of the school involved
- At WASD:
  - All buildings using the program
  - All levels involved - transitions accommodated
  - Developmentally scaled
  - Individual building character preserved

## Positive Behavior Components

- ▶ Teach and discuss the identified behaviors
- ▶ Model the expected behavior
- ▶ Facilitate student practice
- ▶ Students demonstrate proficiency under 'stressful' conditions
- ▶ Errors in performance:
  - No emotional or condemning response
  - Referred to reteaching ASAP
  - Repeat first four steps in reteaching

## Positive Behavior Installation

- ▶ Firm administrative commitment
- ▶ Staff involved in development – building and district committees
- ▶ Few specific, critical behavior targets
- ▶ Clear, concise descriptions taught across all environments
- ▶ All staff participating – consistent expectations
- ▶ Parents and community informed
- ▶ Tracking and evaluation – SWIS

	Classroom	Building	Common	Recess	Program	Bus	Extracurricular Activities	School-Building Activities	Community & Home
<b>Be Present</b>	Students are present in class, on time, and ready to learn.	Students are present in the building, on time, and ready to learn.	Students are present in common areas, on time, and ready to learn.	Students are present during recess, on time, and ready to learn.	Students are present during program activities, on time, and ready to learn.	Students are present on the bus, on time, and ready to learn.	Students are present at extracurricular activities, on time, and ready to learn.	Students are present at school-building activities, on time, and ready to learn.	Students are present in the community and at home, on time, and ready to learn.
<b>Be Respectful</b>	Students respect themselves, others, and property.	Students respect themselves, others, and property.	Students respect themselves, others, and property.	Students respect themselves, others, and property.	Students respect themselves, others, and property.	Students respect themselves, others, and property.	Students respect themselves, others, and property.	Students respect themselves, others, and property.	Students respect themselves, others, and property.
<b>Be Responsible</b>	Students take responsibility for their actions and the actions of others.	Students take responsibility for their actions and the actions of others.	Students take responsibility for their actions and the actions of others.	Students take responsibility for their actions and the actions of others.	Students take responsibility for their actions and the actions of others.	Students take responsibility for their actions and the actions of others.	Students take responsibility for their actions and the actions of others.	Students take responsibility for their actions and the actions of others.	Students take responsibility for their actions and the actions of others.
<b>Be Safe</b>	Students follow safety rules and procedures.	Students follow safety rules and procedures.	Students follow safety rules and procedures.	Students follow safety rules and procedures.	Students follow safety rules and procedures.	Students follow safety rules and procedures.	Students follow safety rules and procedures.	Students follow safety rules and procedures.	Students follow safety rules and procedures.

## BATHROOM

BE PRESENT, BE RESPECTFUL, BE RESPONSIBLE, BE SAFE

	BATHROOMS
<b>BE PRESENT</b>	<ol style="list-style-type: none"> <li>1. USE ONLY WHEN NECESSARY</li> <li>2. USE CLOSET FACILITY</li> <li>3. RETURN TO CLASS PROMPTLY</li> </ol>
<b>BE RESPECTFUL</b>	<ol style="list-style-type: none"> <li>1. RESPECT YOURS AND OTHERS' PRIVACY</li> <li>2. USE EQUIPMENT AND SUPPLIES AS INTENDED</li> <li>3. WASH YOUR HANDS</li> <li>4. USE APPROPRIATE LANGUAGE, TONE AND VOLUME</li> </ol>
<b>BE RESPONSIBLE</b>	<ol style="list-style-type: none"> <li>1. FLUSH TOILET</li> <li>2. WASH HANDS</li> <li>3. KEEP BATHROOM CLEAN</li> <li>4. INFORM STAFF OF PROBLEMS</li> </ol>
<b>BE SAFE</b>	<ol style="list-style-type: none"> <li>1. KEEP HANDS, FEET, AND OBJECTS TO SELF</li> <li>2. FOLLOW DRUG-FREE AND SCHOOL SAFETY POLICIES</li> </ol>

### RTI/PBIS CONTINUUM

<b>RTI</b>	<p><b>Description:</b> Teach foundational social and emotional skills to all students. Strategies at this level are implemented with all children in a classroom or school.</p> <p>• 80 percent of students will master skills through this level of support.</p> <p><b>Strategies:</b> Set and teach classroom and school-wide behavioral expectations for all students (walking in hallways, keeping hands and feet to themselves, establish expectations and correction systems collect data).</p> <p><b>Description:</b> Some students will require extra support (Tier 2/Targeted) in order to master the primary prevention skills and behaviors taught at the universal level.</p> <p>• 15 percent of students will need this level of intervention in addition to the universal programming.</p> <p><b>Strategies:</b> Small group interventions aimed at teaching specific skill sets.</p> <p><b>Description:</b> A small subset of students will need more intensive interventions in order to move toward mastery of the universal skills and behaviors.</p> <p>• 5 percent of students will need this level of intervention in addition to the universal programming.</p> <p><b>Strategies:</b> Individual Support Plan including individualized therapeutic supports.</p>	<b>PBIS</b>
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### SECOND STEP PROGRAM

<b>SSP</b>	<p><b>Description:</b> The Second Step program is a Tier 1, universal classroom curriculum that teaches foundational social and emotional skills to all children, PreK-Grade 8.</p> <p><b>Strategies:</b> The Second Step program teaches students specific skills to help them manage their emotions and impulses and to solve problems. With the ability to calm down and stay in control, students are better able to meet school-wide behavioral expectations.</p> <p><b>Description:</b> Some schools use the Second Step program in small groups and have had measurable success doing so. Since the program is designed as a Tier 1 universal intervention, the best small group interventions are those designed to complement the classroom program.</p> <p><b>Strategies:</b> Typically these programs pre-teach Second Step lessons to the small groups before they are presented to the whole class. This provides students in the small group with an introduction to lesson content before encountering it in the whole-class setting.</p> <p><b>Description:</b> Although the Second Step program is not a Tier 3 strategy, the problem-solving and conflict-resolution skills taught in the program could inform Tier 3 interventions.</p>
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www.ctchildren.org • 800-434-4499 • © 2010 Committee for Children

## Elements of Cohesion

- ▶ Administrative support
- ▶ Staff engaged from the outset
- ▶ Common language
- ▶ Common operations – class meetings
- ▶ Consistent across all settings and staff
- ▶ Reliance on shared committees
- ▶ This too shall pass – NOT
  - No programs du jour

**For more information:**

**Olweus Bullying prevention**

[www.olweus.org](http://www.olweus.org)

1-800-328-9000 in the U.S.

**Second Step**

The Committee For Children  
[thecommitteeforchildren.com](http://thecommitteeforchildren.com)

**School-Wide Positive Behavior Support**

The Pennsylvania Training and Technical Assistance Network  
[pattan.net](http://pattan.net)



## Williamsport Area School District Matrix

	<b>Classroom</b>	<b>Hallway</b>	<b>Cafeteria</b>	<b>Bathroom</b>	<b>Playground</b>	<b>Bus</b>	<b>Assemblies/ Auditorium</b>	<b>School Related Activities</b>	<b>Library &amp; Labs</b>
<b>Be Present</b>	Come to school everyday Be on time Be attentive Be on task Actively participate	Move quickly/quietly to your destination	Be on time Remain in designated area	Use only when necessary Use closest facility Return to class promptly	Remain within the designated areas Line up quickly	Be on time Be on assigned bus Be at designated area on time	Be ready to participate Be at designated area on time	Be on time Show school pride Participate Join clubs, teams, and other activities	Use time wisely
<b>Be Respectful</b>	Follow the directions of all staff Listen while others are speaking Respect others property and personal space Be tolerant Use appropriate language, tone and volume Want to be recognized before speaking	Keep hands, feet and objects to self Respect school property Use appropriate language, tone and volume Dispose of trash properly Follow directions of all staff	Keep hands, feet and objects to self Use manners Use appropriate language, tone and volume	Respect yours and others privacy Use equipment and supplies as intended Wait your turn Use appropriate language, tone and volume	Take turns Share equipment Include everyone Use appropriate language, tone and volume Use good sportsmanship	Follow the directions of all staff Use appropriate language, tone and volume Share space and seats appropriately	Follow the directions of all staff Display good Sportsmanship Use appropriate audience procedures Sit quietly	Use appropriate language, tone and volume Take turns and share	
<b>Be Responsible</b>	Follow directions Be prepared and organized Accept responsibility for your actions Complete and turn in all assignments on time Use classroom materials properly	Travel only to designated areas	Clean your area Have "cafe" card ready Follow the directions of all staff Inform staff of problems	Flush toilet Wash hands Keep bathroom clean Inform staff of problems	Follow all of the rules of the games Use equipment appropriately Put equipment away quickly	Take care of belongings Keep your bus clean Enter and exit appropriately	Eyes forward Keep area clean	Clean up your area Use appropriate language, tone and volume Focus on event	Keep area clean Inform staff of problems Use library and lab materials properly
<b>Be Safe</b>	Keep hands, feet and objects to yourself Sit properly Use classroom materials and equipment appropriately Follow drug free & school safety policies Follow emergency procedures	Face forward Stay to the right One step at a time on stairs Walk Keep hands, feet and objects to self	Sit correctly Keep hands feet and objects to yourself. Wash or sanitize hands	Keep hands, feet and objects to self Follow drug free & school safety policies	Keep hands, feet and other objects to self. No excessive rough play Inform staff of problems	Stay seated Face forward Keep hands, feet and objects to yourself Keep all body parts inside the bus Keep food and drinks in backpack Keep aisle clear	Keep hands, feet and objects to yourself Sit appropriately	Enter/exit in orderly fashion Remain in designated areas Keep hands, feet and objects to self. Follow drug free & school safety policies	Keep hands, feet and objects to yourself Be aware of your environment

Section 3  
Frederick County Public Schools, Maryland



### Strategies for parents

The best protection parents can offer their children is to foster their confidence and independence so children are willing to respond appropriately when necessary.

- Convince your child that he or she is not at fault and that the bully's behavior is the source of the problem
- Encourage peaceful resolutions
- Offer support but do not "rescue" your child from challenges or encourage dependence on you
- Teach your child to be self-confident and firm in response to bullying rather than hostile or antagonistic
- Help your child develop or strengthen friendships and interests that foster acceptance and success
- Work collaboratively with school personnel to address the problem
- Arrange a conference with school staff to obtain practical advice and intervention with the bully



### We are here to help

No student should have to tolerate bullying in school. FCPS takes all reports of harassment or bullying seriously. We follow clearly defined procedures to respond promptly and appropriately. The right to privacy is fully respected in this process.

Further information about FCPS bullying, harassment and discrimination policies and support services is available at your local school or from:

#### **Ted Luck**

*Supervisor of Education That Is Multicultural and Gifted and Talented Education*  
191 South East Street  
Frederick, MD 21701  
301-696-6891

#### **Janet Shipman**

*Coordinator of Counseling and Student Support*  
191 South East Street  
Frederick, MD 21701  
301-644-5220

*This brochure is distributed to students in grades 3, 6 and 9 annually and is on [www.fcps.org](http://www.fcps.org). Please retain for future reference.*

Bullying, Harassment and Intimidation Reporting Forms may be found in the counseling office and administrative offices of all schools and at [www.fcps.org](http://www.fcps.org)>forms.



**Frederick County Public Schools**

The Frederick County Public School system does not discriminate in admissions, access, treatment, or employment in its programs and activities on the basis of race, color, gender, age, national origin, religion, sexual orientation or disability. For more information, contact the Executive Director of Legal Services.

Rev. 08/10

## What You Can Do To PREVENT BULLYING

### A Guide for Parents & Students



**Frederick County, Maryland  
Public Schools**

# Let's Work Together to Stop Bullying

## Respect is a basic right

Everyone has the right to feel respected and be treated with dignity at Frederick County Public Schools. We maintain a firm policy that prohibits all forms of bullying and harassment. We fully support the Maryland State Board of Education regulation that states our schools must be safe, provide an optimal environment for achievement and be free from violence and disrespect.

Our school staffs are sometimes faced with situations in which a student has been threatened, teased, taunted or otherwise intimidated by another student. This form of peer abuse is called harassment, or bullying. When bullying occurs in relation to race, color, sex, national origin, disability, religion or socioeconomic status, it becomes discrimination. If it is allowed to continue, it can lead to violence.



## What is bullying/harassment?

Bullying is defined as intentional negative actions on the part of one or more students, repeatedly and over time, that interfere with a student's ability to participate in or benefit from the school's education programs. Harassment is defined as intentional negative actions on the part of one or more students that causes discomfort with identity issues in regard to race, color, national origin, gender, disability, sexual orientation, religion, or other identifying characteristics, and that interfere with a student's ability to participate in or benefit from the school's education programs. Harassment can be a one time incident. The acts can be written, verbal or physical including published communication that causes physical harm, damages property, causes fear of harm to person or property or disrupts the orderly operation of the school. Bullying or harassment can interfere with learning, cause grades to suffer, lead to absenteeism, damage self-esteem, and cause social and emotional problems in life.

## What can be done?

FCPS administrators, teachers and other school staff make every effort to establish clear behavior standards, be aware of problems, provide proper guidance and supervision, and consistently and fairly enforce policies. Frequently, however, bullying incidents occur out of sight of school staff. Research and experience show that a comprehensive approach that includes students and parents has the most promise in reducing bullying and the harm it causes.

## Action steps for students

How you respond to bullying can make a difference in how you and others are treated in your school.

- Respond as calmly and assertively as you can (anger ignites the situation and tears reinforce the bully's behavior)
- Speak up or offer support when someone is being bullied
- Seek immediate help from an adult then report bullying or harassment incidents to the principal or school counselor
- Privately support those being hurt with kind words
- Express disapproval of bullying by not joining in the laughter, teasing or gossip
- Speak out in support of respect for all people no matter how "different" their interests, skin color, religion, origin, income, physical appearance or abilities
- Defuse a problem situation by taking the bully aside and asking him or her to "cool it"



Published on *Urbana Middle School* (<http://ums.sites.fcps.org>)

[Home](#) > Olweus Bullying Prevention

## Olweus Bullying Prevention

# BULLYING PREVENTION PROGRAM BEGINS AT URBANA MIDDLE SCHOOL

All schools deal with the issue of bullying. Urbana Middle School is taking proactive steps to stop and prevent bullying by adopting the Olweus Bullying Prevention Program. This research-based schoolwide “systemschange” program has been used successfully in schools all over the country and around the world with positive results.

This program is not a curriculum that students participate in for only a few weeks. Rather, it is a coordinated effort by all the adults in the school to supervise and intervene when any bullying happens. As part of the program, students participate in monthly class meetings to learn about the effects of bullying, what they can do about it, and how then can work with adults at school to put a stop to it even as bystanders. Parents can support the messages students are getting in school.

Frank Vetter, principal at Urbana Middle School, said, “This type of program is about changing the whole school climate to make it a safer, more positive place to learn. One change that many schools have noticed after using this program for a year or two is that students actually like school better. It makes sense – it’s hard to learn if you’re afraid or if other students are mean to you.”

Implementing the Olweus Bullying Prevention Program is a longterm commitment to making Urbana Middle School a safer, more positive place to be.

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The webmasters for this site are [Trudy Griebenow](#) and [Nicole Cicerone](#).

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# Hit Back At Bullies? Not At This School

by LARRY ABRAMSON



Enlarge

Larry Abramson/NPR

Jay Kulkarni and his lunch mates at Urbana Middle School near Frederick, Md., all say they have been bullied. But they are learning how to fight back — by not fighting back. Instead, their school tries to address the culture of bullying and teaches kids how to deal with the problem.

March 25, 2010

text size **A A A**

The cafeteria at Urbana Middle School outside Frederick, Md., is a happy, sunny place, redolent of corn chips and pizza, the daily special.

A group of sixth-grade boys look up from their food. Question: Do you guys all feel like at some point in your lives, somebody has bullied you? Answer: a chorus of "yeah!"

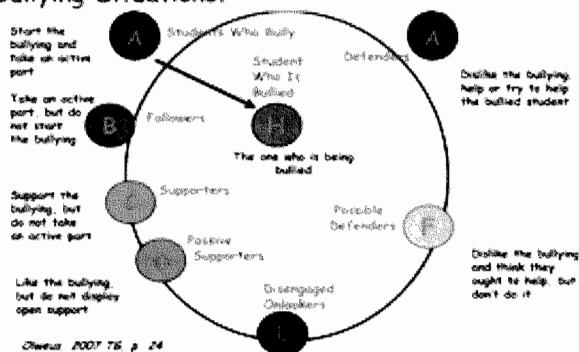
Stupid question. Of course they have: They're middle schoolers.

'Twas ever thus, right? But Principal Frank Vetter says it doesn't have to be that way.

"Most parents," he says, "commiserate with me, and say, 'You work at a middle school!' People sort of remember back to how challenging that time was. So anything we can do to help kids, parents will be supportive of."

That's why the Olweus Bullying Prevention Program tries to turn anti-bullying efforts into part of the school culture, rather than just the topic of an occasional assembly.

## What Roles Do Students Play In Bullying Situations?



Hazeliden Publishing

The 'Circle of Bullying' illustrates how the social phenomenon works and shows the roles — bully, victim, supporters, followers, defenders — of those involved.

The concepts are simple: Don't bully, help those who are being bullied and tell an adult what's going on. Pearre tries to reinforce the idea that the bully doesn't act alone. The community can take away the bully's power by refusing to cheer him on, by telling an adult, or perhaps the ultimate step: stepping in to help the victim.

"Sometimes they are not mature enough to make that step yet," Pearre says. "But we're just as happy if they let us know, and we can intervene."

## Creating An Anti-Bullying Culture

One of the most important things they do at Urban Middle is talk about bullying. It's more than just a response to occasional incidents: It's part of the curriculum. In one classroom, teacher Leslie Pearre shows slides that illustrate how this social phenomenon works.

"This is the circle of bullying," Pearre explains during a classroom meeting devoted to the subject.

She points to a chart that illustrates the roles: passive supporters, followers, the bully, the victim, and possible defenders.

Watching this class, any former middle schooler might recoil and think, "It's wrong to rat on friends." And student Jay Kulkarni voiced what every boy listening to this lesson had to be thinking: "So if someone comes up to you and like, punches you, or does something physically violent, how do you defend yourself? Do you just stand there and watch?"

Don't let it get to that point, kids are told. Don't resort to violence, because it's wrong. And, as Pearre explains, it will land you in even bigger trouble.

"Frederick County Public Schools has a zero-tolerance policy for any kind of physical violence," she warns.

Staying out of fights isn't just a good idea; it's the law. And principal Vetter says he's out to stop bullying in part because he must.

"The state of Maryland requires that we report all bullying incidents, all incidents of harassment. They require various interventions that we do."

The kids seem to be absorbing this idea. But researcher Catherine Bradshaw of Johns Hopkins University, who has worked with this school system, says getting through to parents isn't as easy.

"We've done research on this issue, and quite often parents will tell their kids, 'Don't get into fights, don't do that. But if somebody hits you, you better hit back.' And sometimes that's where the rub is, between messages they hear at home and what is the reality in the school setting."


### **Talking The Talk**

Bradshaw says these programs can be successful if they are consistent. That means a school has to keep at it, since new kids enter the school throughout the year. Sixth-grader Jay Kulkarni has certainly learned to talk to the talk.

"I think these discussions are very productive, because we're not influenced to be the bully," Jay says, while his friends crowd around, vying for their chance to talk to a reporter. "I think the bully is very insecure when he bullies, because maybe he or she has a bad life at home or gets abused by parents."

Jay sounds like he may have a future as a social worker. Or he may just have a better chance of avoiding the intimidation that is standard fare for many kids.

Though this stuff is hard to measure, a recent study suggests it may be working. On a national survey funded by the Department of Justice, students reported fewer incidents of bullying.

 **OLWEUS BULLYING PREVENTION PROGRAM**

*[Insert Name of School]*  
**Bullying Prevention Coordinating Committee Training**

*OBPP Trainer/Consultant Names: Janet Shipman, Marie Haney, TC Suter, Sharon Marconi*

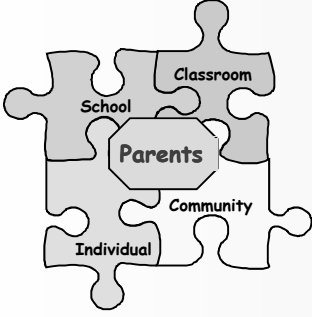
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**Program Developer, Dan Olweus  
US Developer, Sue Limber**


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**Program Components**



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**Recognition of the Olweus Bullying Prevention Program**



- Blueprint Model Program (Center for the Study & Prevention of Violence)
- Effective Program (OJJDP)
- Level 2 Program (US Dept. of Education)

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**The Olweus Bullying Prevention Program IS...**

- Designed for ALL students
- Preventive AND responsive
- Focused on changing norms and restructuring the school setting
- Research-based
- NOT time-limited: Requires systematic efforts over time

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**The OBPP IS NOT...**

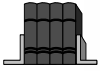
- a curriculum
- a conflict resolution approach
- a peer mediation program
- an anger management program



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## Supplemental Materials

- *Bullying at School: What We Know and What We Can Do*
- *Quit It! A Teacher's Guide on Teasing & Bullying (Gr. K-3)*
- *Cyber Bullying: A Prevention Curriculum (Gr. 3-5 & 6-12)*
- *Class Meetings That Matter: A Year's Worth of Resources (Gr. K-5 & 6-8)*
- *OBPP Companion Bibliography (Gr. K-12)*



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## Olweus Definition of Bullying:

"Bullying is when someone repeatedly and on purpose says or does mean or hurtful things to another person who has a hard time defending himself or herself."


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## Three Key Components of Bullying Behavior

1. Involves an aggressive behavior
2. Typically involves a pattern of behavior repeated over time
3. Imbalance of power or strength

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## Types of Bullying





- Direct--Hitting, taunting, name calling
- Indirect—Rumors, exclusion, cyber bullying

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## Distinguishing Among...


- Bullying
- Rough-and-Tumble Play
- Real Fighting

**TG CD #3**

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## Why address bullying in schools?



1. For students and their futures
2. For a healthy school climate
3. For the larger community
4. For the purposes of risk management for schools
5. It's a wise investment

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## Effects of Being Bullied



- Lower self-esteem
- Depression & anxiety
- Absenteeism & lowered school achievement
- Thoughts of suicide
- Illness

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## Health Consequences of Bullying (Fekkes et al., 2004)

	<u>Bullied</u>	<u>Not bullied</u>
Headache	16%	6%
Sleep problems	42%	23%
Abdominal pain	17%	9%
Feeling tense	20%	9%
Anxiety	28%	10%
Feeling unhappy	23%	5%
Depression scale		
moderate indication	49%	16%
strong indication	16%	2%

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## Concerns About Children Who Bully

- Children who bully are more likely to:
  - Get into frequent fights
  - Be injured in a fight
  - Steal, vandalize property
  - Drink alcohol, smoke
  - Be truant, drop out of school
  - Report poorer academic achievement
  - Perceive a negative climate at school
  - Carry a weapon

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## Children Who Bully


- Bullying may be part of a conduct-disordered behavior pattern
- This pattern may continue into young adulthood
- Olweus study: Bullies were 4 times as likely to have 3 or more convictions by age 24



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## Effects of Bullying on Bystanders


- Bystanders may feel:
  - Afraid
  - Powerless to change the situation
  - Guilty for not acting
  - Diminished empathy for victims over time



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## Effects of Bullying on School Climate

- Creates a climate of fear and disrespect
- Interferes with student learning
- Students may feel insecurity and not like school as well
- Students may perceive lack of control/caring



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## Students Involved in Bullying: Characteristics and Risk Factors...

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19

## Characteristics of Bullied Students

Research suggests two  
categories of bullied  
children:

- "submissive" or "passive victims"
- "provocative victims" or "bully-victims"



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20

## "Passive Victims"

- Cautious, sensitive, quiet, & withdrawn
- Anxious, insecure, have low self-esteem
- Physically weaker than peers (boys)
- Physically mature earlier (girls)
- Have few friends--find it easier to associate with adults

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21

## "Provocative Victims" Tend To...

- Share characteristics with bullied children
- Share characteristics with students who bully
- Be less effective in bullying than other children who bully
- Behave in ways that cause irritation and attract negative attention

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22

## Children Who Bully Tend To...



- Have positive attitudes toward violence
- Be impulsive and have quick tempers
- Show little empathy for victims
- Be aggressive to adults
- Be involved in other antisocial or rule-breaking activities
- Be physically stronger than peers (boys)

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## Common Myths About Children who Bully

- "Children who bully are loners."
- "Children who bully have low self-esteem."

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## What Motivates Children Who Bully?

- Like to dominate others in a negative way
- Gain satisfaction from inflicting injury and suffering
- Receive “rewards” by bullying others (prestige, attention, possessions)

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## What Roles Do Students Play In Bullying Situations?

The diagram illustrates the roles of students in a bullying situation. At the center is the **Student Who Is Bullied** (H). Surrounding this central figure are eight other roles, each with a description:

- A: Students Who Bully** - Start the bullying and take an active part.
- B: Followers** - Take an active part, but do not start the bullying.
- C: Supporters** - Support the bullying, but do not take an active part.
- D: Passive Supporters** - Like the bullying, but do not display open support.
- E: Disengaged Onlookers** - Dislike the bullying and think they ought to help, but don't do it.
- F: Possible Defenders** - Dislike the bullying, help or try to help the bullied student.
- G: Defenders** - Dislike the bullying, help or try to help the bullied student.
- H: Student Who Is Bullied** - The one who is being bullied.

TG, p. 24 © 2010 The Olweus Bullying Prevention Group 26


## Group Mechanisms in Bullying

- Social contagion
- Weakening inhibitions against aggression
- Decreased sense of individual responsibility
- Gradual changes in the view of bullied student(s)

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## School Risk Factors for Problems of Bullying

- Lack of supervision during breaks
- Students have indifferent or accepting attitudes
- Staff have indifferent or accepting attitudes towards bullying



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## A Word About ....

# Adults Who Bully

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## Misdirections in Bullying Prevention and Intervention

- Simple, short-term solutions
- “Program du jour approaches”
- Group treatment for children who bully
- Anger management or self-esteem enhancement for children who bully
- Zero tolerance policies for bullying
- Mediation/conflict resolution to resolve bullying issues
- Selecting inappropriate supplemental materials

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## OBPP Principles imply...

1. Adults are responsible
2. Clear & consistent message
3. Short & long-term focus
4. Follow model with fidelity
5. OBPP should become part of everyday life at school

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31

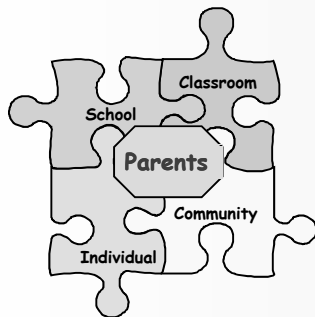
## OBPP Principles imply:

6. Student involvement in changing climate
7. Student learning about bullying
8. OBPP is NOT peer mediation or conflict resolution
9. OBPP is not a classroom management technique

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## Program Components



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## Individual-Level Components



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## Individual Interventions DVD:

### Part 1: "On-the-Spot" Interventions

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## Individual-Level Components


1. Supervise students' activities
2. Ensure that all staff intervene on-the-spot when bullying occurs
3. Hold meetings with students involved in bullying
4. Develop individual intervention plans for involved students



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## Why Adults Don't Always Intervene:



- Have difficulty recognizing bullying
- Fail to recognize the importance of intervening
- Uncertain *how* best to intervene
- Lack of time

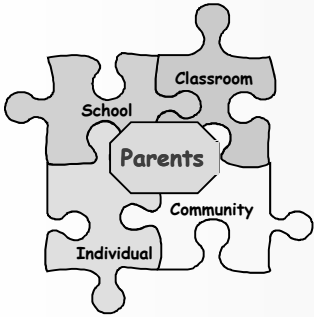
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## On-the-Spot Interventions: *The "Teachable Moment"*

1. Stop the bullying
2. Support student who has been bullied
3. Name bullying behavior & refer to school rules
4. Engage the bystanders
5. Impose immediate & appropriate consequences
6. Take steps to ensure bullied student will be protected from future bullying

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## Program Components



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## Classroom-Level Components




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## Classroom-Level Components

1. Post and enforce schoolwide rules against bullying
2. Hold regular class meetings
3. Hold meetings with students' parents



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## Class Meetings DVD

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## BPCC Support for Classroom

- Build time for class meetings
- Topic ideas
- Support and staff development
- Integrating messages across curriculum
- Monitor progress



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## Supportive Materials for the Classroom

- Schoolwide Guide
- Teacher Guide, plus DVD & CD


Supplemental Materials:

- Class Meetings That Matter (K-5) (6-8)
- Class Meetings & Individual Interventions DVD
- Cyber Bullying Curricula (3-5 & 6-12)
- Quit it!: (K-3)
- OBPP Companion Bibliography
- National Anti-Bullying Campaign Materials

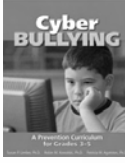
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Grades K-5



Grades 6-8



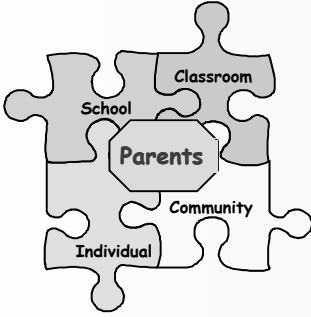
Grades 3-5



Grades 6-12

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## Program Components




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## School-Level Components



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## Bullying Survey



- Locations of hotspots
- Patterns for girls & boys
- Insights into school climate
- Information to assess supervision
- Adult & student attitudes about bullying
- Impact of bullying on students
- Valuable planning tool
- Conducted Annually

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## Hold Staff Discussion Group Meetings


- BPCC has ongoing meetings
- Weekly part of teaming meetings



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## Introduce School Rules and Consequences

- Develop policy on bullying
  - Samples: *SWG Doc. # 20*
- Anti-bullying rules
- Positive & negative consequences



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## school rules about bullying

SP (TG Doc #8)

- We will not bully others.
- We will try to help students who are bullied.
- We will try to include students who are left out.
- If we know that somebody is being bullied, we will tell an adult at school and an adult at home.

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## Use of Positive Consequences to Reinforce Positive Behavior

- Why are positive consequences critical?
- Who receives them?
- Types of behavior to reinforce
- Types of positive consequences
- Tips on use of positive consequences

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## Use of Negative Consequences

- Why aren't positive consequences enough?
- Guidelines for use of negative consequences
- Types of negative consequences

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## Refine the Supervisory System

1. Determine the "hot spots" for bullying
2. Develop strategies to increase supervision in common "hot spots"
3. Data Analysis



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## Refine the Supervisory System (continued)





4. Develop ways of tracking and reporting bullying incidents schoolwide (Sample: SWG CD #23)
5. Consider the attitudes of supervising adults
6. Evaluate your school's physical design to reduce bullying

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## Hold Kick-off Event to Launch the Program

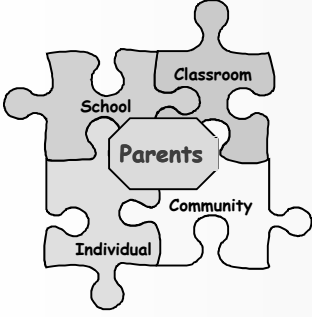


- What is it?
- When should it take place?
- How to prepare for it?
- What to cover?
- Related activities

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## Program Components



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## Community-Level Components



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## Community-Level Components

1. Involve community members on the BPCC
2. Develop partnerships with community members to support your program
3. Help spread anti-bullying messages and principles of best practice throughout the community



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## Communities Support Prevention Efforts




- Parent Teacher Organization (PTO or PTA)
- City Council or County Commissioners
- Non-Profit Family & Child Welfare Organizations
- Local businesses
- Public Service Groups (e.g. Kiwanis, Rotary, Junior League)
- Local foundations
- Local press (newspaper, TV, radio)

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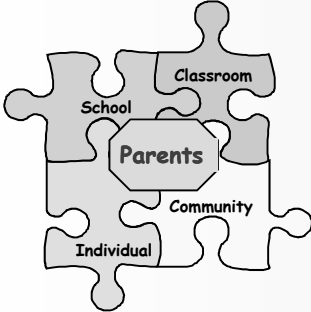
## Spreading the Anti-Bullying Message into the Community

- Community sports leagues
- After-school programs
- Scouting, 4-H, other youth programs
- Faith-based organizations
- Juvenile justice groups
- Summer camps



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## Program Components



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## Partner with Parents


- The importance of parent involvement in the OBPP
- Strategies to involve parents in OBPP
  - Serve on the BPCC
  - Talk with their children about bullying


SP
TG CD #23, #25, #26, & #27

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## Tracking Program Implementation


- OBPP Schoolwide Implementation Checklist (1st Year) (SWG Doc. #7)
- OBPP Implementation Checklist for Teachers (TG Doc. #7)
- OBPP Implementation Checklist for Continued Program Implementation (SWG Doc. # 34)


SP

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## Required OBPP Materials


- OBPP Schoolwide Guide
  - CD of written materials
  - DVD: Overview of OBPP
- OBPP Teacher Guide
  - CD of written materials
  - DVD: Six scenarios for class discussion
- Olweus Bullying Questionnaire




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## Schoolwide Guide and Teacher Guide Icons





DVD Symbol
CD-ROM Symbol



Available In Spanish

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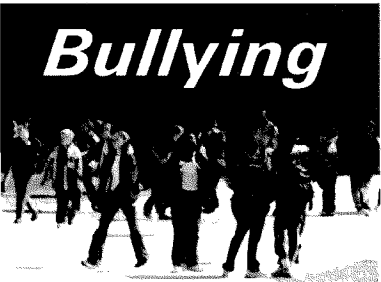
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or call 864-710-4562

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67

# Bullying

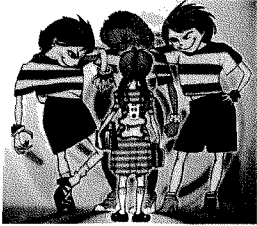


**Why it's a big deal!**



presented by  
James R. Cannon  
Executive Director of Legal Services  
Frederick County Public Schools

## What is Bullying?

- Behavior that makes someone feel intimidated or harassed



- A bully usually wants to feel powerful.

- A victim feels sad, embarrassed, and humiliated.

## How can a person bully another?

- Face – to – Face
- Computer/Email - “cyberbullying”
  - 43% of surveyed middle and high school students reported they experienced cyberbullying in the prior 12 months. (Source: Nat'l Crime Prevention Council)
- Phone – Texting

## Most common bullying complaint?



## Age of most victims?

(FCPS statistics)

- 11 years old
- 12 years old
- 13 years old

### What is the impact to the victim?

- Dreads coming to school
- Drops out of school
- Retaliation – (Columbine)
- Suicide

### Consequences to the Bully?

- Discipline in accordance with FCPS Regulation 400-8
- Legal charges filed by the victim

### Cell Phones

- Very fast changes!
- New ways to bully!



### History:

- Cell phones/beepers:
  - You must be a drug dealer.



### Cell Phones: A must have for safety reasons

Columbine

9-11



Cell phones: Okay...  
as long as we don't see them



or hear them!



Cell phones have created a new vocabulary.



### Coded language

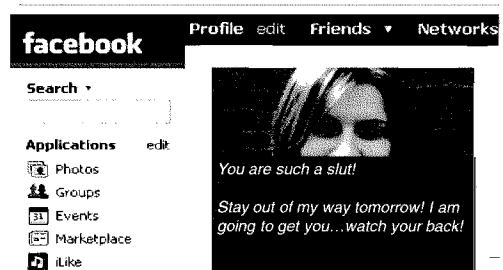
b+wr - by the way  
brb - be right back  
tty l - talk to you later  
lol - laugh out loud  
2day - today



### More ...

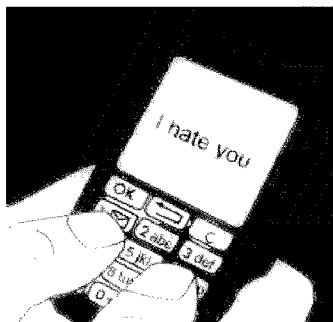
- **BHL8** Be home late
- **L2G** Love to go
- **GTG** Got to go
- **LMBO** Laugh my butt off

### • Cyberbullying

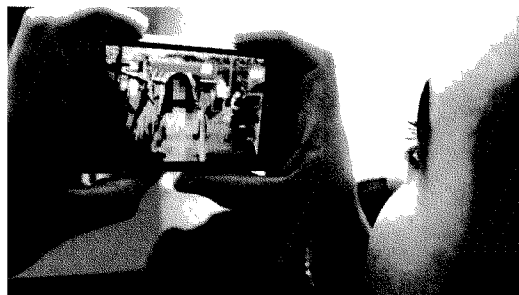


### • Mass Texting- i.e., gossip

Fast way to harm a person



### • Sexting – sending sexually explicit photos in a text message



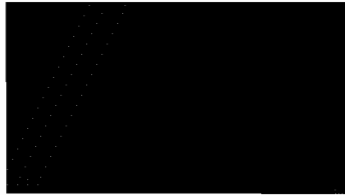
***Most teens do not realize  
sexting could = possession of  
child pornography!***



Is the receiver 18, sender a minor?  
Is the photograph of nudity or sexual conduct?

### **Impact:**

- At least three students committed suicide as the result of being involved in sexting.
- Another student was arrested and convicted for sexting.



[Web Version](#)

### **FCPS Regulation 400-8 "Discipline"**

#### **Sexting**

- Suspension → Expulsion
- Law enforcement notified



### **Goal:**

Think before you act!  
Help your friends think before they act!

Your actions could have lasting consequences!



<b>FREDERICK COUNTY PUBLIC SCHOOLS</b>	<b>Reg. No. 400-48</b>
<b>Subject: BULLYING – HARASSMENT - INTIMIDATION COMPLAINT PROCESS FOR STUDENTS</b>	<b>Date of Issue: 7/1/86</b>
<b>Preparing Office: Office of the Superintendent</b>	<b>Amended: 1/6/11</b>

I. Policies 309 and 437

**NOTE:** Cross-reference policy 318 for responsibilities of investigating sexual harassment involving employers, vendors, volunteers, or outside persons having contact with the school system and regulation 200-48 which addresses the discrimination complaint process for applicants or employees.

II. Procedures

All school employees who observe, receive reports of, overhear, or otherwise witness bullying, intimidation, or harassment or to whom such harassment is reported shall take prompt and appropriate action.

Staff members who engage in or fail to appropriately address bullying, harassment, or intimidation may be subject to disciplinary consequences up to and including termination. Per Maryland law, a school employee who reports an act of bullying, harassment, or intimidation in accordance with this regulation is not civilly liable for any act or omission in reporting or failing to report an act of bullying, harassment, or intimidation.

**NOTE:** Cross-reference policies 305 and 323 for information regarding consequences.  
Cross-reference regulation 400-66 for disability discrimination regarding 504 issues.

A. Definitions (list is not intended to be all inclusive)

1. Bullying, Harassment, or Intimidation

As used in this regulation, bullying, harassment, or intimidation means intentional conduct, including verbal, physical, or written conduct, or intentional electronic communication based on a single incident or pattern of behaviors that creates a hostile educational environment by substantially interfering with a student's educational benefits, opportunities, or performance, or with a student's physical or psychological well-being and is:

- Motivated by an actual or a perceived personal characteristic including race, national origin, marital status, sex, sexual orientation, gender identity, religion, ancestry, physical attributes, socioeconomic status, familial status, physical or mental ability or disability; and is
- Threatening or seriously intimidating; and
- Occurs on school property, at a school activity or event, or on a school bus; or
- Substantially disrupts the orderly operation of a school.

- Also prohibited are reprisals or retaliation against individuals who report acts of bullying, intimidation, or harassment or who are targets, witnesses, bystanders or others with information about an act of bullying, intimidation, or harassment.

## 2. Bullying/Harassment/Intimidation due to Sex

For purposes of this regulation, sexual harassment is a form of discrimination based on sex and consists of unwelcome and unsolicited sexual advances, requests for sexual favors, sexually motivated physical conduct or communication of a sexual nature by another person when:

- a. The harassing conduct causes a student to believe that he or she must submit to unwelcome sexual conduct in order to participate in a school program or activity, or when an employee or third party agent of the school district causes a student to believe that the employee will make an educational decision based on whether or not the student submits to unwelcome sexual conduct; or
- b. The unwelcome sexual conduct is severe, persistent or pervasive such that it affects a student's ability to participate in or benefit from an educational program or activity, or creates an intimidating, threatening or abusive educational environment.
- c. Examples of conduct, which may constitute sexual harassment include but are not limited to:
  - Sexual advances
  - Sexting (electronic transfer of pictures or text of a sexual nature)
  - Touching, patting, grabbing, or pinching another person's intimate body parts, whether that person is of the same sex or the opposite sex
  - Coercing, forcing or attempting to coerce or force the touching of anyone's intimate body parts.
  - Coercing, forcing or attempting to coerce or force sexual intercourse or a sexual act on another
  - Graffiti of a sexual nature
  - Sexual gestures
  - Sexual or dirty jokes
  - Showing pornographic images to others
  - Touching oneself sexually or talking about one's sexual activity in front of others
  - Spreading rumors about or rating other students as to sexual activity or performance
  - Unwelcome, sexually motivated or inappropriate patting, pinching or physical contact
  - Other unwelcome sexual behavior or words, including demands for sexual favors, when accompanied by implied or overt threats concerning an individual's educational status or implied or overt promises of preferential treatment
  - Making fun of another person because of perceived or actual sexual orientation, gender identity, or familial status

## B. Bullying/Harassment/Intimidation due to Race, National Origin, Disability, Religion or Socioeconomic Status

1. Harassment based on race or national origin can include an individual's ancestry, country of origin, or country of origin of the student's parents, family members, or ancestors. In addition, harassment can occur because a person is an immigrant, speaks another language or has a foreign accent.

2. Harassment based on disability refers to an individual having a physical or mental impairment, which substantially limits one or more major life activities or references to the program or services a student receives based on his/her disability.
3. Harassment based on religion includes reference to an individual's commitment or devotion to religious faith or observance.
4. Harassment based on socioeconomic status relates to or involves a combination of social and economic factors in regard to an individual.
5. Bullying and/or harassment may occur when:
  - a. The conduct is sufficiently severe, persistent or pervasive that it affects a student's ability to participate in or benefit from an educational program or activity, or creates an intimidating, threatening or abusive educational environment.
  - b. The conduct has the purpose or effect of substantially or unreasonably interfering with an individual's academic performance.
  - c. The conduct otherwise adversely affects an individual's learning opportunities.
  - d. Examples of conduct that may constitute discrimination/harassment may include:
    - Name-calling, jokes or rumors
    - Threatening or intimidating conduct directed at another
    - Notes, cartoons, or graffiti
    - Specific slurs or negative stereotypes
    - Written or graphic material containing comments or stereotypes, which is posted or circulated and which is aimed at degrading individuals or members of affected classes
    - A physical act of aggression or assault upon another
    - Other kinds of aggressive conduct such as theft or damage to property, which is motivated by the fact that the person is in an affected class

C. Prevention

The school system recognizes its responsibility to implement the following practices in an effort to prevent bullying and harassment in the schools:

1. Conduct annual professional development for administrators and all staff to increase awareness of the prevalence, causes and consequences of bullying and to increase the use of evidence-based strategies for preventing bullying. Additional professional development may be provided for new employees who are hired after the start of school during the school year.
2. Implement counseling and health curriculum on bullying and sexual harassment prevention using school-wide evidence-based anti-bullying programs as a part of a system of positive behavioral supports and school improvement efforts at all grade levels.
3. Create school climate improvement efforts to promote student involvement in the anti-bullying efforts, peer support, mutual respect, and a culture which encourages students to report incidents of bullying to adults.



4. Collaborate with families and the community to inform parents about the prevalence, causes and consequences of bullying, including its central role as a public health hazard, and the means of preventing it.
5. Collect annual school/building-specific data on the prevalence and characteristics of bullying to guide local decision-making related to surveillance, prevention, intervention and professional development.

D. Title IX/Gender Discrimination

1. Title IX is that portion of the Educational Amendments of 1972 which prohibits discrimination on the basis of gender in educational programs or activities receiving federal funds and requires equal opportunity in admissions, athletics, counseling, access to courses, employment policies regarding marital or parental status of students and treatment of students. All students and employees are covered by this law.
2. Title IX also prohibits intimidation, threats, coercion, or retaliation against any individual for the purpose of interfering with any right or privilege secured by Title IX and its implementing regulation or because an individual has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing regarding Title IX.

E. Title IX Complaint Reporting Procedures

1. Informal

An individual who feels he/she has a complaint shall present the matter, either orally or in writing, to the building principal or the official Title IX coordinator where applicable within twenty (20) calendar days of the event that gave rise to the complaint. The informal discussion of problems and continuous interchange of views between the grievant and the building principal, although not required, is encouraged in order to resolve as many disputes as possible. The disposition at this informal level may be either oral or written and shall be communicated to the grievant within twenty (20) calendar days.

2. Formal

If a complainant is not satisfied with the disposition of his/her claim at the informal level, he/she may appeal, in writing, to the superintendent (or directly with the board of education if the complaint involves the superintendent) or contact the Title IX coordinator where applicable for assistance within ten (10) calendar days of the informal communication. The superintendent or designee shall inform the complainant as to the disposition of the claim within twenty (20) calendar days of the receipt of the appeal at this level.

The complainant may appeal the decision of the superintendent to the board of education within thirty (30) calendar days of the superintendent's decision.

3. Rights of Complainant/Responder

A complainant may either use this complaint procedure or elect to file a complaint directly with the U.S. Department of Education, Office for Civil Rights. At any level of the complaint, the complainant and/or the responder may submit relevant evidence and be represented by an individual of their choosing.

4. Extension of Time Limits by Mutual Agreement of the Parties

The stated time limits may be extended to allow for the collection of pertinent information and an effective resolution of the complaint.

F. Administrative Process/Requirements

1. Student Who Makes a Bullying/Harassment/Intimidation Complaint

a. All complaints that are reported will be investigated.

- 1) The school principal, or designee, will initiate the investigation of student complaints against students as timely as possible, ideally within two (2) days.
- 2) If a student expresses a desire to discuss an incident of bullying, intimidation, or harassment with a staff member, the staff member will make an effort to provide the student with a practical, safe, private, and age-appropriate way of doing so.
- 3) *Bullying, Harassment, or Intimidation Reporting Forms* may be submitted by a student, parent, close adult relative, or staff member to school administration. A student may request assistance from a staff member to complete the form if the student wishes. The *Bullying, Harassment, or Intimidation Reporting Forms* may be obtained in the school's main (front) office and counselor's office. The forms may also be obtained electronically from the school system's website.
- 4) Student complaints against a staff member will be initially investigated by the school principal or designee in consultation with the executive director of Human Resources. The principal and the executive director of Human Resources will jointly determine appropriate follow-up investigations as warranted.
- 5) The executive director of Human Resources will investigate a complaint against a volunteer, vendor, or other person having business or contact with the school system and will report findings and recommend appropriate action to the superintendent or his designee.
- 6) The Title IX coordinator will investigate complaints alleging Title IX violations in conjunction with appropriate personnel.

- 7) It cannot be predicted what will be discovered or if a hearing may result from the ultimate outcome of the investigation. Efforts will be made, however, to increase the confidence and trust of the targeted individual and any witnesses, by informing them that any information discussed and recorded will be confined to "need to know" status. Neither the targeted individual nor witnesses should be promised absolute confidentiality at the onset of an investigation.
  - b. If it has been established that an incident may have occurred, an administrator shall contact a parent/guardian of the student making the complaint and the parents of the offender of the incident.
  - c. The administrator reporting the incident will inform the parent/legal guardian that the student is being offered counseling support and follow-up will occur within two (2) weeks and again at four (4) weeks after the initial conference to determine if the bullying, intimidation, or harassment has ceased. After the follow-up sessions, the person conducting the counseling will contact the individuals involved as appropriate.
  - d. The administrator conducting the investigation will complete the incident investigation form and send copies including the incident reporting form and the counseling intervention form to the appropriate director, the supervisor of Counseling and Student Support and the Title IX coordinator and executive director of Legal Services.
  - e. The administrator/designee will create a written record of the bullying, harassment or intimidation incident and any disciplinary actions taken, as well as the statements of the targeted individual, witnesses, and offender. Such documents are considered confidential as they contain student record information. Discussions with all parties should be documented as soon as possible after the event. Any material records or evidence will not be discarded while a criminal investigation or prosecution resulting from the incident is ongoing.
  - f. Information obtained from the *Bullying, Harassment, or Intimidation Reporting Forms* shall be recorded for data collection, storage, and submission according to the requirements of Maryland law.
  - g. Local school systems shall provide summary information for individual schools and the school system obtained from the *Bullying, Harassment, or Intimidation Reporting Forms* to their schools.
  - h. If at any time the parent/legal guardian has questions or concerns about the process, they may contact the principal or supervisor of counseling.
2. Student Against Whom the Complaint is Made
    - a. Consequences and remedial actions for persons committing acts of bullying, intimidation, or harassment and for peers engaged in reprisal or retaliation and for persons found to have made false accusations will be imposed in accordance with Regulation 400-8 on student discipline.

- b. A conference may be held with the parent/legal guardian and student to determine how best to help the student prevent future acts of misconduct.
  - c. The administrator/designee should be aware that some acts of bullying, intimidation, or harassment could also be delinquent acts. If they are delinquent acts, they promptly shall be reported to the responsible law enforcement agency according to the Code of Maryland Regulations (COMAR) 13A.08.01.15.
  - d. The student is required to participate in an activity designed by the school administrator, counselor or school team to educate, sensitize and instill openness and tolerance within approximately two weeks after the investigation.
3. Support services are available to the student bully, the targeted individual, witnesses, and any bystanders. Interventions and programs should be implemented as appropriate based on context, situation, age, and severity. Schools are encouraged to provide a list of the types of available support services based upon their available resources and those available in the communities in which their schools are located.

G. Notification

FCPS notifies all students and staff annually of its discrimination/harassment/bullying complaint process regulation via the FCPS web site and Calendar Handbook.

- H. The Maryland State Department of Education is familiar with the reporting and investigation procedures of Frederick County Public Schools. Individuals with questions may contact the following MSDE staff:

Charles J. Buckler  
Director of Student Services  
and Alternative Programs Branch  
410-767-0311  
(or current Director)

Dominic M. Romano  
School Safety Specialist  
410-767-0311  
(or current School Safety Specialist)

Approved:

*original signed by*

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Linda D. Burgee  
Superintendent

**COUNSELING INTERVENTION REPORT**  
Bullying-Harassment-Intimidation

School \_\_\_\_\_ Incident Date \_\_\_\_\_

\_\_\_\_\_  
Name of student making the complaint                      Grade / Sex / Race Code

\_\_\_\_\_  
Name of other student(s) against whom the complaint is made                      Grade / Sex / Race Code

1. Type and description of incident (be specific):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Thoughts and feelings reported by student making the complaint:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Thoughts and feelings reported by student against whom complaint is made:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Alternative plan of action for both parties in similar future events:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. Key observations during discussion:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. Assessment of need for more intense intervention so as not to produce long-term educational injury to students involved:

Student making complaint: \_\_\_\_\_  
\_\_\_\_\_

Student against whom complaint was made: \_\_\_\_\_  
\_\_\_\_\_

7. Educational activity assigned to student against whom the complaint is made: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Date of school's report to family of child who made the complaint: \_\_\_\_\_  
 (within approximately 2 weeks)

8. Resolution: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

9. Follow-up with the student making the complaint to determine if bullying, harassment, and intimidation has ceased.  
 (4 weeks after initial meeting)

a. Date of follow-up: \_\_\_\_\_

b. Has the bullying, harassment, or intimidation that was reported, ceased to occur? \_\_\_\_\_  
 \_\_\_\_\_

c. Has any new bullying, harassment, or intimidation from another individual or group occurred? \_\_\_\_\_  
 \_\_\_\_\_

d. Has any reprisal or retaliation occurred from the student who committed the bullying, harassment, or  
 intimidation or any witnesses or bystanders? \_\_\_\_\_  
 \_\_\_\_\_

e. Do you feel able to learn in a respectful school environment? \_\_\_\_\_  
 \_\_\_\_\_

f. Would you continue to report any future incidents of bullying, intimidation, harassment, reprisal or retaliation  
 to an adult? \_\_\_\_\_  
 \_\_\_\_\_

**Name and Signature of Person completing the report:**

\_\_\_\_\_ (Typed or printed) \_\_\_\_\_ (Signature)

**Name of Person conducting the intervention:** \_\_\_\_\_  
 (Typed or printed)

**Date** \_\_\_\_\_

Copies: School Principal  
 Supervisor of Counseling and Student Support

**NOTE:** The Reporting Form (if appropriate), the Incident/Investigation Form, and the Counseling Intervention Report are to be sent to the following:

- Appropriate Director
- Supervisor of Counseling and Student Support
- Title IX Coordinator/Executive Director of Legal Services
- School File



5. Where did the incident happen (choose all that apply)?

- On school property
- At a school-sponsored activity or event off school property
- On a school bus
- On the way to/from school\*

\*Will be collected unless specifically excluded by local board policy

6. What did the alleged offender(s) say or do?

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(Attach a separate sheet if necessary)

7. Why did the harassment or intimidation (bullying) occur?

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(Attach a separate sheet if necessary)

8. Did a physical injury result from this incident? Place an X next to one of the following:

- No
- Yes, but it did not require medical attention
- Yes, and it required medical attention

9. If there was a physical injury, do you think there will be permanent effects?  Yes  No

10. Was the student victim absent from school as a result of the incident?  Yes  No

If yes, how many days was the student victim absent from school as a result of the incident? \_\_\_\_\_

11. Did a psychological injury result from this incident? Place an X next to one of the following:

- No
- Yes, but psychological services have not been sought
- Yes, and psychological services have been sought

12. Is there any additional information you would like to provide?

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(Attach a separate sheet if necessary)

Signature: \_\_\_\_\_ Date: \_\_\_\_\_



This form is to be confidentially maintained in accordance with the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g.

### BULLYING/HARASSMENT/INTIMIDATION INCIDENT INVESTIGATION FORM

Administrator Completing Form: \_\_\_\_\_ Position: \_\_\_\_\_

Today's date: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_ School: \_\_\_\_\_  
Month Day Year

Date of incident: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_ School System: \_\_\_\_\_  
Month Day Year

<p><b>Person Reporting Incident</b> (From reporting form) Name: _____</p> <p>Telephone: _____ E-mail: _____</p> <p>Place an <b>X</b> in the appropriate box: <input type="checkbox"/> Student <input type="checkbox"/> Student (Witness/Bystander) <input type="checkbox"/> Parent/Guardian <input type="checkbox"/> Close adult relative <input type="checkbox"/> School Staff</p>
---

1. Name of student target: \_\_\_\_\_ Age: \_\_\_\_\_ Days absent as result of incident: \_\_\_\_\_  
(Please print)

2. Name(s) of alleged offender(s) (If known):	Age	School	Is he/she a student?	Days absent due to incident
_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____
_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____
_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____

(Please print)

Total number of alleged offenders: \_\_\_\_\_

Definition as used in this regulation: bullying, harassment, or intimidation means intentional conduct, including verbal, physical, or written conduct, or intentional electronic communication based on a single incident or pattern of behaviors that creates a hostile educational environment by substantially interfering with a student's educational benefits, opportunities or performance, or with a student's physical or psychological well-being.

3. What actions were taken to investigate this incident? (choose all that apply)

- Interviewed student target
- Interviewed student target's parent/guardian
- Interviewed alleged offender(s)
- Interviewed alleged offender's parent/guardian
- Interviewed witnesses
- Examined physical evidence
- Witness statements collected in writing
- Conducted student record review
- Interviewed school nurse
- Obtained copy of police report
- Reviewed any medical information available
- Other (specify)
- Interviewed teachers and/or school staff

4. Description of the incident: (from question #4 on the bullying/harassment/intimidation reporting form)

- |   |  |
|---|--|
| <input type="checkbox"/> Any bullying, harassment, or intimidation that involves physical aggression                | <input type="checkbox"/> Intimidating (bullying), extorting, or exploiting |
| <input type="checkbox"/> Getting another person to hit or harm the student  | <input type="checkbox"/> Spreading harmful rumors or gossip                |
| <input type="checkbox"/> Teasing, name calling, making critical remarks or threatening, in person or by other means | <input type="checkbox"/> Electronic communication – Cyberbullying          |
| <input type="checkbox"/> Demeaning and making jokes about the victim  | <input type="checkbox"/> Electronic communication – Sexting                |
| <input type="checkbox"/> Making rude and/or threatening gestures  | <input type="checkbox"/> Electronic communication – Other                  |
| <input type="checkbox"/> Excluding or rejecting the student   | <input type="checkbox"/> Other (specify)                                   |

5. The harassment, bullying, or intimidation was primarily motivated by: (choose only one)

- |   |  |
|---|--|
| <input type="checkbox"/> Race                           | <input type="checkbox"/> Physical appearance   |
| <input type="checkbox"/> National origin                | <input type="checkbox"/> Socioeconomic status  |
| <input type="checkbox"/> Familial status/marital status | <input type="checkbox"/> Retaliation   |
| <input type="checkbox"/> Sexual nature                  | <input type="checkbox"/> To impress others   |
| <input type="checkbox"/> Sexual orientation             | <input type="checkbox"/> Just to be mean   |
| <input type="checkbox"/> Gender identity                | <input type="checkbox"/> Because of another reason (specify) _____                   |
| <input type="checkbox"/> Gender                         | <input type="checkbox"/> The reason is unknown                                       |
| <input type="checkbox"/> Religion                       | <input type="checkbox"/> None of the above; the behavior did not meet the definition |
| <input type="checkbox"/> Disability                     |  |

6. Other contributing factors: (check any that apply)

- |   |  |
|---|--|
| <input type="checkbox"/> Race                           | <input type="checkbox"/> Physical appearance   |
| <input type="checkbox"/> National origin                | <input type="checkbox"/> Socioeconomic status  |
| <input type="checkbox"/> Familial status/marital status | <input type="checkbox"/> Retaliation   |
| <input type="checkbox"/> Sexual nature                  | <input type="checkbox"/> To impress others   |
| <input type="checkbox"/> Sexual orientation             | <input type="checkbox"/> Just to be mean   |
| <input type="checkbox"/> Gender identity                | <input type="checkbox"/> Because of another reason (specify) _____                   |
| <input type="checkbox"/> Gender                         | <input type="checkbox"/> The reason is unknown                                       |
| <input type="checkbox"/> Religion                       | <input type="checkbox"/> None of the above; the behavior did not meet the definition |
| <input type="checkbox"/> Disability                     |  |

7. What corrective actions were taken in this case? (choose all that apply)

- |   |   |
|---|---|
| <input type="checkbox"/> None were required; incident did not meet definition of bullying | <input type="checkbox"/> Parent Letter  |
| <input type="checkbox"/> Incident did not warrant any corrective action                   | <input type="checkbox"/> Parent phone call (required for student making complaint)<br>Date parent contacted: _____              |
| <input type="checkbox"/> None were required; this was a false allegation                  | <input type="checkbox"/> Parent conference (required for student against whom complaint is made)<br>Date conference held: _____ |
| <input type="checkbox"/> None were required; bullying was not substantiated               | <input type="checkbox"/> Detention  |
| <input type="checkbox"/> Student conference   | <input type="checkbox"/> In-school suspension   |
| <input type="checkbox"/> Student warning  | <input type="checkbox"/> Out-of-school suspension/expulsion   |
| <input type="checkbox"/> Letter of apology  | <input type="checkbox"/> Incident investigated and found to be a different offense  |
| <input type="checkbox"/> Mediation  | <input type="checkbox"/> Employee intervention and/or dispute   |
| <input type="checkbox"/> Counseling (intervention required per Reg. 400-48)               | <input type="checkbox"/> Other (specify)  |

8. Names of witnesses:

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9. Additional pertinent information gained during the interview:

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(Attach a separate sheet if necessary)

10. Investigator notes:

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(Attach a separate sheet if necessary)

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

- NOTE:** The Reporting Form (if appropriate), the Incident/Investigation Form, and the Counseling Intervention Report are to be sent to the following:
- Appropriate Director
  - Coordinator of Counseling and Student Support
  - Title IX Coordinator/Executive Director of Legal Services
  - School File

Section 4  
Rochester 3A Schools, Illinois

## Illinois schools aim to reduce bullying

- Story
- Discussion

Illinois schools aim to reduce bullying

Associated Press | Posted: Saturday, March 26, 2011 9:00 am | Loading...

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ROCHESTER (AP) - A nearly four-year effort to reduce bullying in the Rochester School District is paying dividends, district officials say.

A recent survey of third- through 12th-grade students showed 63 percent reported they had not been bullied at school in recent months; 22.9 percent said they had been bullied "once or twice."

The same survey in 2007 found nearly 60 percent of Rochester's elementary students reporting incidents of bullying at least once or twice over a similar time span. Half of middle and junior high school students said they were the victims of at least occasional bullying.

School officials credit work by teachers and others to discourage bullying behavior and promote positive character traits.

"We've seen improvements across the district, but we're never going to be satisfied until the numbers are down even farther," said Laurie McWard, director of educational services.

Michael Carpenter, a Georgia-based anti-bullying consultant who compiled the survey for the district, called the drop in victimization "remarkable."

"In all the schools I've worked with, I've never had this much of a reduction," he said.

Carpenter was so impressed with Rochester's results that he has invited McWard to make a presentation with him at the International Bullying Prevention Association's annual conference in New Orleans in November.

Bullying prevention became a central focus for the district during development of its strategic plan in 2007.

Fourteen teachers and administrators from each school building were selected to serve on a bullying

committee. Carpenter trained the committee, members of which then taught what they had learned to staff members in their own schools.

The district used the "Steps to Respect" anti-bullying curriculum, with an emphasis on character education. Carpenter helped the district administer the survey to find out how often students experienced bullying and what kinds of bullying were common, as well as to identify bullying "hot spots" around the schools.

The 2007 survey was given to third- through 10th-graders. The results served as a baseline to evaluate the district's prevention efforts.

Last semester, the district surveyed students once more, this time including all high school students.

Across all age groups, the percentage of students reporting they've been bullied or have bullied others dropped, as did the frequency of bullying behaviors, such as calling people mean names and exclusion.

The junior high school in particular saw the largest decrease in victimization; 10.8 percent of children reported being bullied in the last two or three months, compared to 26.6 percent in 2007.

Those results were no surprise to eighth-graders Sydney Elliott and John Freveletti.

Sydney moved to the district last year and said she immediately made many friends.

"I think this is the safest school I've been to so far," she said.

John said he rarely sees bullying occur, and when it starts, teachers and others are quick to punish it. He also said his teachers get to know each of the students.

"All the teachers here make an effort to try and get as comfortable with you as possible so they can become more than just the teacher but your friend," he said.

Making each student feel that their teachers care about them is a key step, junior high teachers and bullying committee members Kaili Gustafson and Kenny Gand said.

Gustafson teaches seventh-grade math. Gand is the junior high's physical education and health teacher.

"Most of us take an active role in things outside school, and we go to events," Gand said. "(Students) know, 'My teachers care about me because they came to watch me play.'"

Gustafson said developing relationships with students builds trust so that when bullying or another problem occurs, the students feel they can tell their teachers.

"We're trying to tell the kids we understand how hard it is to feel like you're telling on someone or giving their information away," she said. "We're encouraging the kids to report, not tattle. If we're reporting something, we're helping a classmate who may be having a problem."

Gand said he asks students to be leaders in how to behave appropriately. He and Gustafson also said they also try to build students' confidence so they can stick up for themselves and others.

"It totally turns the situation if one person stands up for the victim or if one person asks the bully, 'What are

you doing?" Gustafson said.

Librarians, bus drivers and cafeteria workers all have received bullying-prevention training as well.

"Many times, it's not in the math classroom during a lesson that something is happening," Gustafson said. "It's in the hallway or it's at lunch or it's at recess, so you really need to make sure that everyone knows what we do. The support staff understands the mission on this topic as well."

McWard said the bullying committee's next goal is to train coaches and extracurricular leaders.

The committee also would like to do a podcast for parents on cyber bullying.

"The more that we can work hand-in-hand with our parents, the better the outcome will be for the safety of our kids," McWard said.

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Posted in State-and-regional on *Saturday, March 26, 2011 9:00 am* | Tags: Updates

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**Rochester School Summary  
December, 2010**

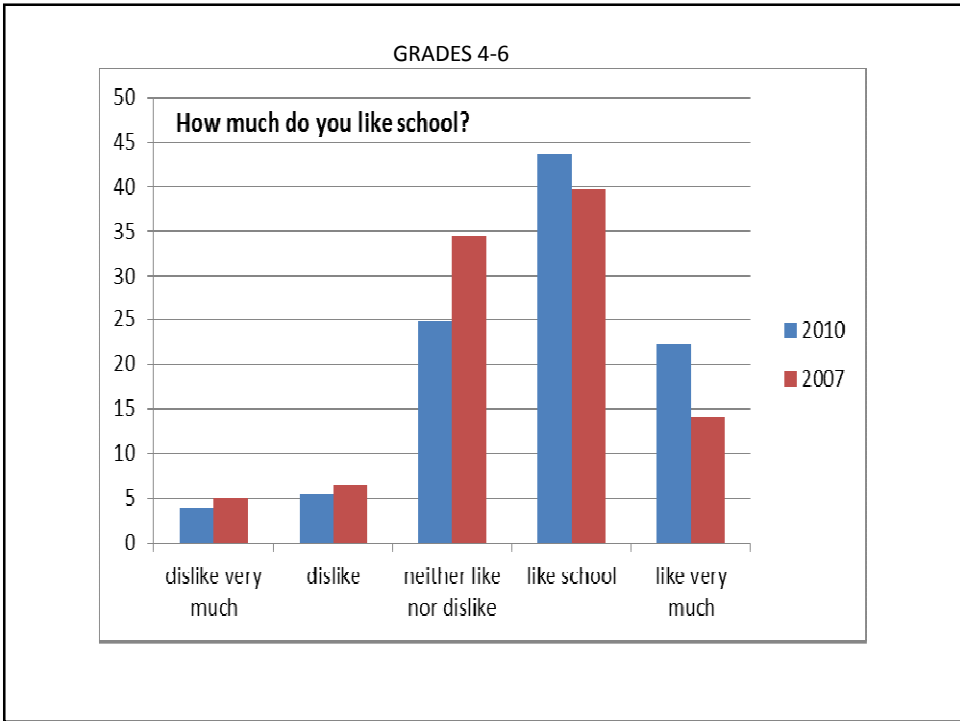
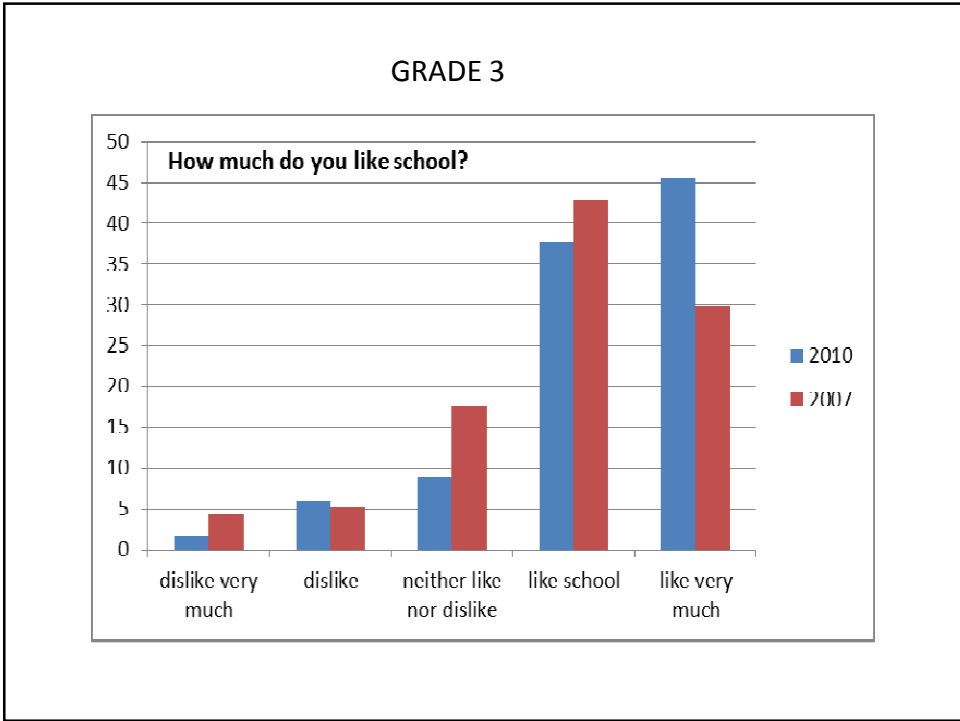
**Bullying Surveys compiled by  
Michael R. Carpenter, Ph.D**

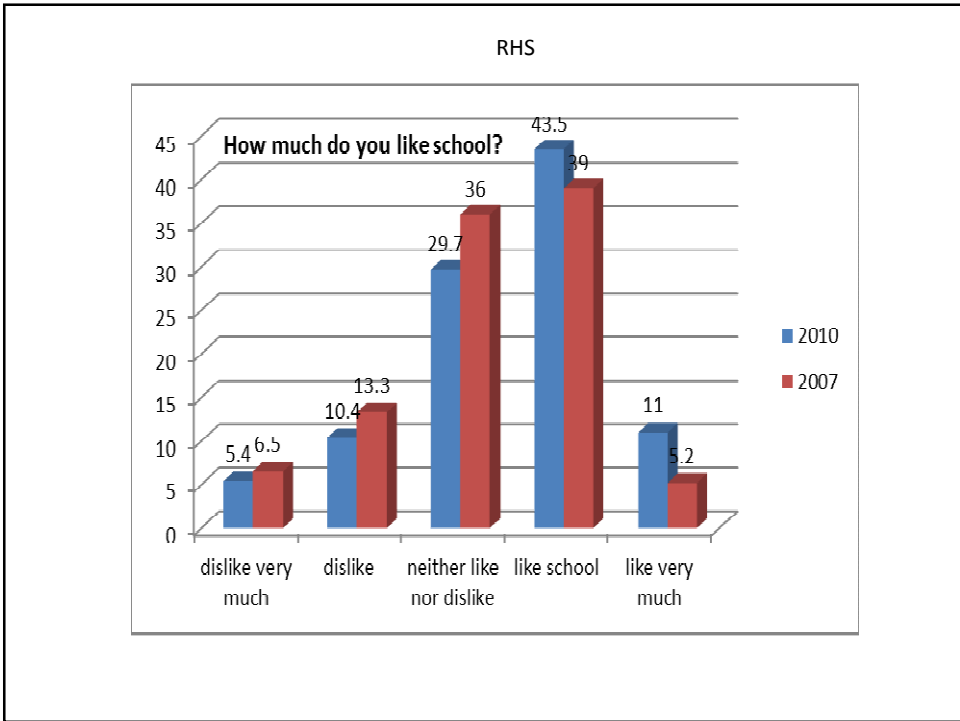
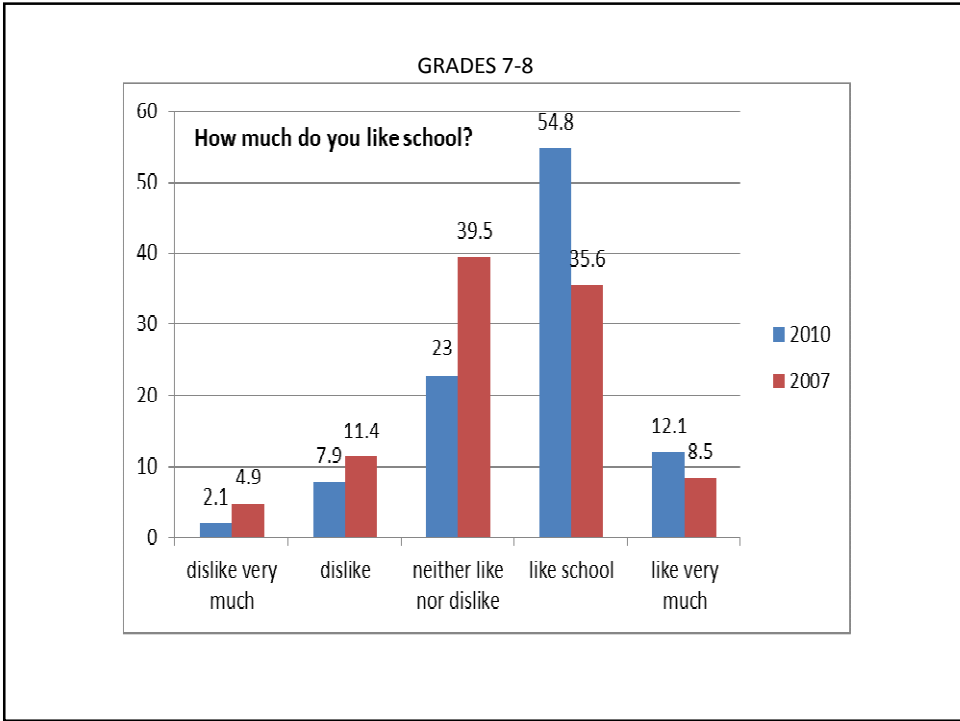
**Definition of Bullying in Rochester Schools**

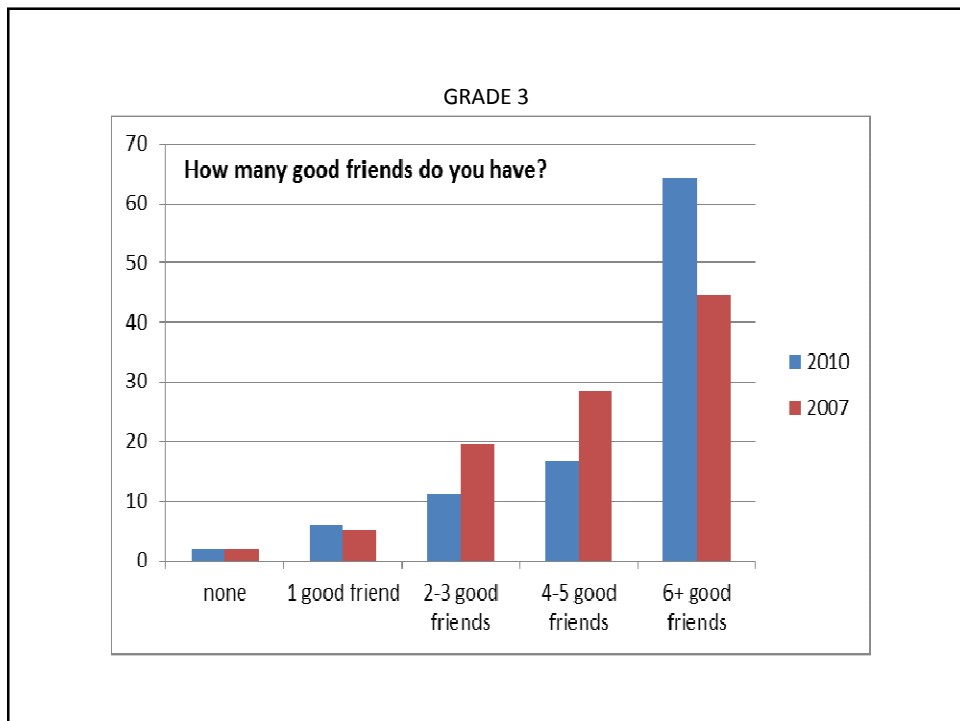
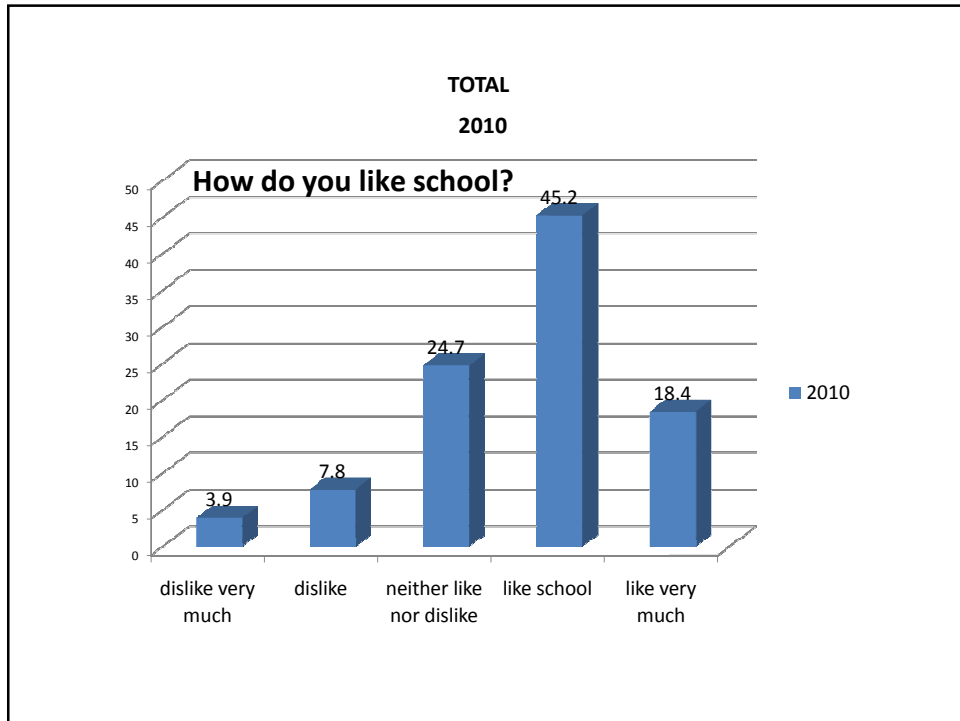
“Our school believes that all children have an absolute right to be educated in a safe and secure environment and to be protected from others who may wish to harm, degrade, or abuse them. There is no justification whatsoever for bullying behavior and it will not be tolerated in any form.

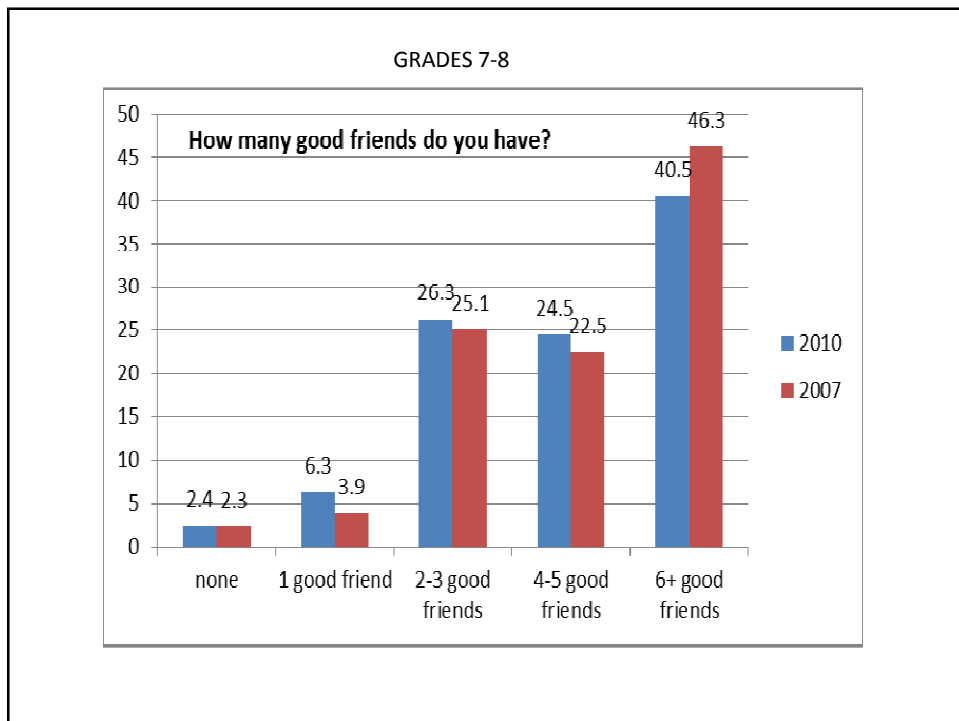
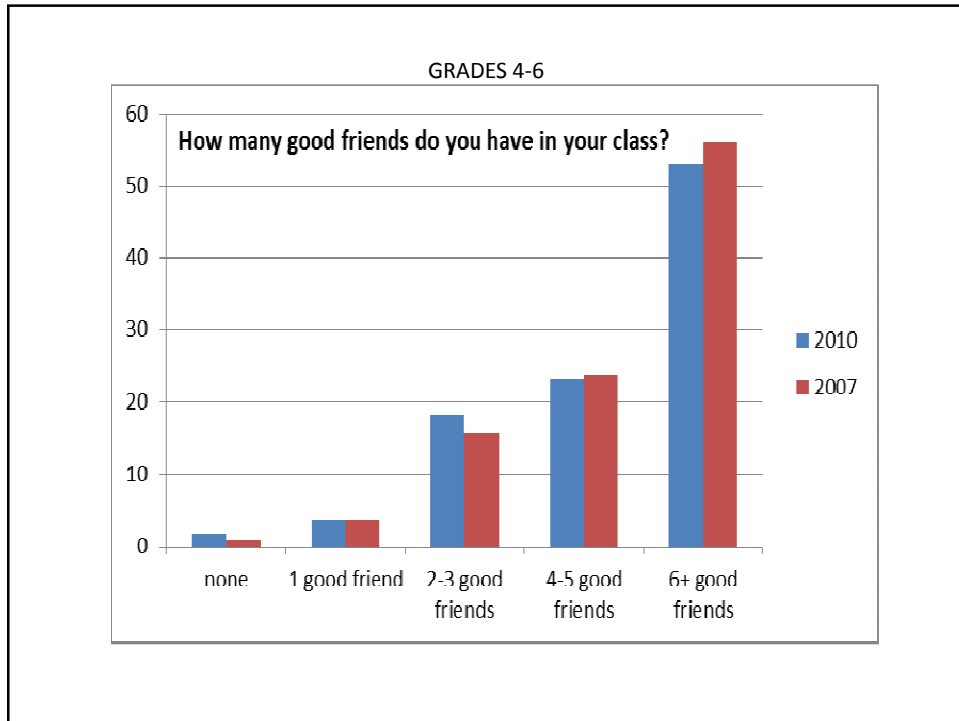
Bullying is the intentional desire to hurt, threaten, or frighten someone else through verbal, nonverbal or physical aggressions. This occurs when a person is exposed repeatedly and over time to negative direct or indirect actions.”

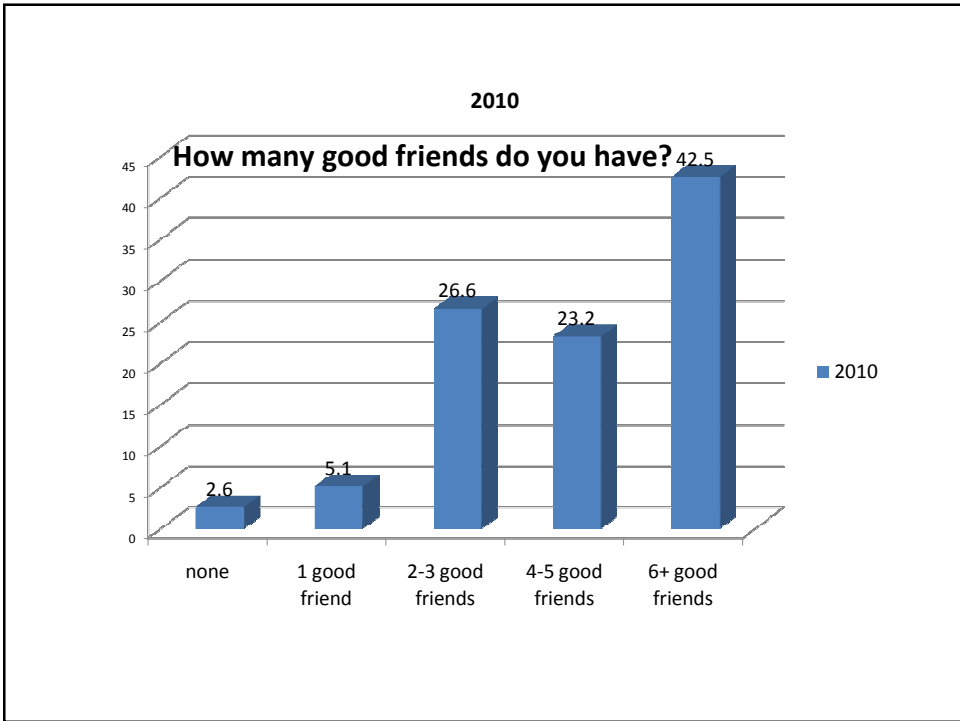
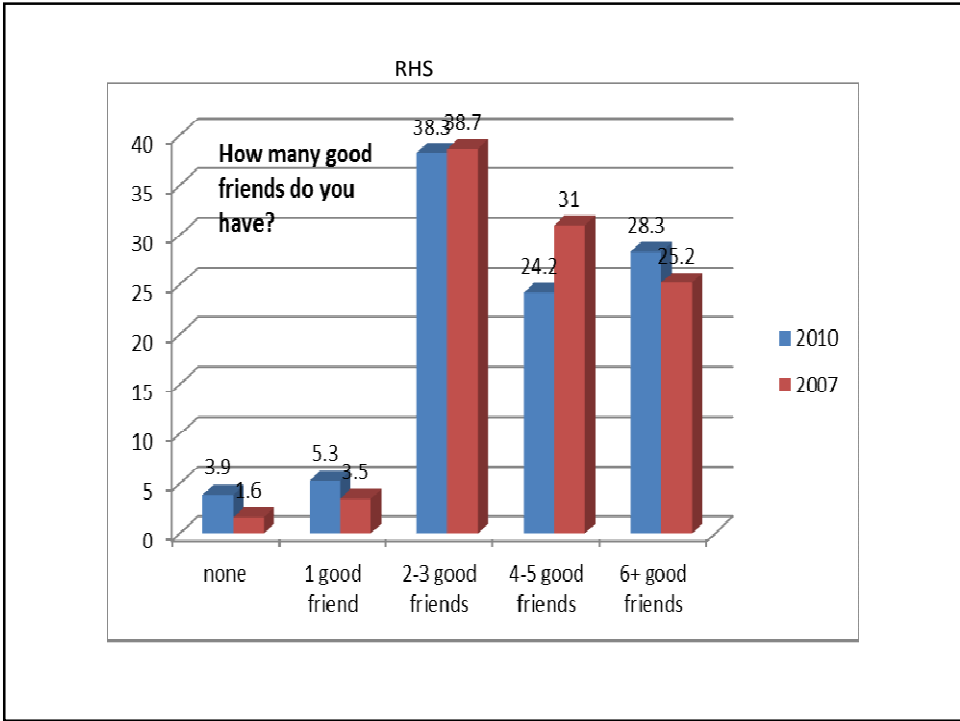


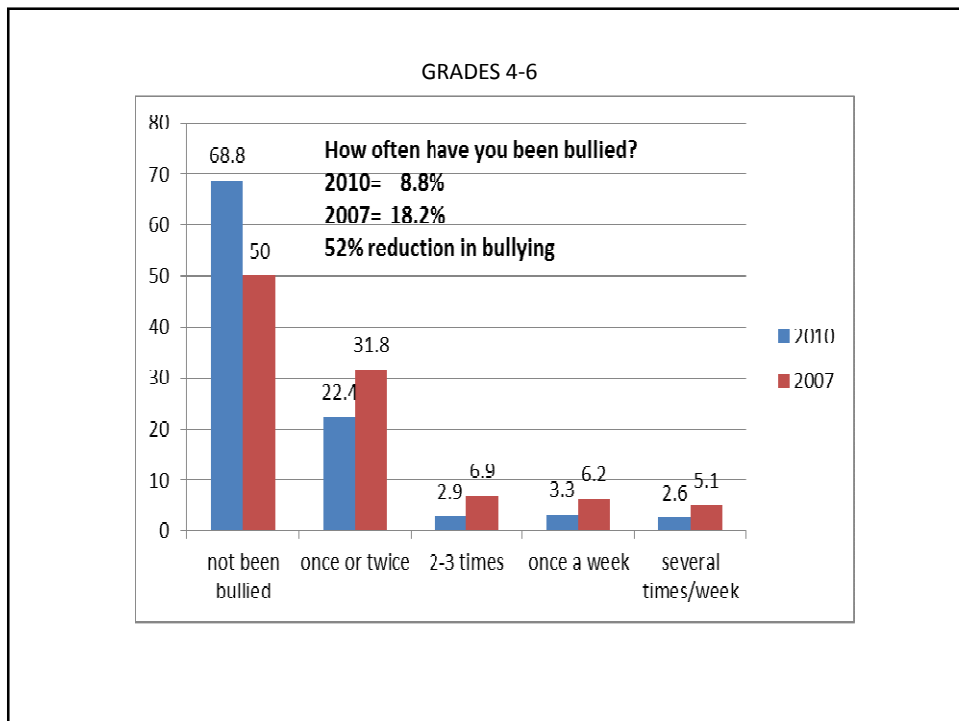
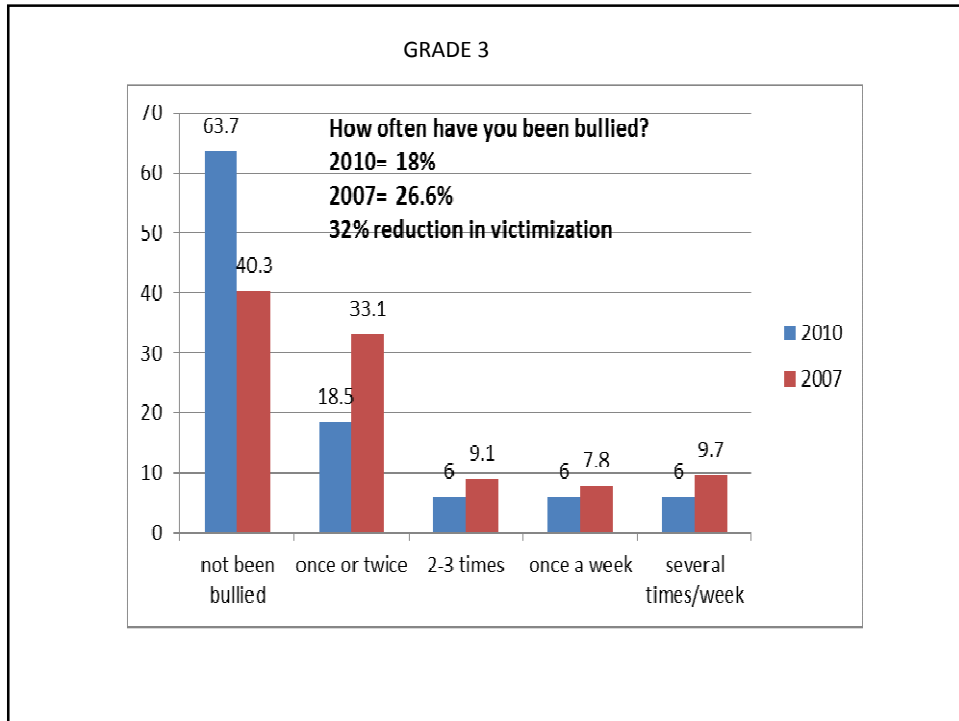


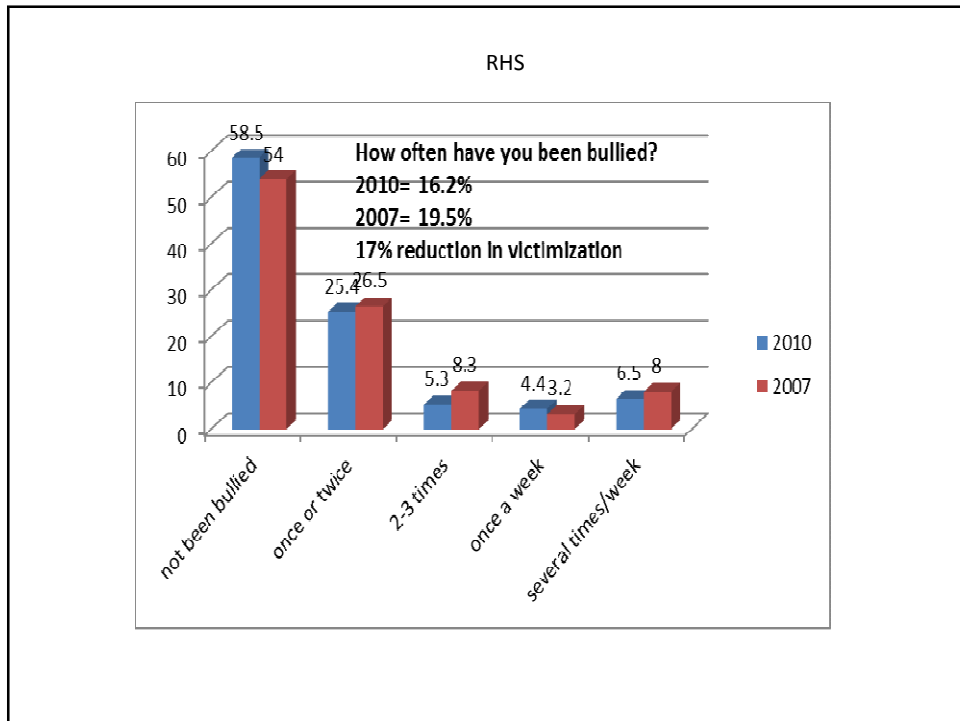
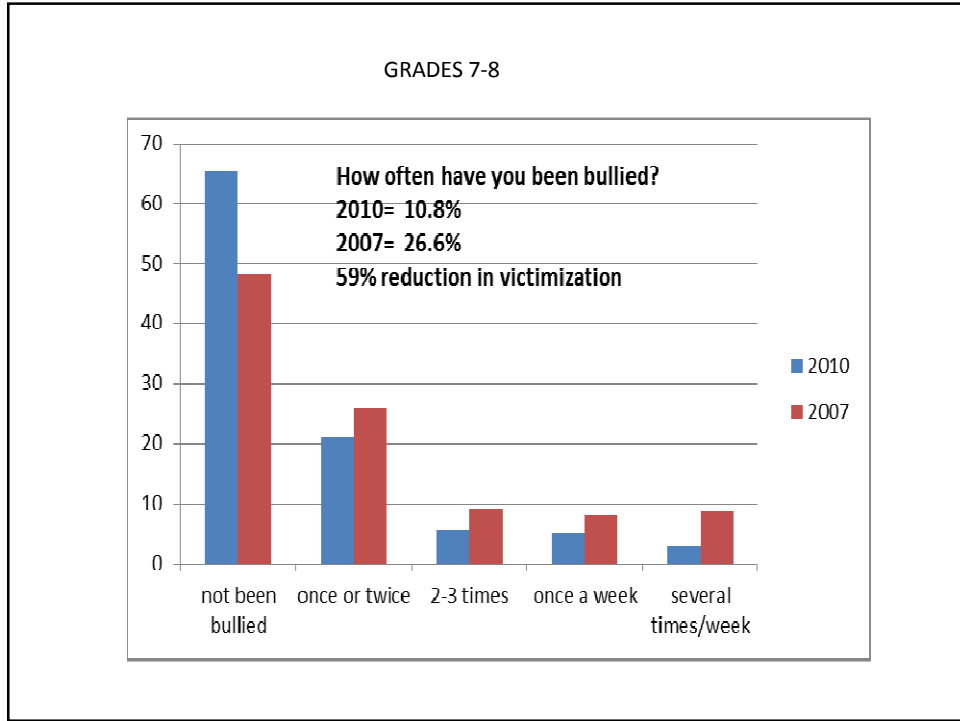


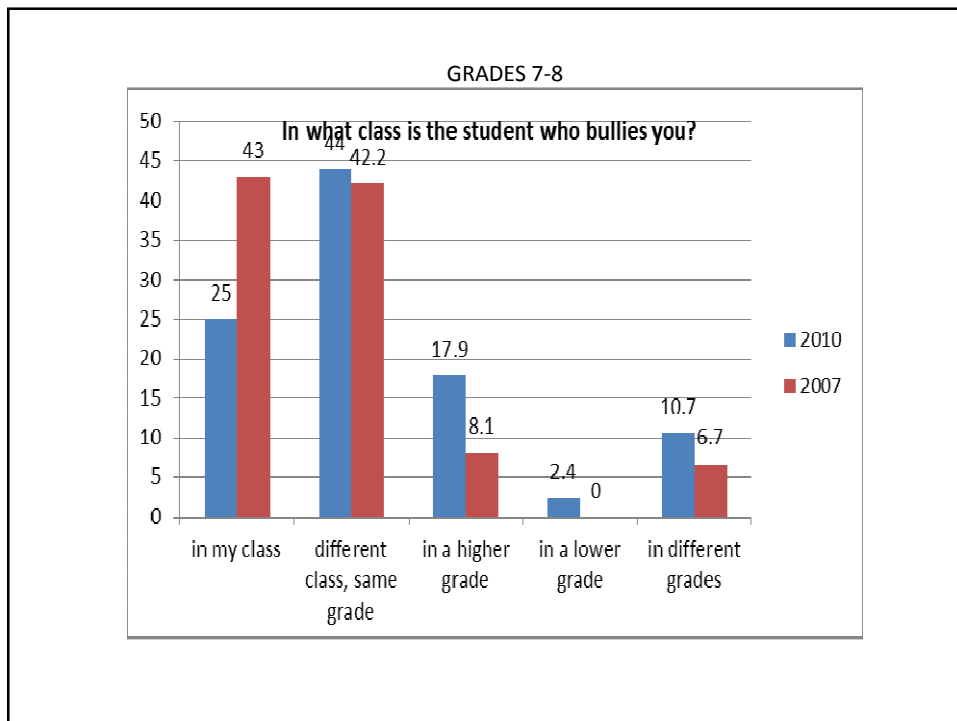
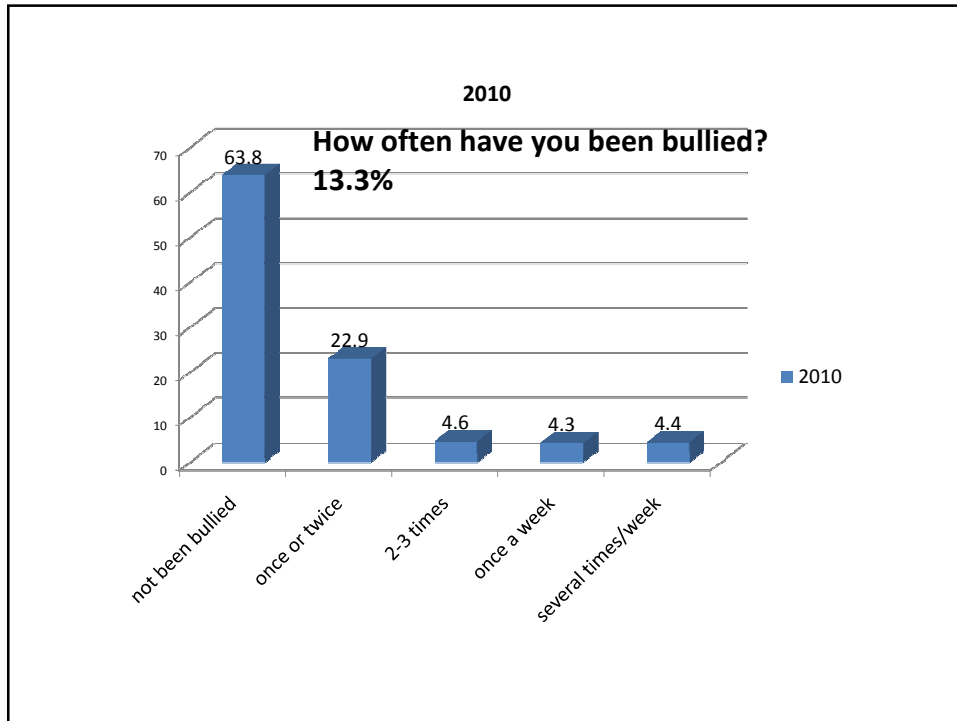




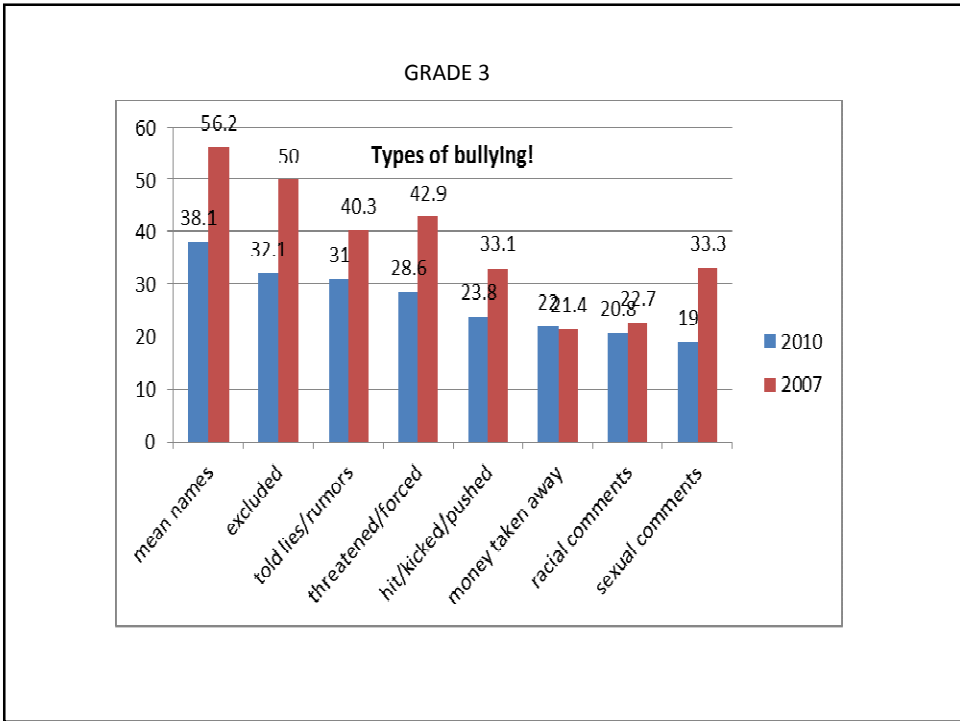
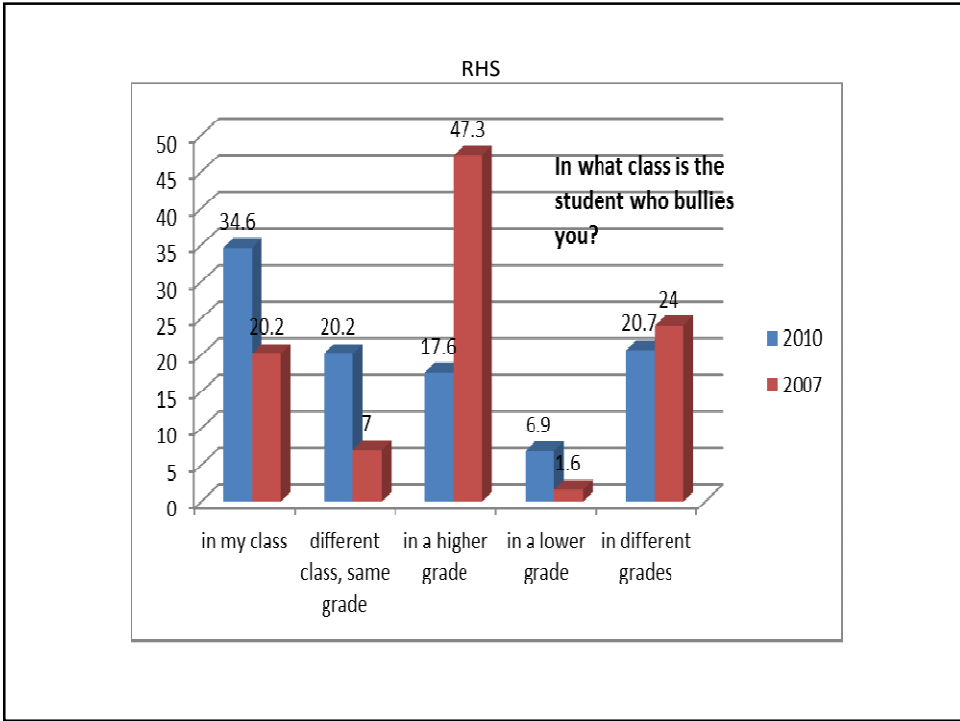


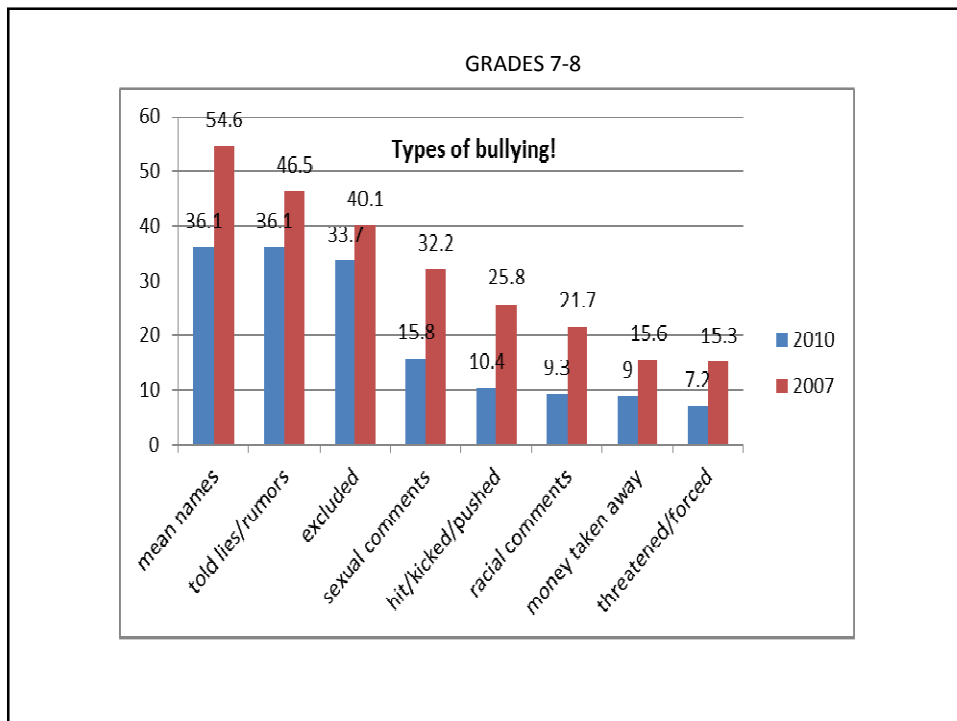
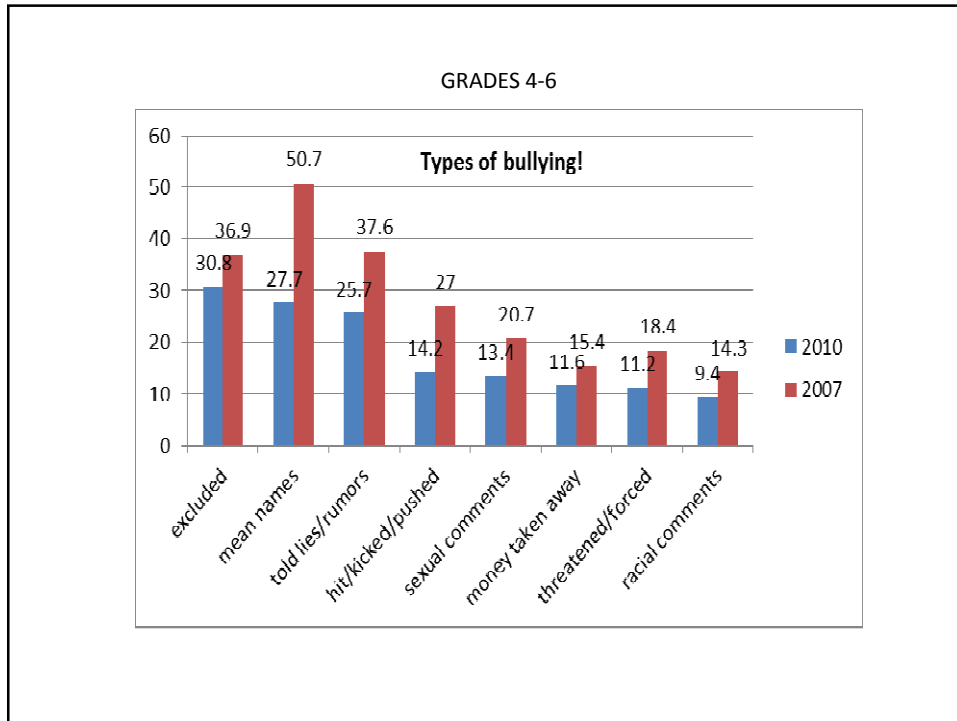


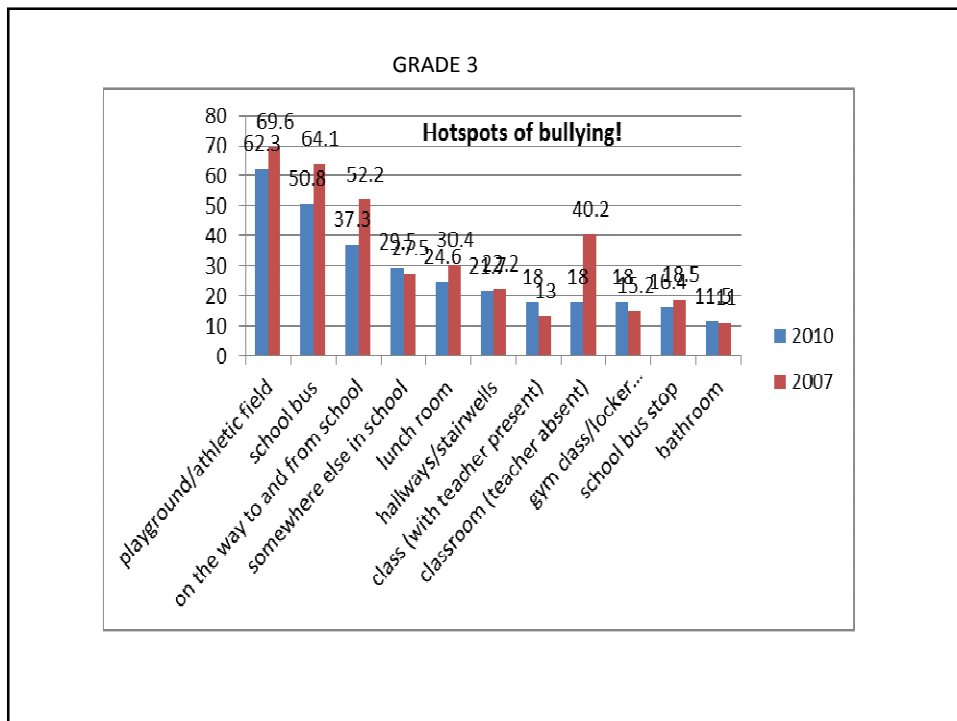
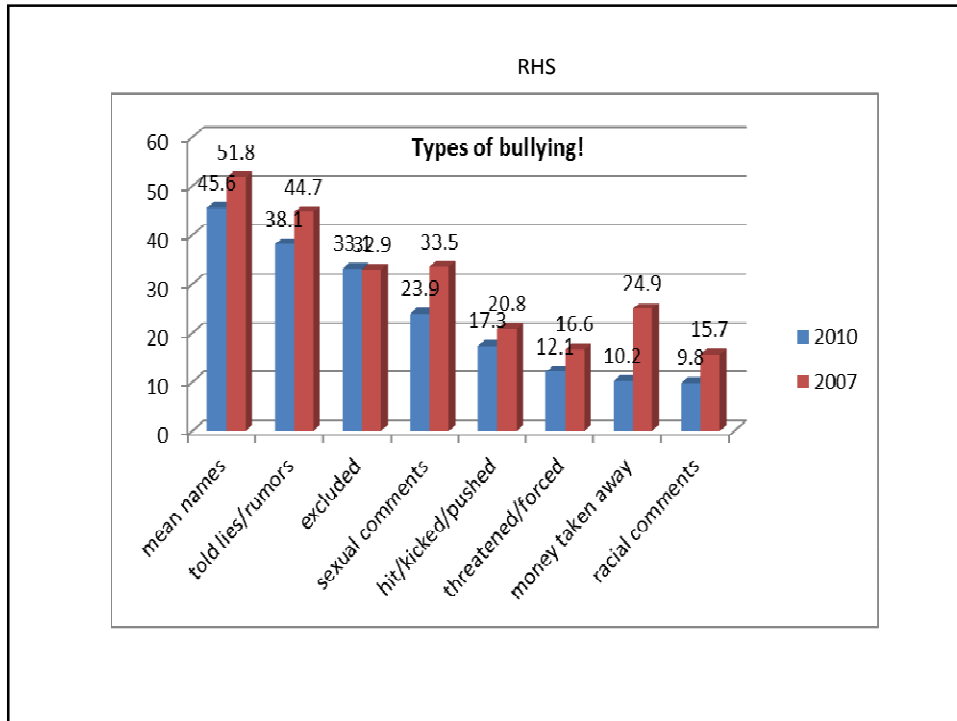


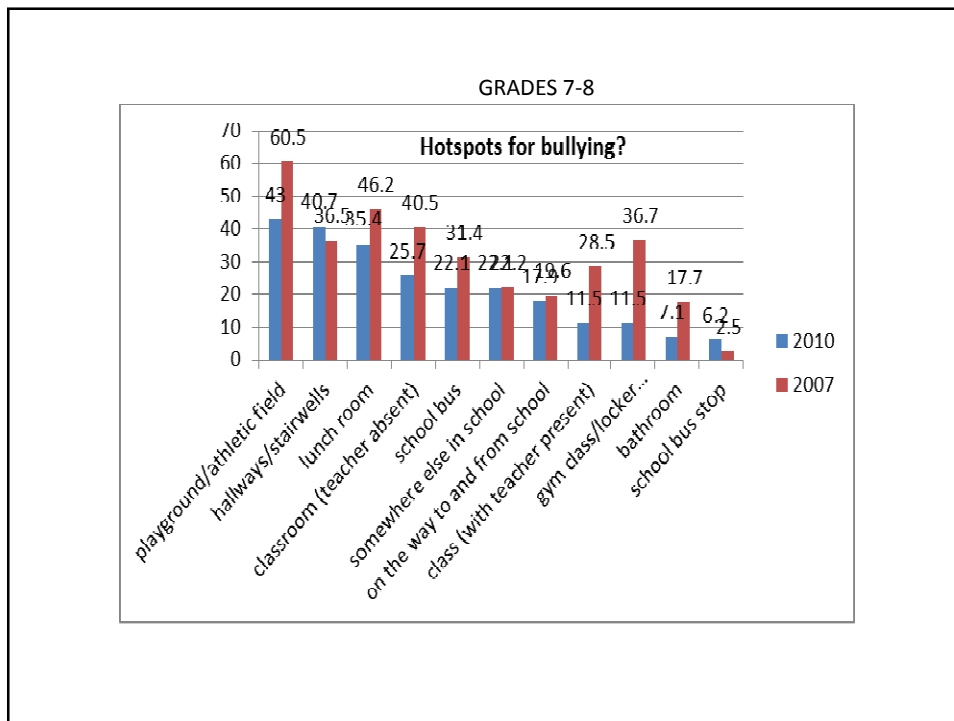
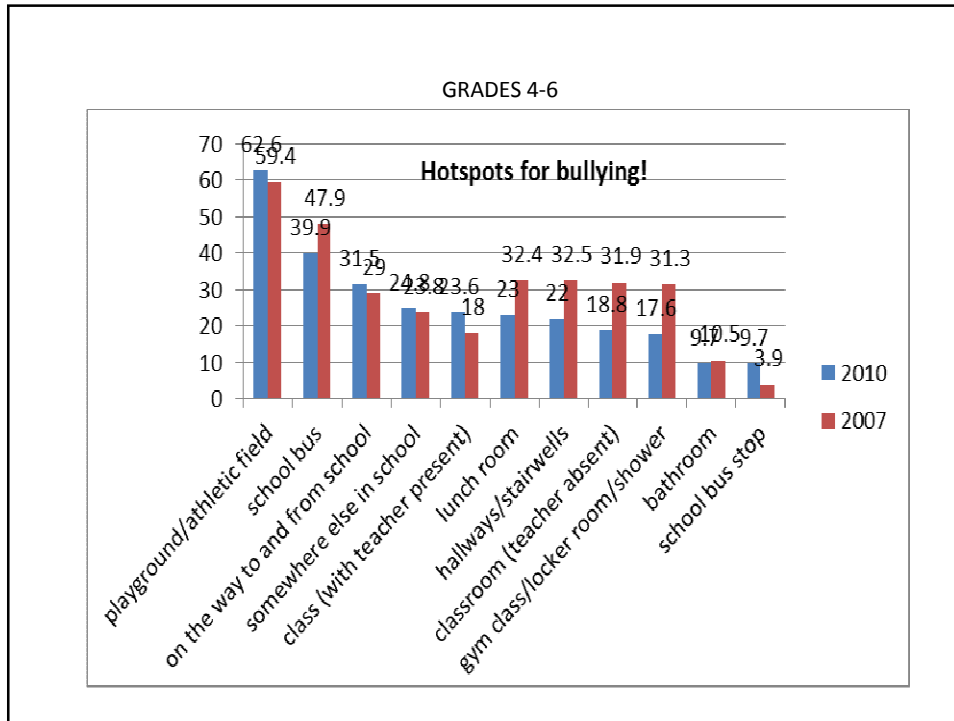


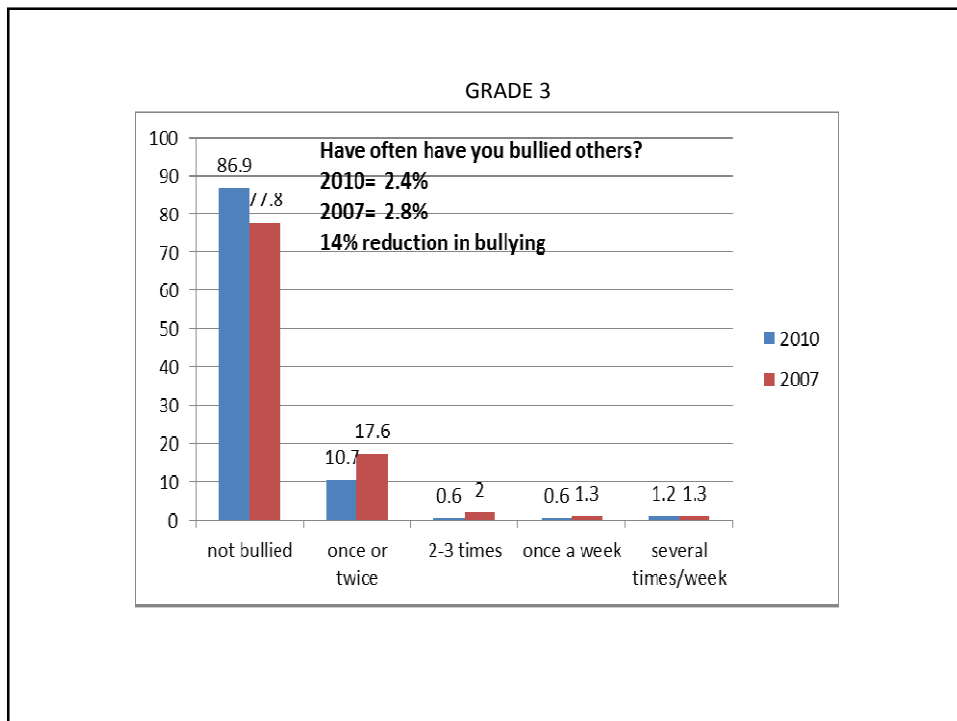
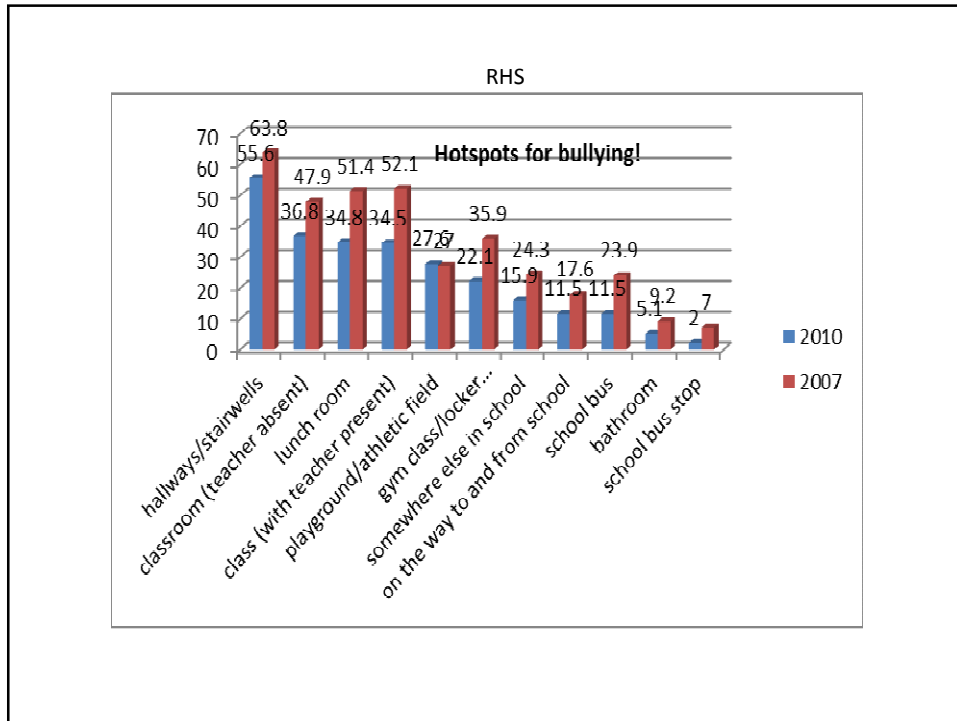


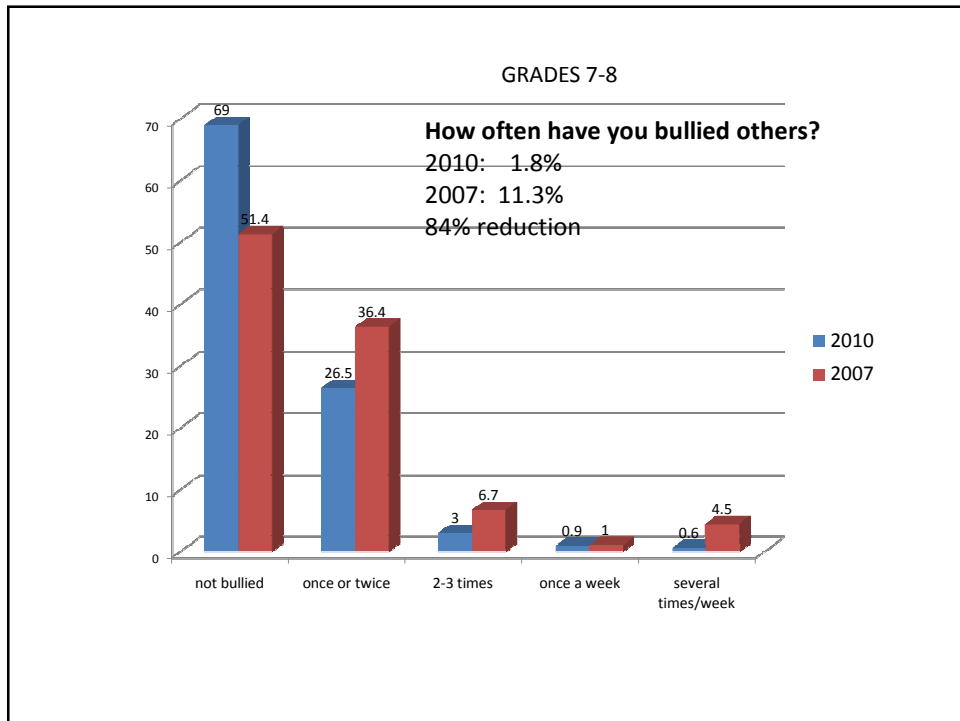
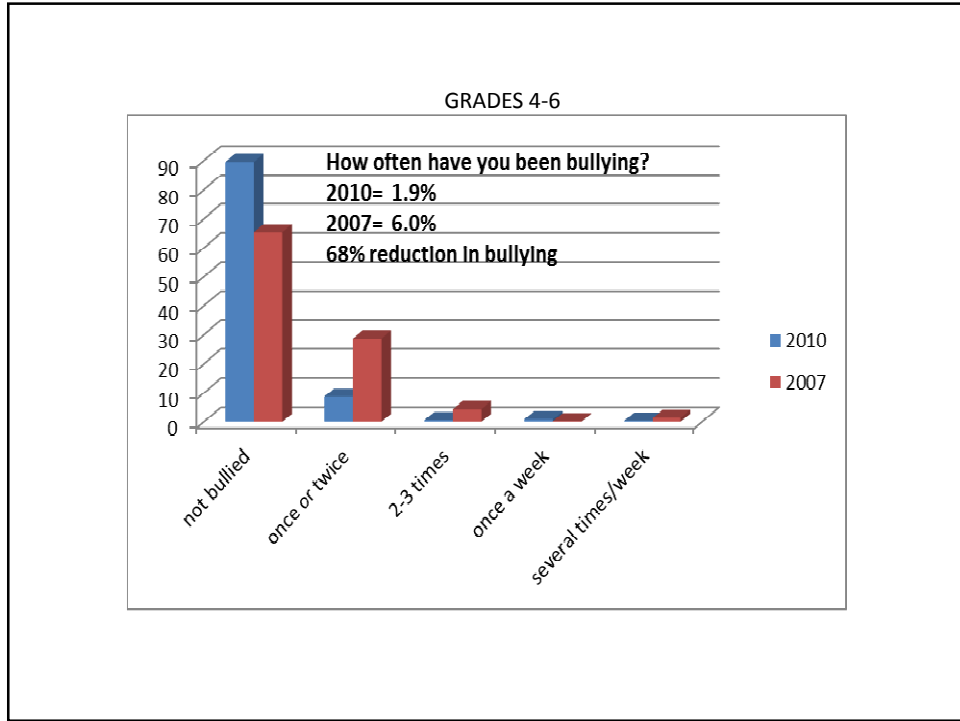


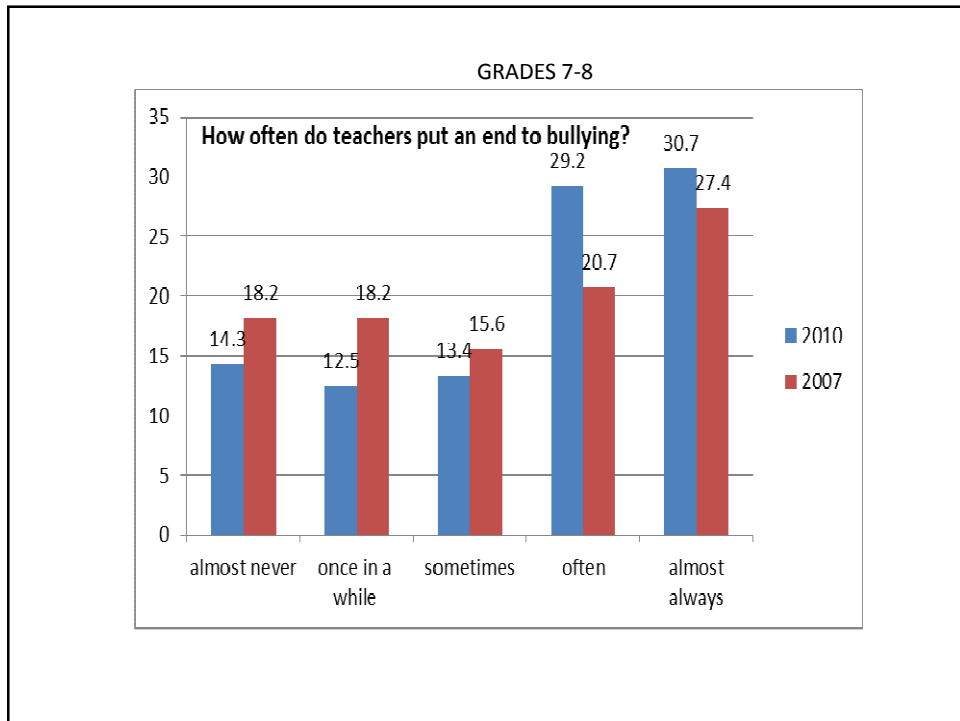
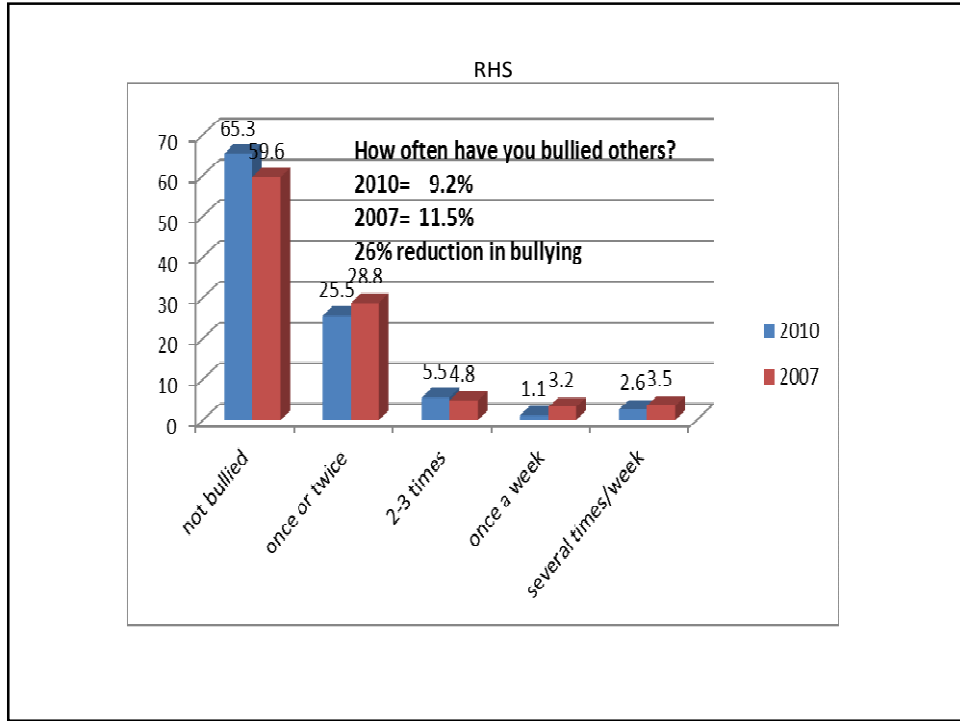


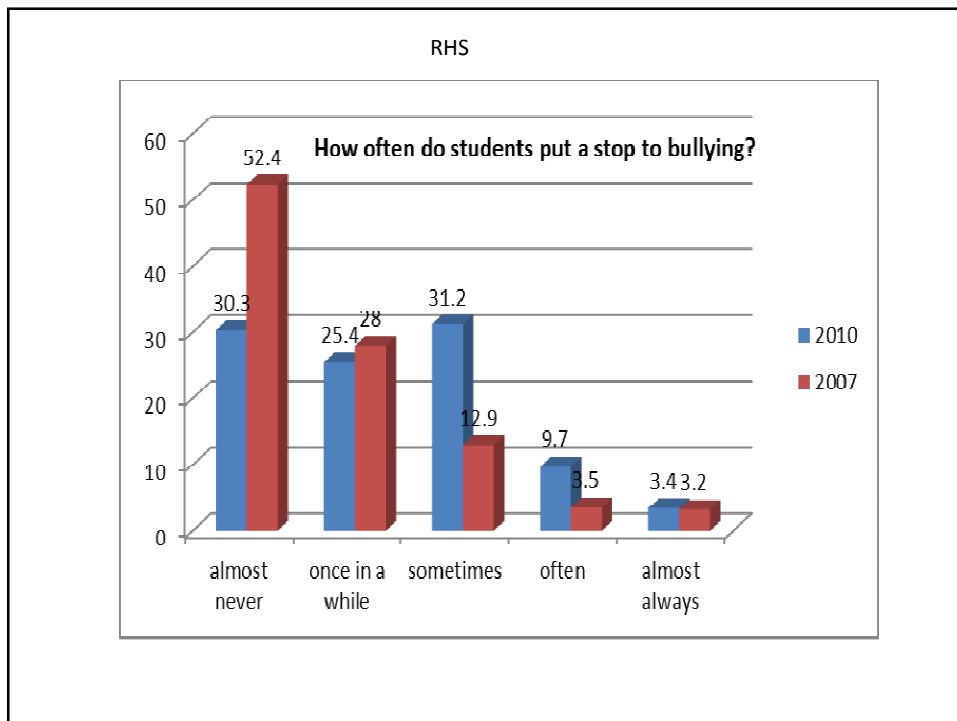
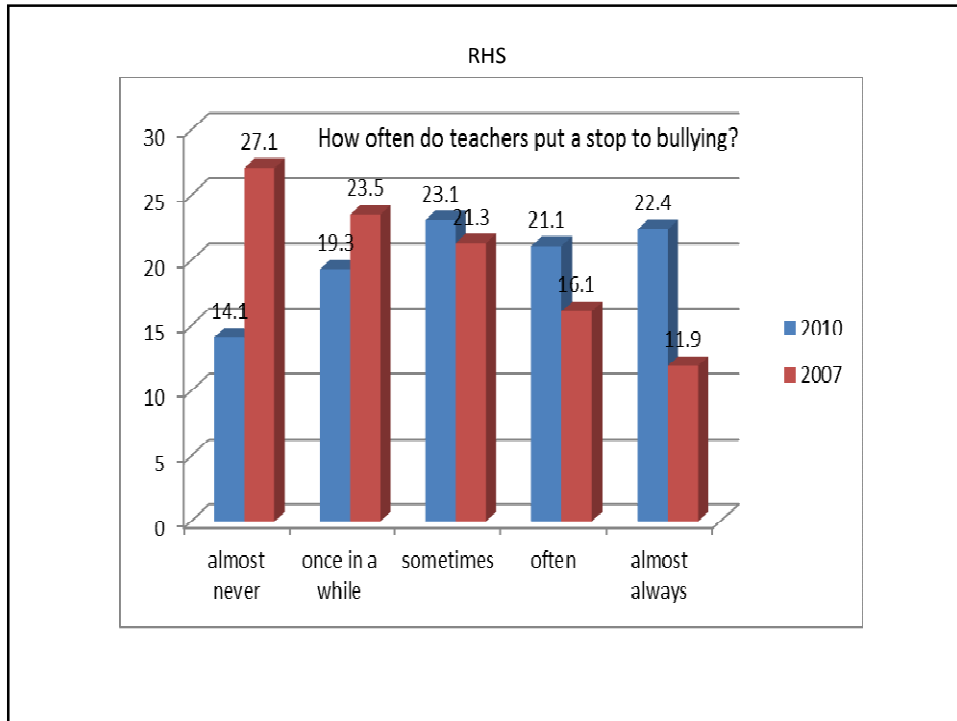




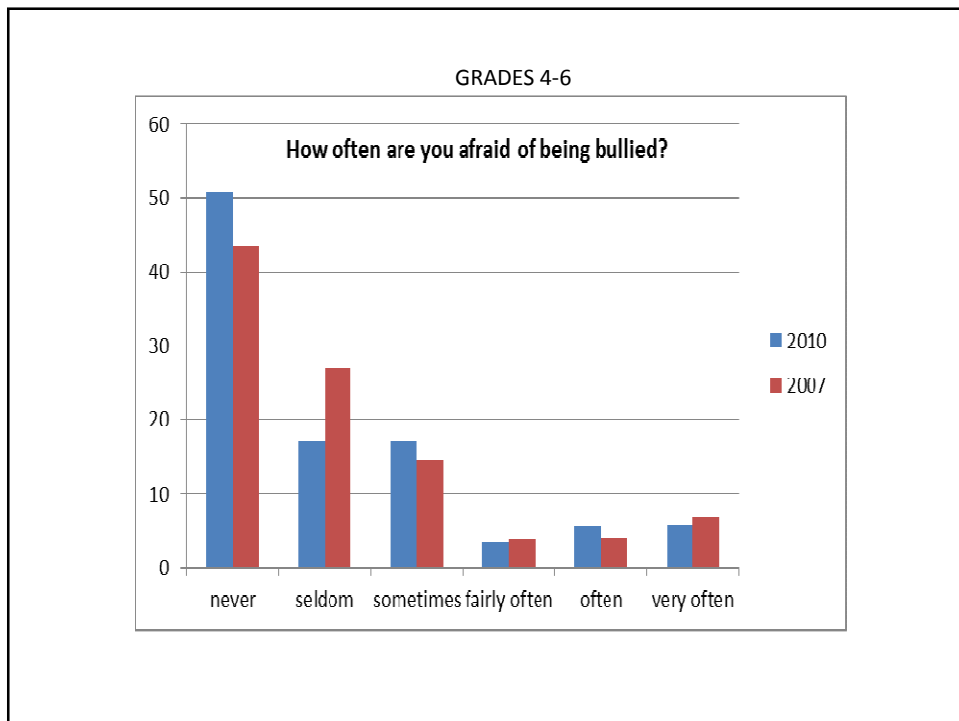
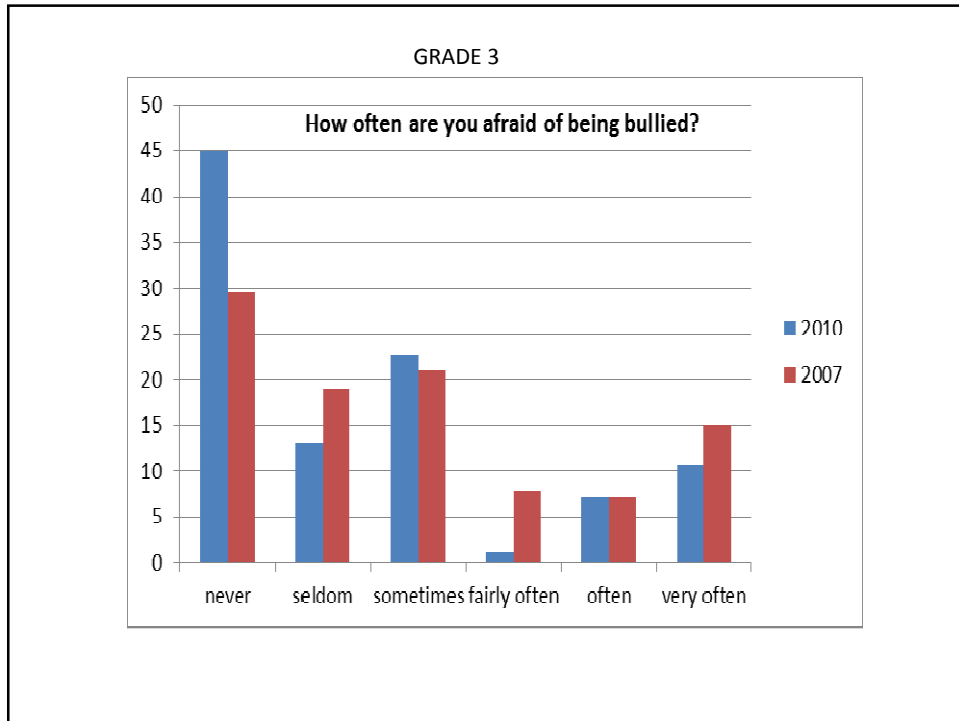


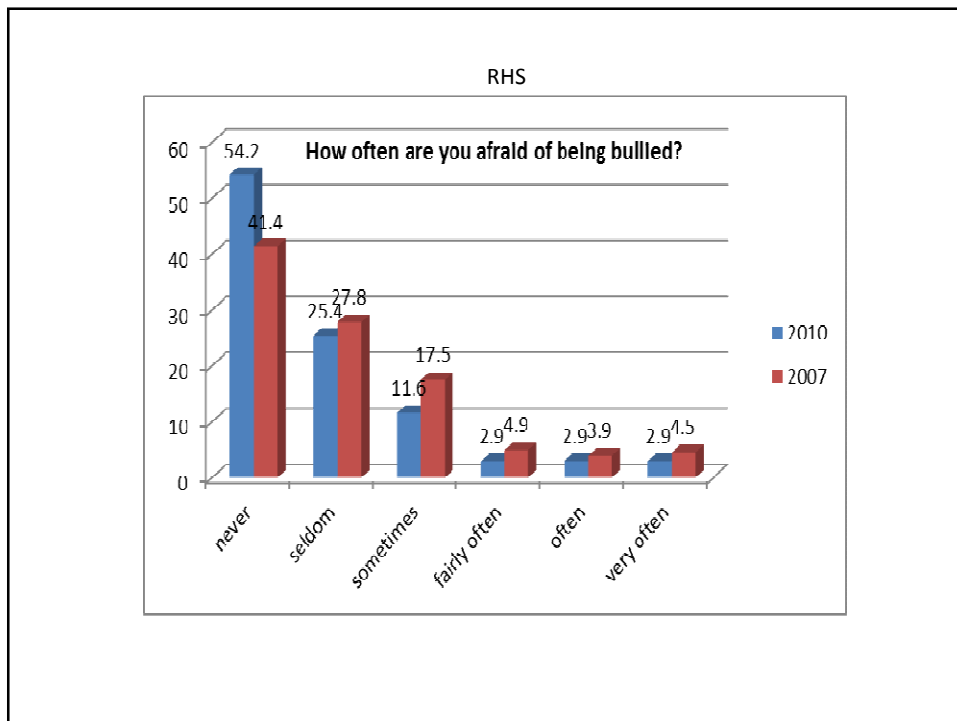
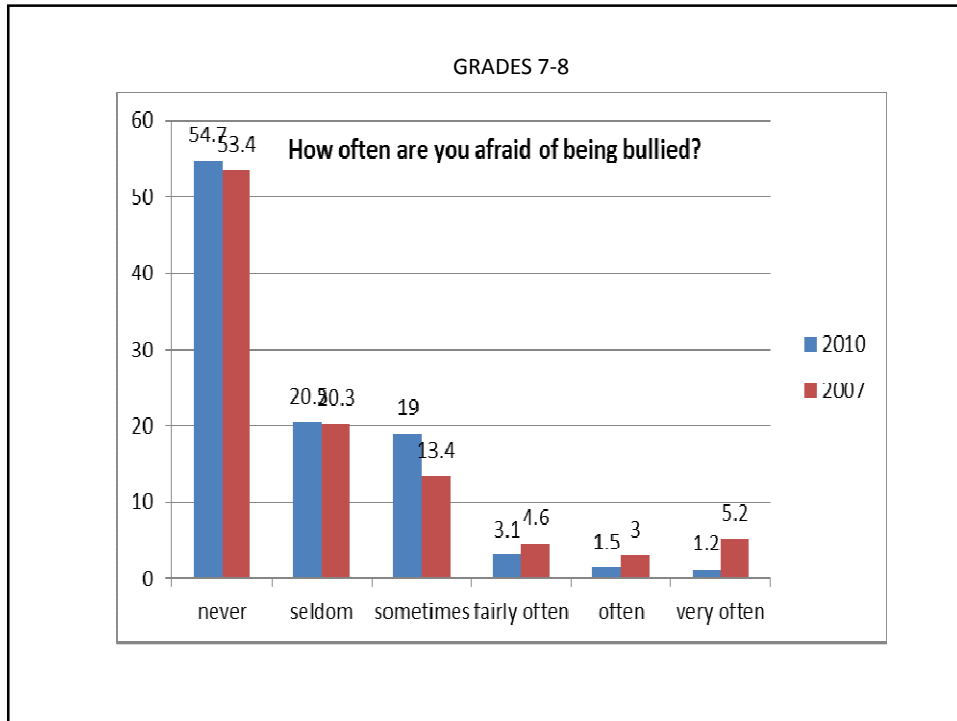


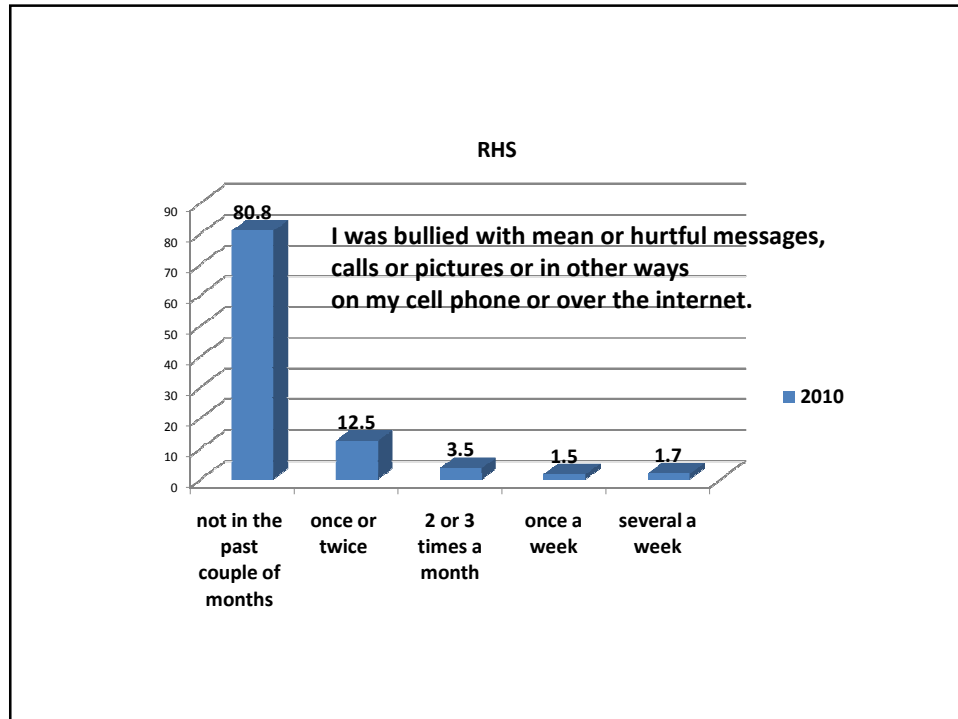












### What Activities May Have Influenced Results?

- District Strategic Plan—bullying prevention is important!
- District Bullying Prevention Committee developed an action plan; staff engagement
- Bullying Curriculum, *Steps to Respect*; *Cool Tools* taught to address specific bullying issues
- Inclusion of bullying prevention in existing activities such as Snowflurry, assemblies
- P.B.I.S. fully implemented with standardized school discipline rules posted
- Identification of bullying “hot spots” and education of staff about how to help (including bus drivers).
- Emphasis upon positive character traits at monthly assemblies
- Emphasis upon zero tolerance for bullying at assemblies

### What Activities May Have Influenced Results?

- Involvement of students in developing bullying prevention activities (RHS)
- Review and discussion of bullying data with all staff
- Assemblies and guest speakers (I.S.P.) with messages specific to internet safety, cyber-bullying, etc.
- Empowering victims of bullying

### Next Steps

- Reconvene Bullying Prevention Committee; development of new action plan
- Review of data with all stakeholders
- Clarify best practices that we want to continue, modify, etc.
- Continue to emphasize bullying prevention in district and building SIPs
- Survey

Section 5  
Richardson Independent School District, Texas



## Richardson ISD program wards off bullying by strengthening bonds between students

By JEFFREY WEISS / The Dallas Morning News

jweiss@dallasnews.com

Published 11 October 2010 12:19 PM

A deceptively simple program introduced in this country in Richardson ISD elementary schools has shown remarkable ability to cut down the kid-on-kid oppression that can lead to bullying and violence, school officials say.

"There's your time and my time. And now it's time for R time," Kelly May told her class of eager second-graders at Mohawk Elementary last week.

R time is one of many anti-bullying and character education curriculums used by area schools: Olweus Bullying Prevention, Steps to Respect, Tribes. But unlike most of those, R time spends almost no time specifically addressing bullying or what to do about it.

That's partly why it's effective, said Jill Darling, RISD student assistance programs director. Paradoxically, she said, some school programs that focus specifically on bullying and on student groups that are often victimized experience an increase in bullying, at least in the short term.

"In R time, the kids just learn to get along," she said.

R time, created in England more than a decade ago, costs only about \$60 per classroom to implement. But even its strongest supporters acknowledge that no program completely eliminates bullying. And making R time succeed requires a powerful schoolwide commitment.

At a time when high-profile bullying episodes nationwide have led to recent teen suicides, educators welcome a strategy that is relatively easy to put in place and succeeds in lessening the occurrence of bullying.

### How it works

Here's how the program works:

R time happens once a week in every classroom in a participating elementary school. The teacher randomly pairs the students, ensuring that kids don't always link up with friends. In May's class, she passed out giant tongue depressors that each had a number matched by only one other stick.

May summarized the straightforward R time rules: Caring at all times, listening, good manners, don't interrupt, show respect.

Then came the handshake and standard greeting for this day that each child gave their partner: "My name is ... . You look very nice today."

May pulled four items out of a bag: A bottle of shampoo, a bar of soap, a hairbrush and a toothbrush. The kids were asked to talk with each other about what it would be like not to use any of the items for a week. (The word "stinky" came up a few times.)

Then several kids were asked to explain to the class what their partners said. Each child asked their partner's permission to share their thoughts. May wandered the room, gathering a selection of responses. Then the kids shook hands again and thanked each other.

Elapsed time: About 20 minutes. Big deal? Apparently so.

Billie Snow, principal at Mohawk for 13 years, said the results of R time have been dramatic. Not only are the students consistently showing better manners, but if the kids act up in the lunchroom or at recess, teachers use the R time training to calm them down.

"They say 'Remember your R time rules,'" she said. "The kids don't squabble as much."

She's even heard from parents who say that R time is carrying over into how some children act at home.

The basic R time format is identical week to week, but the teachers can choose among hundreds of topics and activities: What would you ask a famous visitor to your school? What's a noisy place outside the school? Draw a picture together of what a bully looks like.

Mohawk started using R time in 2008. In two years the number of conduct violations requiring official disciplining dropped by a third. Springridge Elementary also started using R time in 2008. The year before, 42 percent of discipline reports were related to bullying. In three years, that had dropped to 8 percent. And the number of students who used a longstanding peer mediation service dropped by 92 percent.

Linda Tinsley is program director for Region 10 of the Texas Education Agency, which includes much of North Texas. After seeing the program's success at Richardson schools, she's helped introduce it to 31 other area school districts - including Dallas, Mesquite, Allen and Carrollton-Farmers Branch - where 144 campuses have trained their staffs in R time procedures.

5/24/2011

## Richardson ISD program wards off bull...

Big picture

She speculated why a program that scarcely mentions bullying seems to have a powerful effect.

"All of the positive just pushes out the negative," she said.

About half the elementary schools in Carrollton-Farmers Branch are using R time, said Jo Gillen, the district director of career and technical education and counseling. Her district was attracted to the "big picture" approach of the program, she said.

"What we liked about this program is that it helped with the whole student and would help with the family and the teacher," she said "It is about social skills at every level."

R time was born in one third-grade class in Coventry, a city of 300,000 about 90 miles northwest of London. Greg Sampson, a teacher and principal, developed the basic format that is still in use. He sought to find a way to reduce the isolation many students experienced, using an enjoyable activity and with a process that could be repeated consistently over time.

"I wanted to increase their circle of friends to increase their circle of knowledge of each other," he said.

The program had no title until one boy raised his hand one day and asked a question in the accent of the region: "When is 'r' time?"

The boy had tagged the yet-unnamed activity as "our time," for the students to do something they enjoyed. And Sampson had his program's name.

Strong commitment

Studies in England at schools using R time showed an impressive drop in the percentage of students who said they had been bullied and a significant decrease in the number of students who said they were aware of bullying going on.

R time had spread to a few thousand schools in England when Sampson came to the United States for an anti-bullying conference where he first met RISD's Darling. She was captivated by R time, traveled to England for training, and came back to start the program in three Richardson elementary schools in 2008.

In addition to North Texas, there is a growing colony of R time schools in the United States in the Midwest. Sampson would like to expand the program faster but doesn't have the training staff available.

Richardson has added about three schools every year. The slow pace reflects the time needed to train the entire staff of a participating school, and the shortage of qualified trainers, Darling said.

While the classroom component looks simple, R time only works when the commitment can be seen throughout the school, proponents say.

On many campuses, the R time rules are put on posters in every classroom. At Spring Valley Elementary, the rules are on banners - English and Spanish - lining the hallways. Principal Kelly Colburn mentions the rules every day when she reads the morning announcements over the intercom.

At Skyview Elementary, R time "is practiced through the whole building, subconsciously," said principal Phillip Bates.

Civil discussions

Obviously, antisocial behavior doesn't stop in elementary school. This year, in England and Richardson ISD, a program like R time is being piloted for the first time at several junior highs. Created by Sampson's business partner, Pete Harvey, Negotiate uses a similar format - random pairing, standard greetings, emphasis on respect - but takes on topics that junior high kids take seriously:

What would you do if you found an envelope with \$1,500? What if you found out that friends who were dating were secretly seeing other people?

Beyond the goal of R time, Negotiate is intended to teach kids that they can engage in spirited, civil discussions about controversial topics. Negotiate is being tested at Richardson North and Richardson West junior highs.

While it's too soon to draw many conclusions, one instructor at North said she's already seen some effects.

"I've seen the teachers pulling it into their classrooms," said Angie Hendricks. "They're saying 'You know what respect looks like. I need you to bring that into my classroom.'"

While those schools work the bugs out of Negotiate, more teachers will continue to use R time at elementary schools. At Skyview this week, Marlowe McIntyre's third grade class took on one of the rare bully-specific R time lessons. Each pair of students was given a small whiteboard and a marker and were assigned to draw what a bully looks like.

After discussing the pictures, McIntyre drew a larger lesson: "Focus on not being the person you drew in that picture," she said.

And then each pair of kids faced each other and shook hands.

"Thank you," they each said, "for being nice to me today."

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## How do Kern schools fight bullying?

BY JORGE BARRIENTOS, Californian staff writer

[jbarrientos@bakersfield.com](mailto:jbarrientos@bakersfield.com) | Saturday, Oct 23 2010 12:00 PM

Last Updated Saturday, Oct 23 2010 12:00 PM

The recent suicide of Seth Walsh in Tehachapi, reportedly after being bullied, raised some big questions: How much bullying goes on in our schools? Is it more prevalent or just reported more?

It's hard to tell.

State officials added to the education code, effective in 2009, a section on bullying and harassment that allows schools to suspend and expel offenders.

But California schools are not required to develop bullying prevention plans -- unlike other states -- nor to document or track bullying cases, though changes are coming from the state.

That doesn't mean schools here don't take bullying seriously and aren't addressing and documenting it. In fact, Kern County is among the state's leaders in training school employees and students how to combat it, according to a leading national expert on school violence prevention.

"A lot of places are doing wonderful things to address bullying," said Wayne Sakamoto, a 20-year veteran in the field of school and community safety and director of school safety for the Murrieta Valley Unified School District. "What Kern County has, though, is a multiplayer collaboration with faith-based groups, schools, law enforcement and the entire community. That's what begins to make a difference."

### PROACTIVE APPROACH

Endeavor Elementary School in the Fruitvale School District is an example of how local campuses address bullying.

During the second week of school, the entire campus learns how bullying begins, who can be targeted, ways of spotting it and how to better treat others.

Kids -- who often hear about trouble first -- can report bullying confidentially by filling out a form in the



5/24/2011

How do Kern schools fight bullying? - B...

office. They do so about five times a week, documenting such things as name calling, teasing and kids having toys they shouldn't, said Principal Deanna Clarke.

Kids report bullying-type incidences once or twice a week, she said.

Throughout the school year, questionnaires go out where students can identify campus "hot spots" for bullying and parents can share their feelings on school safety, Clarke said. About 96 percent of parents recently surveyed said their child was safe "all of the time." Parents mentioned "safety officers were visible" and "playground issues were quickly resolved."

Districtwide in Fruitvale, again 96 percent of more than 1,000 parents asked said they felt their child was safe at school, according to recent data. About 93 percent said they felt staff was available to give their children emotional support.

Meanwhile, district educators are trained to handle bullying allegations, the most lesson being to *listen* to students and parents, Clarke said.

At-risk students are recommended to receive counseling, she said, because often times the kids who are hurting hurt others.

"We want to stay on top of that so no child is ever bullied on campus," Clarke said.

Fruitvale officials document violence on campus and feed the information into a district computer system. For next year, they are working to better designate bullying cases to track their prevalence, Assistant Superintendent Mary Westendorf said.

For now, school officials can only look at individual suspensions, referrals or demerits to figure out bullying's prevalence. Since August, 37 of Fruitvale's 3,300 students have been suspended, three for bullying offenses, district officials said. But that's not an accurate indication of how much bullying is actually occurring.

A study released by Clemson University Wednesday, called the largest national database on bullying among U.S. students, showed 17 percent of kids had been bullied two to three times a month or more. The study surveyed more than half a million students. About 40 percent of those said they had been bullied for one year or longer.

## SCHOOL TRAINING

All schools here also do four things related to school bullying. Each district must report to the state its suspensions, expulsions and hate crimes -- which could be bullying-related but are not categorized as such. It also has to submit the California School Climate Survey, which asks school staff about campus bullying and other safety issues.

Each campus must have a school safety plan. And schools participate in the California Healthy Kids Survey, the largest statewide survey of student risk behaviors in the nation.

That survey is valuable, school officials say, but funding for it could be cut. In fact, other bullying prevention programs are in danger of losing funding, said Linda Sargent, Safe Schools consultant for the Kern County Superintendent of Schools office.

5/24/2011

How do Kern schools fight bullying? - B...

For years KCSOS has offered training and workshops in cyber bullying and school conflict mediation, for example.

While those services are valuable, conceded Daryl Thiesen, prevention programs coordinator in the Kern County Superintendent of Schools Office, incidences like Walsh's can still happen out of school. In fact, KCSOS offered more Safe School Ambassadors trainings at Jacobsen Middle School, where Walsh attended, than at all but one junior high in the county, Thiesen said.

One of the last times local bullying received nationwide attention was in 2006 and involved Stockdale High students at an out-of-town debate tournament. A freshman was bound with plastic wrap and duct tape, his mouth sealed up to his nostrils and his psyche further battered when photos of the incident were shown to other students.

The Kern High School District, several students and their parents eventually agreed to pay a combined \$260,000.

Since Walsh's death, local media have reported several more alleged bullying incidences. Last week, six Foothill High student-athletes were suspended for bullying or hazing football teammates, and a coach was fired for lack of supervision.

Principal Brenda Lewis said she wanted to "send the message to students that incidences should not take place."

Another recent case -- where a 13-year-old girl was sent threatening messages from a high-schooler on MySpace apparently because she is gay -- highlighted the difficulty in handing out punishments.

Kern High School District officials said they would investigate the allegations, but it may be hard to punish because the incident was off-campus. And officials with the Bakersfield City School District, where the 13-year-old attends school, said because the incident happened on the Internet after school hours, there wasn't much they could do either.

"We have jurisdiction on things that happen on campus, and to and from campus," said BCSD spokesman Steve Gabbitas. "When it's outside the jurisdiction, we're concerned about it, and we'll help parents, but really our hands are tied."

Officials at the California Department of Education said schools could punish students for bullying outside of campus if they determine it has affected the classroom learning environment. It's up to administrators to decide whether or not to investigate and to make that determination -- but that takes manpower schools are short on these days.

## 'KNOW YOUR KIDS'

At the high school level, campus officials take bullying allegations "very seriously," said Otis Jennings, Kern High School District director of pupil personnel services.

High schools have peer-mediation groups where students talk to one another. Campuses host "Teen Truth," a premier student assembly that addresses bullying.

5/24/2011

How do Kern schools fight bullying? - B...

Officials keep a running tab of bullying allegations in offenders' records and look back at those records when they need to take disciplinary action.

But many cases go unreported, Jennings said. The battle is getting students to understand that it's OK to tell someone.

If bullying is serious enough, the Kern High School Police Department gets involved and isn't hesitant to act, said Chief Steve Alvidrez. Punishment varies from suspension to expulsion to arrest for assault.

"We make sure this doesn't become a problem," he said.

One of the most effective ways to fight bullying, Alvidrez said, is to become familiar with students, and know which to keep an eye on -- potential victims and bullies.

"You can't get to know all 2,000 kids on campus, but if you do your job and you know your kids, there's a way to get in the middle of things," Alvidrez said.

Another tactic is keeping communication open with the outside community, including parents and probation officers, to know what's happening off campus. The department also trains school employees -- bus drivers, cafeteria workers, teachers and custodians -- in knowing what to look for.

### 'TOUGHER YOUTH CULTURE'

It's hard to tell whether there is more bullying today than in past generations, but Sakamoto said he believes "we have gone away from a culture of respect and kindness," where teaching basic etiquette is not a priority. Today, he said, we have "a meaner, tougher youth culture."



And today's generation has something past ones did not -- technology. A problem in tackling cyber bullying, for example, is that "technology outgrew parenting skills" -- parents have yet to catch up on how kids are using computers to bully.

Soon, Sakamoto said, we all will catch up. Kern schools have already made



"The efforts in bullying will make a difference," Sakamoto said. "I think we're on the right track."

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15 Comments

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Section 6  
Roundlake-Brewster, Minnesota

McClatchy - Tribune Business News  
November 22, 2008  
**RL-B students stand up to bullying**

Laura Grevas

Nov. 22--ROUND LAKE -- In a sea of pale pink T-shirts, nearly 300 students and teachers in the Round Lake-Brewster School District stood up -- well, sat down -- as part of an international effort to eliminate bullying in schools.

"I know a lot of you have a problem with wearing pink today, but I'm going to explain to you why we're wearing pink today," teacher Lori Romans told the K-12th- graders assembled in the Round Lake High School gymnasium Friday afternoon.

She recounted the story behind the pink shirts.

Last year, two senior students in Nova Scotia passed out pink tank tops to their friends in support of a freshman at their high school who had been harassed the day before for wearing a pink shirt. Later, Canadian Bobby Cooper would start a movement -- International STAND UP to Bullying Day -- for which students sign and wear pink pledge T-shirts as part of a visible stance against bullying.

When Romans led the students in reciting the pledge printed on their T-shirts, the small district was at no shortage for volume.

"Today I have an obligation," they repeated. "No longer will I be silent. Silence is participation. I refuse to participate in the problem. We're all different but we all deserve respect. If you need help, come to me. If I think you need help, I'm getting involved. I GOT YOUR BACK!"

Romans recounted her own story of being bullied in the restroom as a kindergartner.

"To this day I can't use public restrooms," she told them. "You have a choice to be a positive person in someone's life ... or a negative person in someone's life."

She challenged students to intervene when they see others being picked on.

"In this room there are over 300 sets of eyes that are going to be watching (out for bullies)," she continued, saying most bullying occurs in restrooms, hallways and recess -- out of the sightlines of teachers.

"I hope ... instead of just laughing along cause that's their friends (bullying others), students will stick up for each other," said Kimmy Wiese, a senior at the school.

"Even though we know it won't get fully stopped, we can at least tone it down," added senior Anna Obermoller after the assembly.

Romans said she got a "random fax" alerting her to the worldwide event, and the school decided to become one of the 750 schools, workplaces and organizations (represented by more than a half-million people) that would pledge to stand up to bullying. The shirts were funded through a grant from the RLB School Board.

"It happens everywhere... Round Lake-Brewster has decided that instead of punishing the bullies, we're going to try to avoid the problem all together and empower the students to take responsibility for themselves and stop it."

She took the district's bullying policy around to each class at the beginning of the year to remind students of consequences.

"That was sort of the 'bad cop' take on it, and (this event) is the 'good cop' take," she explained.

"This isn't because we thought we had an exponential amount of bullying. It's just something we thought we'd address as a school-wide issue to get better at it."

The school's Family, Career and Community Leaders of America (FCCLA) chapter will present on the school's efforts as part of their yearly STAR (Students Taking Action with Recognition) Project.

FCCLA member Ceilia Schmitz was surprised at those willing to don pastel pink.

"There were people I did not expect to get involved that really took part in the event," she said.

Editor's note: A series on bullying in schools will appear in this newspaper in December.

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Business Dateline

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Section 7  
Lehigh Area School District, Pennsylvania

## PROGRAM OVERVIEW

Since 2000, Safe School Ambassadors programs have been implemented in over **850** schools, training over **28,000** students and over **4,400** adults in **30** US states and in **2** Canadian provinces.

### Impact of the Safe School Ambassadors program:

- Reduces bullying, including cyberbullying
- Increases student reporting to adults
- Reduces put-downs, harassment and fighting
- Improves school climate and student retention
- Reduces gang involvement and activity

### The Safe School Ambassadors program is:

- A research-based, field-tested, logic model
- A proven anti-bullying and violence-prevention program
- Student-centered
- Focused on social norms change
- Cost-effective

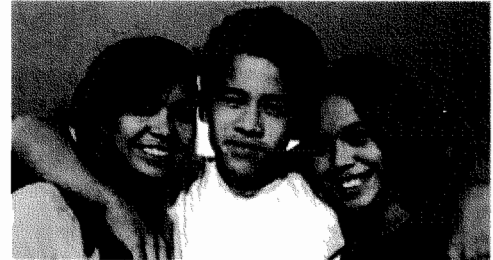
The program identifies and selects student leaders from diverse groups across the campus and forms them into a team of Safe School Ambassadors. Ambassadors are trained in the skills of nonviolent communication to stop bullying and violence.

### Why the Safe School Ambassadors program is student-centered:

- Students see, hear and know things that adults don't
- Students can intervene in ways adults can't
- Students are often the first to arrive on the scenes of most incidents before adults even know about the incidents
- Students determine the social norms—what's OK and what's not—while adults set the rules, policies and consequences

### Safe School Ambassadors have:

- High social status and influence in their peer groups
- Strong communication skills and an outgoing personality
- Empathy and compassion
- A history of standing up for their friends and peers



"The Safe School Ambassadors program has provided us with a well-designed student-to-student initiative that has made a positive difference in over 30 of our district's schools."

—Alison Adler, Ed.D., Chief, Safety & Learning Environment,  
School District of Palm Beach County, Florida

### How the Safe School Ambassadors (SSA) program empowers youth:

Few schools have fully engaged, equipped and empowered their students as peacemakers to improve school climate. As a result, students believe that they have only *two options*:

- to be a bystander and condone the hurtful acts they see, or
- to "tell" on their peers

The SSA program provides Ambassadors with the motivation, skills and support to know they have a *better option*:

### Ambassadors are taught to intervene to prevent or stop the mistreatment they see.

"We learned how to defuse conflicts that arise in everyday life and how to create a community of peace and unity."

—Dani, 16, Safe School Ambassador, northern California

### Safe School Ambassadors is designed for students 4th–12th grades.



## What Community Matters provides:

### 1) *Introductory materials and DVD to:*

- Explain program elements and steps for implementation
- Help secure administrative and staff buy-in
- Identify, recruit and select appropriate adults and students to be trained
- Prepare for the training

### 2) *Two days of interactive training at school site for selected students and adults, so that:*

- Students develop essential skills: observation, intervention, negotiation, reporting, and referral
- Adults learn how to facilitate ongoing small (Family) group meetings that provide Ambassadors with supervision, skill development and support

### 3) *Program implementation materials and coaching:*

- Principal's and Program Advisor's Handbooks, for the administrator and site coordinator, include timelines, checklists, strategies, guidelines, tips, activities, and resources
- Family Group Facilitators' Guidebook, for adults leading Family groups, includes meeting agendas, activities, strategies, and forms
- Student Ambassador's Guidebook includes vocabulary, definitions, skills, activities, reflection journals and intervention tips
- Electronic bulletins, newsletters, and reminders, with best practices from active programs
- Web-based resources, with downloadable forms and letters, a searchable help desk, and a data management portal. (For more information, go to our website.)
- Individualized coaching and support via email and phone

### 4) *Program Measurement and Assessment:*

#### **Included in the SSA program model are...**

- Two Action "Snapshot" Campaigns, measuring Ambassadors' activity
- Mid- and Year-End Discipline Data Analysis forms and coaching, measuring program impact on school climate
- Year-End Surveys (online or paper) of Ambassadors and program adults, measuring Ambassadors' activity and program impact on Ambassadors and school climate

#### **Optional SSA program Assessment Tools...**

##### **Pre- and Post-SSA Training Surveys**

- School Climate Survey
- Key Adults Survey



## How does the Safe School Ambassadors (SSA) program complement other school climate efforts?

The SSA program functions as a stand-alone program. It is also an excellent complement to peer education, diversity education, conflict mediation, and other student empowerment, character education and safe school programs. On its own or with other programs, the SSA program improves school climate and fosters safer schools.

## What the Safe School Ambassadors program costs:

For the materials, training, pre/post program support and coaching, a school site invests about \$125 per student trained:

\$4,300\* for program, elementary, middle or high school levels PLUS an estimated \$500-\$1300 travel and accommodations costs in addition to the program cost, depending on where the school is located and which trainer is assigned.

\*Check website for discounts and SSA program sustainability options.

**We also provide Parent/Guardian Education Workshops and Staff Development Trainings: [www.community-matters.org](http://www.community-matters.org)**

## Where can I find funding for the Safe School Ambassadors program?

Schools have found funding: through state laws that fund bullying-prevention and school climate; Titles I and IV; principal's discretionary fund; funds for student activities; PTA/O or PFC; district funds; site councils; state and federal grants for safe schools and prevention; and other sources, such as police departments, businesses, service clubs, hospitals, local/community foundations, private donors and community fundraising. We have tools and resources to help schools find funding. Ask us!

"Safe School Ambassadors save lives!"

—Neil Williamson, Dean of Students  
Belmont High School, Los Angeles, CA

Section 8  
Minnesota Institute of Public Health

# Minnesota Institute of Public Health

## projects

### project Avert



Parents, students, and staff want schools to be safe and healthy places that foster ACADEMIC, SOCIAL, and EMOTIONAL growth. Surveys tell us that the public expects schools to be SAFE and FREE from harassment, drugs and violence of any form.

The AVERT Assessment protocol is an evidenced-based process of assisting schools, school districts or any institute for learning to identify the positives and the issues of concern as perceived by students, parents and staff members.

Implementation of research-based safe school intervention and prevention strategies have resulted in:

1. Increased G.P.A.
2. Increased school attendance
3. Increased connectiveness between students and staff
4. Higher comfort levels and appreciation among students
5. Reduction in discipline issues

### **Evaluation Finds that Safe Schools/Healthy Students Initiative Significantly Improves Student Safety**

On November 3, 2009, the U.S. Department of Health and Human Services' Substance Abuse and Mental Health Services Administration (SAMHSA) issued the following press release:

Rockville, MD - In the wake of several recent highly-publicized stories about violence among school-aged children, a new report shows that school districts participating in the Safe Schools/Healthy Students Initiative substantially improved the safety of their students. According to the report by SAMHSA, over a three-year period, school districts participating in the Safe Schools/Healthy Students grant program reported fewer students involved in violent incidents, decreased levels of experienced and witnessed violence, and improvements in overall school safety and violence prevention.

"Every child deserves to learn in a safe and healthy environment, and now through the results of the Safe Schools/Healthy Students Initiative we know that we can take real steps to help them," said SAMHSA Acting Administrator Eric Broderick, D.D.S., M.P.H. "The positive impact for children, families and communities is unprecedented: lower rates of school violence, more mental health services for more children, better attendance, and improved academic performance."

Key findings from the Safe Schools/Healthy Students National Evaluation include:

- \* A 15 percent decrease in the number of students involved in violent incidents during the grant period (from 17, 800 in year 1 to 15,163 in year 3).
- \* A 12 percent decrease in the number of students reporting that they had experienced or witnessed violence from year 1 of the grant period to year 3.
- \* Most staff at grantee schools reported that the Initiative had made their schools safer. By year 3 of the grant, 84 percent said the Initiative had improved school safety, 77 percent said it had reduced violence on campus, and 75 percent said it had reduced violence in the community.

The Safe Schools/Healthy Students program supports the implementation and enhancement of integrated, comprehensive community-wide plans that create safe and drug-free schools and promote healthy childhood development. Under the initiative, school districts, in partnership with local public mental-health agencies, law-enforcement and juvenile justice entities, must implement a comprehensive, community-wide plan that focuses on the following elements:

- \* Safe school environments and violence prevention activities
- \* Alcohol, tobacco and other drug prevention activities
- \* Student behavioral, social and emotional supports
- \* Mental health services
- \* Early childhood social and emotional learning programs.

Since 1999, the U.S. Department of Health and Human Services, the U.S. Department of Education, and the U.S. Department of Justice have implemented the Safe Schools/Healthy Students Initiative, which has provided more than \$2.1 billion to local educational, mental health, law enforcement and juvenile justice partnerships. For more information on the Safe Schools/Healthy Students visit [www.sshs.samhsa.gov/apply/default.aspx](http://www.sshs.samhsa.gov/apply/default.aspx) [<http://www.sshs.samhsa.gov/apply/default.aspx>].

#### Resources:

Read the press release on SAMHSA's Web site at [www.samhsa.gov/newsroom/advisories/0911033535.aspx](http://www.samhsa.gov/newsroom/advisories/0911033535.aspx) [<http://www.samhsa.gov/newsroom/advisories/0911033535.aspx>].

Read a data brief that describes the evaluation's findings at [www.sshs.samhsa.gov/media/sshs\\_media/pdf/SSHS\\_Violence\\_Prevention\\_Brief\\_rev7.pdf](http://www.sshs.samhsa.gov/media/sshs_media/pdf/SSHS_Violence_Prevention_Brief_rev7.pdf).

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**Fatal error:** Call to undefined function base\_path() in  
**/home/miphorg/public\_html/sites/default/modules/ubercart/uc\_store/uc\_store.module** on line **510**



Section 1  
NSBA Publication

# Dealing with Legal Matters Surrounding Students' Sexual Orientation and Gender Identity



## PARTICIPATING ORGANIZATIONS:

American Association of School Administrators	National Association of School Psychologists
American Federation of Teachers	National Association of Secondary School Principals
American School Counselor Association	National Education Association
Association for Supervision and Curriculum Development	National School Boards Association
National Association of Elementary School Principals	National Student Assistance Association
National Association of Independent Schools	School Social Work Association of America
United Church of Christ Justice & Witness Ministries	



# Dealing with Legal Matters Surrounding Students' Sexual Orientation and Gender Identity

**O**ver the past decade, controversies surrounding students' sexual orientation and gender identity have become increasingly common in K-12 schools. Often it falls to school administrators and school boards to manage the conflicts that arise in areas of curriculum, student clubs, dress codes, and harassment. This publication provides practical guidance on schools' legal rights and responsibilities with respect to students, programs, and curriculum. Specific court decisions that have provided clarity in this arena are cited in endnotes.

Like all other individuals, lesbian, gay, bisexual, and transgender (LGBT) students are guaranteed equal protection under the Fourteenth Amendment to the Constitution and free speech and association under the First Amendment. Like other student clubs, LGBT-related student



groups<sup>1</sup> are guaranteed equal treatment and access under the Equal Access Act (1984).<sup>2</sup> Additionally, some courts have held that Title IX<sup>3</sup> offers protections to LGBT students in certain circumstances,<sup>4</sup> and some states and communities have enacted statutes, regulations, and professional standards prohibiting discrimination on the basis of sexual orientation and gender identity.<sup>5</sup>

Court cases addressing legal issues regarding LGBT students and related issues have resolved many questions and can provide guidance for schools if and when conflicts arise. Not all issues have been resolved, however, and in some instances court rulings differ from jurisdiction to jurisdiction. In some jurisdictions, the courts may not yet have considered every issue discussed here. As always, it is best to seek legal advice either from district legal counsel, the state education department, or your state professional organization to determine the specific legal authority in your jurisdiction.

## Student Organizations and Clubs

### ***Some students in my school want to form a Gay-Straight Alliance (GSA). What are my legal responsibilities?***

**T**he courts have found that the Equal Access Act (EAA) requires schools to treat student clubs that address LGBT issues the same as other student groups. The Equal Access Act requires any public secondary school<sup>6</sup> that receives federal money AND has a “limited open forum” to allow LGBT-oriented clubs formed by students the same access to school facilities that other student groups enjoy. Two important caveats: 1) the clubs must be initiated at the request of students, and 2) the Equal Access Act applies only when the school has a “limited open forum,” meaning the school recognizes other “noncurriculum related” student



groups.<sup>7</sup> The bottom line: Schools that meet these conditions must permit LGBT-related groups such as GSAs to meet on the same basis as other student groups.<sup>8</sup>

If schools allow only curriculum-related clubs, then they are not required to grant access to any noncurriculum related group.<sup>9</sup> Some school districts have attempted to change the rules regarding “noncurriculum related” groups after receiving a request to establish a student group that addresses LGBT issues. The courts have not looked favorably on attempts to finesse the legal definitions in order to

approve only favored groups, and districts typically have lost these lawsuits.<sup>10</sup>

In one case a school district was successful in invoking an Equal Access Act exception that permits schools to deny access based on “material and substantial interference with the orderly conduct of educational activities within the school” to keep out a GSA.<sup>11</sup> But in this case, the court pointed out that the GSA would be discussing safe sex in a school that had an “abstinence-only” sex education program, that the GSA’s website linked to other websites with explicit content, and that the school at which the GSA was proposed served students as young as 12 years old.<sup>12</sup>

At least one district attempted to eliminate all student noncurriculum related organizations after students tried to hold a GSA meeting.<sup>13</sup> This is legal only if the new rule is applied equally to every student club, and the district subsequently reconsidered this drastic measure.

In short, districts that meet the conditions above must provide to LGBT-related

student organizations the same access given to any other student group. "Access" has been interpreted to include funding, access to school bulletin boards and other media, meeting space, and yearbook photos.<sup>14</sup> To avoid potential legal problems, school districts should have in place a uniform set of rules regarding the establishment of student organizations. The rules should be applied evenhandedly and should be available to students, parents, and staff.

***But I have students and parents who object to the formation of any student clubs that address gay issues. How am I supposed to handle this situation?***

**T**he Equal Access Act originally was proposed to ensure that student religious clubs could meet in public schools, but Congressional debate and subsequent court rulings have made clear that the EAA is meant to apply to a broad array of student groups. Under the EAA, schools cannot "deny equal access or a fair opportunity to, or discriminate against, any students who wish to conduct a meeting within that limited open forum on the basis of the religious, political, philosophical, or other content of the speech at such meetings."<sup>15</sup>

A school cannot refuse to allow a group like a gay-straight alliance (GSA) to meet because other students, teachers, administrators, parents, or community members object to formation of the club. The unpopularity of particular expression has been rejected as a justification for preventing student speech.<sup>16</sup> Where club opponents substantially disrupt the work of the school or the rights of the student GSA members, the appropriate response is to address the disruptive opponents.<sup>17</sup> The Equal Access Act expressly allows schools to "maintain order and discipline on school premises, [and] to protect the well-being of students and faculty."<sup>18</sup> While schools may properly address disruption by GSA opponents, courts have not allowed districts to use this section of the EAA to prohibit LGBT-related clubs because of negative community sentiment or other potentially disruptive responses.<sup>19</sup>

While schools may issue a general statement that they are not sponsoring student groups, but rather are merely providing all student groups an opportunity to meet, schools should not single out or target a particular group for this clarification. As a practical matter, in the face of controversy it may be helpful to explain to your school community that the same rules apply to recognition of GSAs as apply to all noncurriculum related student clubs.



### ***How do I handle staff or outsiders wanting to be a part of the GSA?***

**T**o be covered by the Equal Access Act, student clubs must be “student initiated.” Outside community members “may not direct, conduct, control, or regularly attend activities of student groups,” although they may attend occasionally, if invited by students, unless the district has a policy prohibiting “nonschool persons” from attending student group meetings. School faculty and staff, on the other hand, may regularly attend meetings, particularly for “custodial” purposes such as the need to provide adult supervision. Many districts assign (and even pay) teachers to supervise noncurricular clubs like ski club or chess club. If staff monitors are provided to other noncurricular student clubs, one should be assigned to the GSA as well. If staff are allowed to participate in other non-curricular student clubs in more than just a custodial capacity, the district cannot restrict staff from similar participation in the GSA.

***I have been approached by some parents and members of the community who object to the fact that the Boy Scouts meet at the school. They feel that the Boy Scouts discriminate against gay people and that the school should not condone this.***



**T**he No Child Left Behind Act contains a provision called the Boy Scouts of America Equal Access Act.<sup>20</sup> This Act requires public schools that receive federal funds to provide the Boy Scouts with the opportunity to meet in school facilities, as long as the district makes school facilities available to other outside groups. The Act also states that schools cannot “discriminate against any group officially affiliated with the Boy Scouts of America....”<sup>21</sup>

This means that if the district permits outside youth or community groups to meet on school premises or in school facilities before or after school, then the Boy Scouts must be given similar access to the school campus. This does not mean that a district is required to sponsor a Boy Scout troop. School sponsorship confers the school’s official support and extends benefits and rights that are not generally provided to other groups, and such sponsorship could raise other legal issues. But a school district that receives federal funds must make its facilities available to the Boy Scouts on the same basis it does to other organizations.

***Some parents object to military recruiters being allowed on the school campus. They claim the military discriminates against gays and lesbians and should not be allowed at school.***

**T**he No Child Left Behind Act contains a provision requiring any school that receives federal funds to provide military recruiters with the “same access to secondary school students as is provided generally to post-secondary educational institutions or to prospective employers of those students.”<sup>22</sup> So if your school has a policy allowing colleges, college recruiters, and employment recruiters on campus, then military recruiters must be allowed as well. Additionally, schools are required to provide recruiters with student “directory information,” such as names, addresses, and phone numbers, unless a parent or student has opted out. The law requires the school district to notify parents of their right to opt out and to explain the procedure for doing so.



## Student Dress Code

***I have had students wear both pro-gay and anti-gay messages on T-shirts. I'm getting complaints from all sides. What am I supposed to do?***

**C**ourts have recognized that students have rights to free speech and free expression that must be balanced against a school's interest in maintaining an appropriate learning environment.<sup>23</sup> With regard to “speech” (which includes words, symbols, artwork, or pictures) on student clothing, the courts have allowed schools to prohibit lewd, vulgar, indecent, or clearly offensive speech, as well as speech contrary to the school's educational mission.<sup>24</sup> Some courts have held that messages or images deemed at odds with the values schools instill, such as civility, human dignity, and self respect, were contrary to a school's educational mission.<sup>25</sup>

School restriction on speech that does not fall into one of these categories has been allowed only where the school can show that the speech substantially disrupts or interferes with the work of the school or the rights of other students.<sup>26</sup> The fact that other students, teachers, or school administrators may disagree with, dislike, or object to a message conveyed on student clothing does not constitute sufficient disruption of the learning environment or interference with other students' rights. If, on the other hand the message is similar to speech that

has caused actual disruption, such as student altercations, the school may restrict such expression.<sup>27</sup> This does not mean that school officials must wait for disruption to occur before they can act. But they must be able to demonstrate that their concerns are well founded. Prohibiting clothing that conveys a message that might be construed as pro- or anti-gay (e.g., “Barbie is a lesbian,” “Gay Pride,” or “Straight Pride”) but is not likely to disrupt the learning environment or interfere with other students’ rights risks legal challenge. Where school dress codes or anti-harassment policies might apply to speech contained on student clothing, schools are on the safest legal ground when they ensure that these policies are enforced to prohibit only speech that may disrupt the learning environment or interferes with other students’ rights.

***Recently I have received complaints from transgender students about the prom, yearbook, and graduation dress codes. These students tell me that separate dress requirements for girls and boys unfairly restrict their “gender identity” or “gender expression.” What does that mean, and how should I handle it?***

**A**s a basic legal requirement, school rules must be reasonable or have a logical relationship to the school’s legitimate interests. Dress codes that are reasonably related to a school’s interest in ensuring that student attire is consistent with an effective educational environment are constitutionally acceptable.<sup>28</sup> Dress codes that impose restrictions based on the student’s gender (e.g., prohibiting boys but not girls from wearing earrings) should be adopted only after careful consideration, since they may draw challenges that the school is discriminating on the basis of sex. Some courts have held that sex stereotyping in the workplace and in schools constitutes discrimination “based on sex,” which is illegal.<sup>29</sup> These cases could be construed to support legal challenges to sex-specific dress codes on the ground that they discriminate on the basis of sex in violation of the Constitution and Title IX. But other courts in addressing such challenges have allowed sex-specific distinctions, finding school concerns about safety, discipline, distraction from learning, and promoting community values to be valid grounds for the differences.<sup>30</sup> This does not suggest that all sex-specific dress regulations are permissible in all contexts. For example, a restriction on boys’ wearing dresses to school would be appropriate in communities where such attire on males would result in substantial disruption of the learning process, but in other locales, cross dressing might actually be more socially acceptable and cause minimal disruption in school, making such a restriction less legally justifiable. The setting and age of the students may be factors to consider as well; for example, a requirement that girls wear dresses to the prom might be harder to defend, since at a prom, distraction from learning

would not be an issue.

Schools with sex specific dress codes could consider making a narrow exception for transgender students—students who are biologically of one gender, but psychologically identify with the opposite gender. At least one court has said that a school could not prohibit a male student who identified himself as female from wearing girls' clothes where the district had no specific evidence that plaintiff's manner of dress (rather than his behavior) caused substantial disruption.<sup>31</sup>

## Curriculum and LGBT Issues

***Some parents in my school have complained about what they see as “pro-homosexual” content in some classroom materials. They want more control over class content, or they want to remove their child from the class. What is the best response?***

**L**ocal school districts generally have a great deal of latitude with respect to curricular content, and courts typically have rejected parental efforts to dictate or alter it.<sup>32</sup> Decisions about classroom content should be based on sound education rationales, age appropriateness, relevancy to the course, and currency of the information. Districts may want to consider adopting a complaint-and-review procedure for resolving challenges to school curriculum. Including teachers, parents, and community members on the review panel will foster a sense of fairness in any decision made. All parents should be advised of their right to use this process. The courts have rejected constitutional claims by parents that they have the right to excuse or remove their children from classes they find objectionable.<sup>33</sup> However, some states have specific statutes that allow parents to opt their children out of classes or assemblies that include controversial topics such as sexuality, HIV, sexually transmitted diseases, abortion, or death. As a practical matter, school boards probably have the local discretion to adopt a more liberal parental opt-out policy than is required by state law. However, such a policy should be reconciled with the district's obligation to educate students in accordance with state curricular standards.

As of this writing, four states—Arizona, California, Nevada, and Utah—require written parental consent before students can participate in classes where such topics as sex, sexuality, and AIDS are discussed.<sup>34</sup> Parental consent is



not required under these laws if teachers will be discussing content such as harassment or discrimination based on sexual orientation or gender identity. These laws vary in scope, and you should become familiar with your state laws on this subject. Here again, a school board probably could choose to go beyond the minimal requirement of state law.

The federal Protection of Pupil Rights Amendment (PPRA)<sup>36</sup> affords parents the right to limit their child's participation in surveys or questionnaires that may contain controversial and/or sexual subject matter. Prior written consent from parents is required before certain federally funded surveys are taken, and schools must notify parents annually of their rights under the PPRA.

## Student Involvement in School Events

***A group of students wants to participate in or have the school sponsor events like "Diversity Days" or a "Day of Silence." What are the school's obligations and limitations?***

**A** school's legal rights and responsibilities regarding any activity or event depend on whether it is initiated by students or by the school. In general, schools exercise less control over student-initiated activities and speech than over the school's own activities, though some limits are permissible. When considering a student's request, a school must accommodate students' constitutional rights. As discussed above, the First Amendment allows schools to restrict speech that is lewd, vulgar, indecent, or clearly offensive or that substantially interferes with the work of the school or the rights of other students. Student requests to participate in a Day of Silence, during which students agree to remain silent for all or part of a day to raise awareness for LGBT students, or Diversity Days, when students may organize educational activities around such issues as race, class, sex, sexual orientation, and gender identity, typically do not raise such concerns. Keep in mind that your school, like most, probably allows and even encourages a broad range of student-initiated activities and may have established policies or practices that govern student-led activities. These policies should be applied evenhandedly to all requests. Treating requests from LGBT students or related issues differently invites legal challenge.





As compared to student speech, schools exercise a greater degree of control over school-sponsored speech, which generally is treated by courts as part of the school curriculum. A school has the discretion to decide whether sponsorship of an event or activity, including a Diversity Day or Day of Silence, appropriately conveys its educational mission.<sup>36</sup> Nearly every district has a procedure and established criteria to determine whether the district will participate in, or sponsor, student or community events. These procedures should be followed, and generally speaking, the criteria should not be altered because of the viewpoint or content involved in the proposed event. To do otherwise may raise First Amendment and Equal Protection problems.<sup>37</sup>

***Some students have religious or moral objections to homosexuality and want a chance to provide a public counterpoint to what they see as problematic “gay-positive” viewpoints during such events. Should I allow it?***

**T**he appropriate response depends on whether the school itself is the “speaker” (i.e., whether it’s the school’s message). If a school itself provides information to students (even outside the traditional classroom), the school has greater control over that message. A school is free to implement a course of study or sponsor an official school assembly devoted to promoting tolerance of LGBT students and nondiscrimination. In general, others have no right to present an opposing view within these official school activities.<sup>38</sup> However, at least one court has said that, even in the context of a school-sponsored event, excluding expression in conflict with the message the school wanted to convey to students was impermissible viewpoint discrimination.<sup>39</sup> Most importantly, you must be careful to follow your school’s policies and rules in developing school activities.

If, however, you have created an opportunity for open discussion (a “limited public forum”), which is not school-sponsored speech, you may not exclude viewpoints within that forum just because you disagree with them or because others may be uncomfortable with them. This would mean that at a non-school-sponsored event discussing issues about tolerance toward gays and lesbians, the school could not prohibit a speaker who wanted to express religious or moral objections to homosexuality.

A limited public forum may be created when the event is sponsored by students or outside organizations, even though it is held in the school. Although schools can set parameters about the purpose of the forum prior to

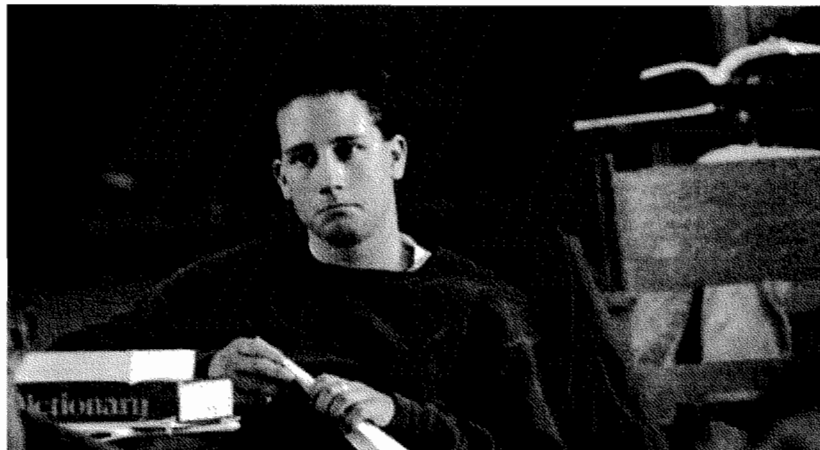


opening it, the ability to limit speech within a limited public forum once it's open is fairly narrow and cannot be based on the the speaker's viewpoint.<sup>40</sup> The restrictions must be reasonable in light of the purpose of the forum. Because it is often difficult to determine what kind of forum has been established, school administrators may want to seek legal advice before making decisions about whether to allow or prohibit particular student expression.

***A same-sex couple wants to attend a school dance.  
What is the proper course of action?***

**O**nce again, you must look at the rationale or logic of the school rules. School rules must be rationally related to a legitimate educational objective. Ask, what is the legitimate objective of a particular rule? For example, schools may have legitimate reasons to restrict an activity to students enrolled at the school or to impose an age limit on attendees, but a ban on same sex-couples would be more difficult to justify. Because it also discriminates on the basis of the sex and (actual or perceived) sexual orientation of the couple, such a restriction likely will invite legal challenge.

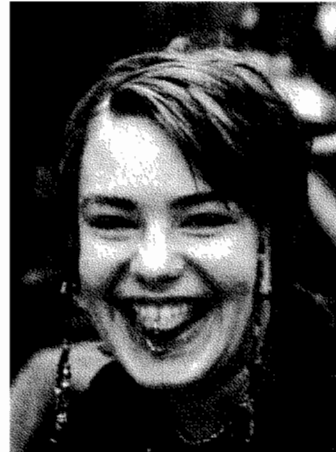
In at least one case, a court found that a school's refusal to allow a student to bring his same-sex date to the prom violated that student's First Amendment rights. Noting the opposition of some students to the same-sex couple's prom attendance, the court observed, "The [F]irst [A]mendment does not tolerate mob rule by unruly school children."<sup>41</sup>



# Harassment of LGBT Students

***Our school has an anti-bullying policy that allows us to discipline students for harassing students because of their sexual orientation. Some students have claimed this violates their freedom of speech. How do you strike the balance?***

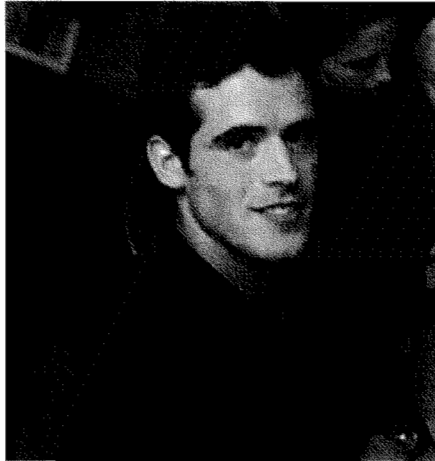
It is important to remember that there is no constitutional right to bully or intimidate other students. Speech or conduct that gives rise to a well-founded fear of disrupting the operation of the school or interfering with the rights of other students may be prohibited.<sup>42</sup> School districts have a legitimate interest in disciplining students for disruptive behavior and can enact effective anti-harassment policies to do so.<sup>43</sup> Districts should write policies so as to protect students' First Amendment rights to free expression, while at the same time prohibiting genuinely threatening, demeaning, and harassing speech and/or behavior.<sup>44</sup>



LGBT students (or students perceived to be LGBT) have successfully sued school districts for failing to take action against their harassers. For example, in a case from Minnesota,<sup>45</sup> a court held that a school district's failure to protect a gay student from peer harassment violated the federal Equal Protection Clause. The court also held that the student was protected by Title IX's prohibition on sex discrimination because he alleged that the harassment was based on his failure to conform to male stereotypes. In addition, guidance from the U.S. Department of Education's Office for Civil Rights (OCR) states that "sexual harassment directed at gay or lesbian students that is sufficiently serious to limit or deny a student's ability to participate in or benefit from the school's program constitutes sexual harassment prohibited by Title IX."<sup>46</sup>

An important point to keep in mind is that school boards may be held liable for harassment of students by their peers if the harassment—verbal and/or physical attacks—has been severe and persistent and the school took no action after learning of the misconduct.<sup>47</sup>

***I've just been told that harassment based on sexual orientation is occurring at my school. What am I supposed to do?***



**C**omplaints about alleged harassment based on sexual orientation should be handled just like any other harassment complaints. All complaints or other information suggesting that harassment may be occurring should be investigated thoroughly and promptly by a trained investigator. No allegations about potential harassment should be ignored because the charge seems improbable or because the behavior seems unlikely to recur or is perceived as a harmless rite of passage. The student target of the alleged harassment should be informed of

the steps the school is taking, the district's policy on harassment, and the name and contact information of the district's Title IX grievance officer.

Once the investigation is complete, appropriate measures should be taken depending on the results. If harassment did occur, the district's response must be designed to ensure that the harassment stops. This could include discipline and counseling of the harassers, assistance to the victim, and school activities that focus on reducing harassment. The complainant should be notified of the determination made and encouraged to report any further incidents, including retaliation. Steps should be taken to monitor the effectiveness of the district's response and the need for any further action.

Schools also can be liable for harassment of LGBT students by faculty or staff members. In one such case, administrators failed to take action when the student reported anti-gay harassment by a teacher.<sup>46</sup> The assistant principal condoned the teacher's behavior, disciplined the student, ordered him to stop speaking about his sexual orientation, and informed the student's mother that her son was gay. The student and his mother sued, and district eventually agreed to settle the case for \$25,000.

If a staff member is reported or observed to be harassing or demeaning a student's real or perceived sexual orientation or gender identity, the school has the same responsibility to investigate and, if warranted, take corrective action as it would for other inappropriate behavior.

## Additional Resources

***The following resources address legal issues concerning student sexual orientation, more general issues concerning LGBT students, and student rights to free speech, religious expression, and equal access. The listing of these resources in no way constitutes an endorsement by the participating organizations of the advice or content of these resources and sites; nor does it in any way imply an endorsement of this publication by the publishers of these resources and sites.***

### **American Psychological Association**

*Healthy Lesbian, Gay, and Bisexual Students Project.*

<http://www.apa.org/ed/hlgb/>

### **American Psychological Association**

*Just the Facts About Sexual Orientation & Youth: A Primer for Principals, Educators and School Personnel.*

<http://www.apa.org/pi/lgbcc/publications/justthefacts.html>

### **American School Board Journal**

*Be Prepared: What Your School Board Needs to Know about Boy Scouts, School Policies, and the Law. April 2001.*

<http://www.asbj.com/2001/04/0401ASBJjones.pdf>

### **Council of School Attorneys**

*Resources, news, and court opinions on school law issues, including student rights.*

<http://www.nsba.org/cosa>

### **Gay, Lesbian & Straight Education Network**

*Resources on GSAs and anti-bullying and anti-harassment efforts.*

<http://www.glsen.org>

### **Lambda Legal**

*Defending Gay/Straight Alliances and Other Gay-Related Groups in Public Schools Under the Equal Access Act — Questions and Answers.*

<http://www.lambdalegal.org/cgi-bin/iowa/documents/record?record=251>

### **National Gay and Lesbian Task Force Policy Institute**

*Education Policy: Issues Affecting Gay, Lesbian, Bisexual and Transgender Youth.*

<http://www.thetaskforce.org/downloads/EducationPolicy.pdf>

### **National Mental Health Association**

*What Does Gay Mean? How to Talk with Kids About Sexual Orientation and Prejudice.* <http://www.nmha.org/whatdoesgaymean/>

### **Parents, Family and Friends of Lesbians and Gays (PFLAG)**

*From Our House to the Schoolhouse.*

<http://www.pflag.org/publications/schools.pdf>

# Endnotes

- 1** LGBT-related clubs are not necessarily “gay student clubs”; they typically are formed to reduce prejudice.
- 2** 20 U.S.C. §§ 4071-4074 (2004).
- 3** 20 U.S.C. §§ 1681-1688 (2004). Title IX of the Education Amendments of 1972 prohibits gender-based discrimination in educational programs that receive federal funding.
- 4** Although Title IX does not protect against discrimination on the basis of sexual orientation generally, LGBT students may be able to sue under Title IX for a school district’s failure to protect them from harassment. See the question and answer on harassment, on page 12.
- 5** See, e.g., Cal. Educ. Code § 220 (West 2004) (“No person shall be subjected to discrimination on . . . any basis that is contained in the prohibition of hate crimes set forth in subdivision (a) of Section 422.6 of the Penal Code in any program or activity conducted by an educational institution. . . .” Section 422.6 includes gender and sexual orientation); Conn. Gen. Stat. Ann. § 10-15c (West 2004) (“ . . . each child . . . shall have . . . an equal opportunity to participate in the activities, programs and courses of study offered in such public schools. . . without discrimination on account of . . . sexual orientation. . . .”); Minn. Stat. Ann. § 363A.13 (West 2004) (“It is an unfair discriminatory practice to discriminate in any manner in the full utilization of or benefit from any educational institution. . . . because of . . . sexual orientation. . .”).
- 6** State law determines which grades fall into the definition of “secondary” school.
- 7** See *Board of Educ. of Westside Cmty. Schools v. Mergens*, 496 U.S. 226 (1990). Examples of noncurricular clubs typically include the Key Club, Pep Club, Chess Club, Ski Club, Varsity Club, and Future Business Leaders of America. However, courts decide what clubs are curriculum- or noncurriculum-related on a case-by-case basis.
- 8** See, e.g., *Colin v. Orange Unified Sch. Dist.*, 83 F. Supp. 2d 1135 (C.D. Cal. 2000); *East High Gay/Straight Alliance v. Bd. of Educ. of Salt Lake City Sch. Dist.*, 81 F. Supp. 2d 1166 (D. Utah 1999).
- 9** To be curriculum-related, a club must “directly relate” to courses offered by the school. The inquiry about whether student clubs relate to the curriculum only determines whether a limited open forum has been created; where such a forum is created, the curricular status of a student group cannot be used as a basis to deny access. See, e.g., *Colin*, 83 F. Supp. 2d at 1144-46 (rejecting argument that school could exclude a GSA because the GSA “directly relates” to the school’s sex education curriculum).
- 10** See, e.g., *Boyd County High Sch. Gay Straight Alliance v. Bd. of Ed. of Boyd County*, 258 F. Supp. 2d 667 (E.D. Ky. 2003).
- 11** *Caudillo v. Lubbock Indep. Sch. Dist.*, 311 F. Supp. 2d 550 (N.D. Tex. 2004). This case is currently on appeal.
- 12** See *id.*
- 13** See *East High Gay/Straight Alliance*, 81 F. Supp. 2d 1166 (D. Utah 1999); *East High Sch. Prism Club v. Seidel*, 95 F. Supp. 2d 1239 (D. Utah 2000).
- 14** See *Prince v. Jacoby*, 303 F.3d 1074 (9th Cir. 2002).

- 15** 20 U.S.C. § 4071(a) (2004).
- 16** See *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 508-09 (1969).
- 17** See *Boyd County*, 258 F. Supp. 2d at 690.
- 18** 20 U.S.C. § 4071(f) (2004).
- 19** See, e.g., *Boyd County*, 258 F. Supp. 2d at 690.
- 20** 20 U.S.C. § 7905(a) (2004).
- 21** 20 U.S.C. § 7905(b) (2004).
- 22** 10 U.S.C. § 503(c) (2004).
- 23** See *Tinker*, 393 U.S. 503.
- 24** See, e.g., *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675 (1986).
- 25** See, e.g., *Boroff v. Van Wert City Bd. of Educ.*, 220 F.3d 465 (6th Cir. 2000) (holding that school could prohibit wearing of Marilyn Manson T-shirt because band promoted values contrary to school's educational mission); *Scott v. Sch. Bd. of Alachua County*, 324 F.3d 1246 (11th Cir. 2003) (upholding ban on display of Confederate flag to further fundamental values of civil discourse). But see endnote 26 below.
- 26** See, e.g., *Sypniewski v. Warren Hills Regional Bd. of Educ.*, 307 F.3d 243 (3d Cir. 2002) (upholding school's anti-harassment policy but invalidating enforcement of policy to prohibit students from wearing T-shirts that did not disrupt the learning environment or interfere with other students' rights); *Pyle v. South Hadley Sch. Cte.*, 861 F. Supp.157 (D. Mass. 1994) (holding that school dress code prohibiting clothing that "harasses, threatens, intimidates, or demeans" individuals or groups was unconstitutional viewpoint discrimination because it was aimed at content rather than validity or potential for disruption).
- 27** See, e.g., *Sypniewski*, 307 F.3d at 254; *Scott*, 324 F.3d 1246 (upholding school ban on display of Confederate flag based on past racially charged incidents).
- 28** See, e.g., *Boroff*, 220 F.3d 465; *Jeglin v. San Jacinto Unified Sch. Dist.*, 827 F. Supp. 1459 (C.D. Cal. 1993) (upholding ban on sports insignia used as gang symbols).
- 29** *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989) (ruling that employment action based on female employee's failure to comport with female sex stereotype in appearance and behavior is illegal sex discrimination under Title VII); *Montgomery v. Indep. Sch. Dist. No. 709*, 109 F. Supp. 2d 1081 (D. Minn. 2000) (allowing gay student to sue under Title IX where school district allegedly failed to protect him from peer harassment for his failure to conform to male stereotype).
- 30** See, e.g., *Olesen v. Bd. of Educ. of Sch. Dist. No. 228*, 676 F. Supp. 820 (N.D. Ill. 1987) (upholding ban on boys' wearing of earrings where district had gang problem and some earrings were used as gang symbols); *Hines v. Caston Sch. Corp.*, 651 N.E.2d 330 (Ind. App. 1995) (upholding ban on boys' wearing of earrings where, under local community standards of dress, earrings were considered female attire and earring rule discouraged rebelliousness); *Jones v. W.T. Henning Elem. Sch.*, 721 So.2d 530 (La. App.1998) (upholding ban on boys' wearing of earrings based on distraction it would cause as contrary to community values).
- 31** *Doe v. Brockton Sch. Comm.*, 2000 WL 33342399 (Mass. App. Ct. Nov. 30, 2000) (granting preliminary injunction to student against school's enforcement of dress code provision).

- 32** See, e.g., *Fleischfresser v. Directors of Sch. Dist.* 200, 15 F.3d 680 (7th Cir. 1994) (rejecting parental challenge to use of reading series in curriculum).
- 33** See, e.g., *Leebaert v. Harrington*, 332 F. 3d 134 (2d Cir. 2003) (ruling that school district did not violate parental rights by refusing to excuse student from mandatory health education course and failing him after he refused to attend).
- 34** Ariz. Rev. Stat. § 15-716 (2003); Cal. Educ. Code § 51550 (West 2003); Nev. Rev. Stat. §389.065 (2003); Utah Code Ann. § 53A-13-101 (2003).
- 35** 20 U.S.C. § 1232h (2004).
- 36** See, e.g., *Downs v. Los Angeles Unified Sch. Dist.*, 228 F.3d 1003 (9th Cir. 2000).
- 37** See *id.* at 1011 and n.2 (noting varying rights of schools to limit (1) student speech (least control); (2) "school-sponsored" speech (reasonable rights to restrict, but may be problematic if restrictions are viewpoint-based); and (3) school's own speech (greatest control)).
- 38** See *Downs*, 228 F.3d 1003.
- 39** *Hansen v. Ann Arbor Public Schools*, 293 F. Supp. 2d 780, 794 (E.D. Mich. 2003) (invalidating school's exclusion of student who wanted to express religious objections to homosexuality as part of diversity week panel's promoting tolerance of gay and lesbian students).
- 40** See *Widmar v. Vincent*, 454 U.S. 263 (1981).
- 41** *Fricke v. Lynch*, 491 F. Supp. 387 (D.R.I. 1980).
- 42** See, e.g., *Sypniewski v. Warren Hills Regional Bd. of Educ.*, 307 F.3d 243, 264 (3d Cir. 243) (upholding constitutionality of school anti-harassment policy).
- 43** See *id.* *Compare Saxe v. State College Area Sch. Dist.*, 240 F.3d 200 (3d Cir. 2001). (finding harassment policy unconstitutionally "overbroad" and "vague").
- 44** See, e.g., *Sypniewski*, 307 F.3d at 249 (quoting anti-harassment policy found to be constitutional).
- 45** *Montgomery v. Indep. Sch. Dist. No. 709*, 109 F. Supp. 2d 1081 (D. Minn. 2000); see also *Nabozny v. Podlesny*, 92 F.3d 446, 455-56 (7th Cir. 1996) (finding that school violated Equal Protection Clause by failing to protect gay male student); *Henkle v. Gregory*, 50 F. Supp. 2d 1067 (D. Nev. 2001) (allowing claims under Title IX for discrimination and harassment by other students and under First Amendment based on demands by school officials that the student keep his sexual orientation to himself).
- 46** U.S. Dept. of Educ., Office for Civil Rights, Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties (Jan. 19, 2001) at 3.
- 47** See *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629 (1999); *Ray v. Antioch Unified Sch. Dist.*, 107 F. Supp. 2d 1165 (N.D. Cal. 2000).
- 48** See, e.g., *McLaughlin v. Bd. of Educ. of Pulaski County Special Sch. Dist.*, 296 F. Supp. 2d 960 (E.D. Ark. 2003).



Section 2  
The First Amendment Center Publication,  
endorsed by NSBA

A Teacher's Guide to Religion  
in the Public Schools



*first  
amendment*

*A Teacher's Guide to Religion in the Public Schools*  
is published by the First Amendment Center.

The guide has been endorsed by the following organizations:

American Association of School Administrators  
American Federation of Teachers  
American Jewish Committee  
American Jewish Congress  
Association for Supervision and Curriculum Development  
Baptist Joint Committee on Public Affairs  
Christian Educators Association International  
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National School Boards Association  
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Union of Orthodox Jewish Congregations of America

First  
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# A Teacher's Guide to Religion in the Public Schools

*“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”*

—FIRST AMENDMENT TO THE U.S. CONSTITUTION

FIRST AMENDMENT CENTER



*A Teacher's Guide to Religion in the Public Schools*  
**FIRST AMENDMENT CENTER**

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Publication No. 137.08-FAC  
Revised September 2004  
Reprinted May 2008

**E**ach day millions of parents from diverse religious backgrounds entrust the education of their children to the teachers in our nation's public schools. For this reason, teachers need to be fully informed about the constitutional and educational principles for understanding the role of religion in public education.

This teacher's guide is intended to move beyond the confusion and conflict that has surrounded religion in public schools since the early days of the common school movement. For most of our history, extremes have shaped much of the debate. On one end of the spectrum are those who advocate promotion of religion (usually their own) in school practices and policies. On the other end are those who view public schools as religion-free zones. Neither of these approaches is consistent with the guiding principles of the Religion Clauses of the First Amendment.

Fortunately, however, there is another alternative that is consistent with the First Amendment and broadly supported by many educational and religious groups. The core of this alternative has been best articulated in "Religious Liberty, Public Education, and the Future of American Democracy," a statement of principles issued by 24 national organizations. Principle IV states:

*Public schools may not inculcate nor inhibit religion. They must be places where religion and religious conviction are treated with fairness and respect. Public schools uphold the First Amendment when they protect the religious liberty rights of students of all faiths or none. Schools demonstrate fairness when they ensure that the curriculum includes study about religion, where appropriate, as an important part of a complete education.*

The questions and answers that follow build on this shared vision of religious liberty in public education to provide teachers with a basic understanding of the issues concerning religion in their classrooms. The advice offered is based on First Amendment principles as currently interpreted by the courts and agreed to by a wide range of religious and educational organizations. For a more in-depth examination of the issues, teachers should consult *Finding Common Ground: A Guide to Religious Liberty in Public Schools*. This guide is not intended to render legal advice on specific legal questions; it is designed to provide general information on the subject of religion and public schools.

Keep in mind, however, that the law alone cannot answer every question. Teachers and administrators, working with parents and others in the community, must work to apply the First Amendment fairly and justly for all students in our public schools.

## Teaching about Religion in Public Schools

### 1. Is it constitutional to teach about religion?

Yes. In the 1960s' school prayer cases (that prompted rulings against state-sponsored school prayer and Bible reading), the U.S. Supreme Court indicated that public school education may include teaching about religion. In *Abington v. Schempp*, Associate Justice Tom Clark wrote for the Court:

*[I]t might well be said that one's education is not complete without a study of comparative religion or the history of religion and its relationship to the advancement of civilization. It certainly may be said that the Bible is worthy of study for its literary and historic qualities. Nothing we have said here indicates that such study of the Bible or of religion, when presented objectively as part of a secular program of education, may not be effected consistently with the First Amendment.*

### 2. Why should study about religion be included in the curriculum?

Growing numbers of educators throughout the United States recognize that study about religion in social studies, literature, art, and music is an important part of a well-rounded education. "Religion in the Public School Curriculum: Questions and Answers," issued by a coalition of 17 major religious and educational organizations—including the Christian Legal Society, the American Jewish Congress, the National Education Association, the American Federation of Teachers, the American Association of School Administrators, the Islamic Society of North America, the National Council for the Social Studies, the Association for Supervision and Curriculum Development, the Baptist Joint Committee on Public Affairs, the National Association of Evangelicals, and the National School Boards Association—describes the importance of religion in the curriculum thus:

*Because religion plays a significant role in history and society, study about religion is essential to understanding both the nation and the world. Omission of facts about religion can give students the false impression that the religious life of humankind is insignificant or unimportant. Failure to understand even the basic symbols, practices, and concepts of the various religions makes much of history, literature, art, and contemporary life unintelligible.*

*Study about religion is also important if students are to value religious liberty, the first freedom guaranteed in the Bill of Rights. Moreover, knowledge of the roles of religion in the past and present promotes cross-cultural understanding essential to democracy and world peace.*

A number of leading educational groups have issued their own statements decrying the lack of discussion about religion in the curriculum and calling for inclusion of such information in curricular materials and in teacher education.

Three major principles form the foundation of this consensus on teaching about religion in public schools:

1. As the Supreme Court has made clear, study about religion in public schools is constitutional.
2. Inclusion of study about religion is important in order for students to be properly educated about history and cultures.
3. Religion must be taught objectively and neutrally. The purpose of public schools is to educate students about a variety of religious traditions, not to indoctrinate them into any tradition.

### 3. Is study about religion included in textbooks and standards?

*"Knowledge about religions is not only characteristic of an educated person, but is also absolutely necessary for understanding and living in a world of diversity."*

National Council for the Social Studies

Agreement on the importance of teaching about religion has begun to influence the treatment of religion in textbooks widely used in public schools, as well as state frameworks and standards for the social studies. The current generation of history textbooks mention religion more often than their predecessors, and, in world history, sometimes offer substantive discussions of religious ideas and events.

State frameworks and standards are also beginning to treat religion more seriously. Most state standards in the social studies require or recommend teaching about religion through specific content references and general mandates, and many also include such references in fine arts and literature standards. In California, for example, the History-Social Science Framework and the new History-Social Science Content Standards require considerable study of religion. Students studying U.S. History in California are expected to learn about the role of religion in the American story, from the influence of religious groups on social reform movements to the religious revivals, from the rise of Christian fundamentalism to the expanding religious pluralism of the 20th century.

Teaching about religion is also encouraged in the *National Standards for History*, published by the National Center for History in the Schools. The elaborated standards in world history are particularly rich in religious references, examining the basic beliefs and practices of the major religions as well as how these faiths influenced the development of civilization in successive historical periods. While the U.S. history standards include religion less frequently, many historical developments and contributions that were influenced by religion are nevertheless represented.

*Geography for Life: The National Geography Standards*, published by the Geography Standards Project, and the *National Standards for Civics and Government*, published by the Center for Civic Education, include many references to teaching about religious belief and practice as historical and contemporary phenomena. Study of religion in the social studies would be expanded considerably if curriculum developers and textbooks writers were guided by these standards.

## 4. How should I teach about religion?

Encouraged by the new consensus, public schools are now beginning to include more teaching about religion in the curriculum. In the social studies especially, the question is no longer “Should I teach about religion?” but rather “How should I do it?”

The answer to the “how” question begins with a clear understanding of the crucial difference between the teaching of religion (religious education or indoctrination) and teaching about religion. “Religion in the Public School Curriculum,” the guidelines issued by 17 religious and educational organizations, summarizes the distinction this way:

- >The school’s approach to religion is *academic*, not *devotional*.
- >The school strives for student *awareness* of religions, but does not press for student *acceptance* of any religion.
- >The school sponsors *study* about religion, not the *practice* of religion.
- >The school may *expose* students to a diversity of religious views, but may not *impose* any particular view.
- >The school *educates* about all religions; it does not *promote* or *denigrate* religion.
- >The school *informs* students about various beliefs; it does not seek to *conform* students to any particular belief.<sup>iii</sup>

Classroom discussions concerning religion must be conducted in an environment that is free of advocacy on the part of the teacher. Students may, of course, express their own religious views, as long as such expression is germane to the discussion. But public-school teachers are required by the First Amendment to teach about religion fairly and objectively, neither promoting nor denigrating religion in general or specific religious groups in particular. When discussing religion,



many teachers guard against injecting personal religious beliefs by teaching through attribution (e.g., by using such phrases as “most Buddhists believe ...” or “according to the Hebrew scriptures ...”).

## 5. Which religions should be taught and how much should be said?

Decisions about which religions to include and how much to discuss about religion are determined by the grade level of the students and the academic requirements of the course being taught.

In the elementary grades, the study of family, community, various cultures, the nation, and other themes and topics may involve some discussion of religion. Elementary students are introduced to the basic ideas and practices of the world’s major religions by focusing on the generally agreed-upon meanings of religious faiths—the core beliefs and symbols as well as important figures and events. Stories drawn from various faiths may be included among the wide variety of stories read by students, but the material selected must always be presented in the context of learning *about* religion.

On the secondary level, the social studies, literature, and the arts offer opportunities for the inclusion of study about religions—their ideas and practices. The academic needs of the course determine which religions are studied. In a U.S. history curriculum, for example, some faith communities may be given more time than others but only because of their predominant influence on the development of the American nation. In world history, a variety of faiths are studied in each region of the world in order to understand the various civilizations and cultures that have shaped history and society. The overall curriculum should include all of the major voices and some of the minor ones in an effort to provide the best possible education.

Fair and balanced study about religion on the secondary level includes critical thinking about historical events involving religious traditions. Religious beliefs have been at the heart of some of the best and some of the worst develop-

ments in human history. The full historical record (and various interpretations of it) should be available for **analysis** and discussion. Using primary sources whenever possible allows students to work directly with the historical record.

Of course, fairness and balance in U.S. or world history and literature are difficult to achieve, given the brief treatment of religious ideas and events in most textbooks and the limited time available in the course syllabus. Teachers will need scholarly supplemental resources that enable them to cover the required material within the allotted time, while simultaneously enriching the discussion with study of religion. Some schools now offer electives in religious studies in order to provide additional opportunities for students to study about the major faith communities in greater depth.

## 6. May I invite guest speakers to help with study about religion?

When teaching about religions in history, some teachers may find it helpful to invite a guest speaker for a more comprehensive presentation of the religious tradition under study. Teachers should consult their school district policy concerning guest speakers in the classroom.

If a guest speaker is invited, care should be taken to find someone with the academic background **necessary** for an objective and scholarly discussion of the historical period and the religion being considered. Faculty from local colleges and universities often make excellent guest speakers or can make recommendations of others who might be appropriate for working with students in a public-school setting. Religious leaders in the community may also be a **resource**. Remember, however, that they have commitments to their own faith. Be certain that any guest speaker understands the First Amendment guidelines for teaching *about* religion in public education and is clear about the academic nature of the assignment.

## 7. How should I treat religious holidays in the classroom?

Teachers must be alert to the distinction between teaching about religious holidays, which is permissible, and celebrating religious holidays, which is not. Recognition of and information about holidays may focus on how and when they are celebrated, their origins, histories and generally agreed-upon meanings. If the approach is objective and sensitive, neither promoting nor inhibiting religion, this study can foster understanding and mutual respect for differences in belief. Teachers may not use the study of religious holidays as an opportunity to proselytize or otherwise inject personal religious beliefs into the discussion.

The use of religious symbols, provided they are used only as examples of cultural or religious heritage, is permissible as a teaching aid or resource. Religious symbols may be displayed only on a temporary basis as part of the academic lesson being studied. Students may choose to create artwork with religious symbols, but teachers should not assign or suggest such creations.

The use of art, drama, music or literature with religious themes is permissible if it serves a sound educational goal in the curriculum. Such themes should be included on the basis of their academic or aesthetic value, not as a vehicle for promoting religious belief. For example, sacred music may be sung or played as part of the academic study of music. School concerts that present a variety of selections may include religious music. Concerts should avoid programs dominated by religious music, especially when these coincide with a particular religious holiday.

This advice about religious holidays in public schools is based on consensus guidelines adopted by 18 educational and religious organizations.<sup>5</sup>

## 8. Are there opportunities for teacher education in study about religion?

Teacher preparation and good academic resources are needed in order for study about religion in public schools

to be constitutionally permissible and educationally sound.

The First Amendment Center supports initiatives in several regions of the country designed to prepare public-school teachers to teach about religion. The most extensive of these programs is the California 3Rs Project (Rights, Responsibilities, and Respect). Co-sponsored by the California County Superintendents Educational Services Association, the project has created a network of resource leaders and scholars throughout the state providing support for classroom teachers. Teachers trained by the project give workshops for their colleagues on the constitutional and educational guidelines for teaching about religion. Religious studies scholars from local colleges and universities are linked with school districts to provide ongoing expertise and periodic seminars on the religious traditions that teachers are discussing in the curriculum.

The Utah State Office of Education co-sponsors a Utah 3Rs Project that is currently building a network of resource leaders in all of the state's school districts. Other states and districts have similar programs in various stages of development.

Harvard University and the University of Pennsylvania offer master's level programs that are excellent opportunities for both current and prospective public- and private-school teachers interested in learning more about the study of religion and religious-liberty issues in American public life.<sup>6</sup>

Other colleges and universities offer assistance to teachers, including in-service programs focused on teaching about religion. A notable example is the Religion and Public Education Resource Center at California State University – Chico. This center provides resources, including curriculum guides and sample lessons in several subject areas.<sup>7</sup> Other organizations, such as the Council on Islamic Education, offer academic resources and workshops on teaching about specific religious traditions.<sup>8</sup>

## 9. What are good classroom resources for teaching about religion?

Teaching about religion in the public schools requires that sound academic resources be made readily available to classroom teachers. Fortunately, good classroom resources, especially in the social studies, are now available for helping teachers integrate appropriate study about religion.

*Finding Common Ground: A Guide to Religious Liberty in Public Schools*, published by the First Amendment Center, provides an extensive list of organizations and publishers that offer classroom resources for teaching about religion in public schools.

Two recent publications are examples of what is now available for study about religion in a secondary school classroom:

*Religion in American Life* is a 17-volume series written by leading scholars for young readers. Published by Oxford University Press, the series includes three chronological volumes on the religious history of the U.S., nine volumes covering significant religious groups (Protestants, Catholics, Jews, Orthodox Christians, Mormons, Muslims, Hindus, Buddhists, Native Americans, and others), and four volumes addressing specific topics of special importance for understanding the role of religion in American life (women and religion, church-state issues, African American religion, and immigration).<sup>18</sup>

Columbia University Press has published a CD-ROM titled *On Common Ground: World Religions in America*. This multimedia resource uses text, primary sources, photographs, music, film, and the spoken word to bring alive the extraordinary religious diversity in the United States. Fifteen different religions in various regions of America are represented, from the long-established Christian, Jewish, and Native American traditions to the more recent arrivals such as Hinduism and Buddhism.<sup>19</sup>

## 10. What is the relationship between religion and character education?

As discussed previously, the First Amendment prohibits public-school teachers from either inculcating or inhibiting religion. Teachers must remain neutral concerning religion, neutral among religions, and neutral between religion and non-religion. But this does not mean that teachers should be neutral concerning civic virtue or moral character.

Teachers should teach the personal and civic virtues widely held in our society, such as honesty, caring, fairness, and integrity. They must do so without either invoking religious authority or denigrating the religious or philosophical commitments of students and parents.

When school districts develop a plan for comprehensive character education, they should keep in mind that the moral life of a great many Americans is shaped by deep religious conviction. Both the approach to character education and the classroom materials used should be selected in close consultation with parents and other community members representing a broad range of perspectives. When care is taken to find consensus, communities are able to agree on the core character traits they wish taught in the schools and how they wish character education to be done.

For guidance on how to develop and implement a quality character education program, contact the Character Education Partnership in Washington, D.C.<sup>20</sup>

## The Personal Beliefs of Teachers

### 11. May I pray or otherwise practice my faith while at school?

As employees of the government, public-school teachers are subject to the Establishment Clause of the First Amendment and thus required to be neutral concerning religion while carrying out their duties as teachers. That means, for example, that teachers do not have the right to pray with or in the presence of students during the school day.

## Religious Expression of Students

Outside of their school responsibilities, public-school teachers are free like other citizens to teach or otherwise participate in their local religious community. But teachers must refrain from using their position in the public school to promote their outside religious activities.

Teachers, of course, bring their faith with them through the schoolhouse door each morning. Because of the First Amendment, however, teachers who wish to pray or engage in other religious activities—unless they are silent—should do so outside the presence of students. If a group of teachers wishes to meet for prayer or scriptural study in the faculty lounge during their free time in the school day, we see no constitutional reason why they may not be permitted to do so as long as the activity is outside the presence of students and does not interfere with their duties or the rights of other teachers.

Teachers are permitted to wear non-obtrusive jewelry, such as a cross or Star of David. But teachers should not wear clothing with a proselytizing message (e.g., a “Jesus Saves” T-shirt).

### 12. How do I respond if students ask about my religious beliefs?

Some teachers prefer not to answer the question, stating that it is inappropriate for a teacher to inject personal beliefs into the discussion. Other teachers may choose to answer the question straightforwardly and succinctly in the interest of an open and honest classroom environment.

Before answering the question, however, teachers should consider the age of the students. Middle and high school students may be able to distinguish between a personal view and the official position of the school; very young children may not. In any case, the teacher may answer at most with a brief statement of personal belief—but may not turn the question into an opportunity to proselytize for or against religion. Teachers may neither reward nor punish students because they agree or disagree with the religious views of the teacher.

### 13. May students express religious views in public schools?

In “Religion in the Public Schools: A Joint Statement of Current Law,” 35 religious and civil liberties organizations give the following summary of the rights of students to express their faith in a public school:

*Students have the right to pray individually or in groups or to discuss their religious views with their peers so long as they are not disruptive. Because the Establishment Clause does not apply to purely private speech, students enjoy the right to read their Bibles or other scriptures, say grace before meals, pray before tests, and discuss religion with other willing student listeners. In the classroom, students have the right to pray quietly except when required to be actively engaged in school activities (e.g., students may not decide to pray just as a teacher calls on them). In informal settings, such as the cafeteria or in the halls, students may pray either audibly or silently, subject to the same rules of order as apply to other speech in these locations. However, the right to engage in voluntary prayer does not include, for example, the right to have a captive audience listen or to compel other students to participate.<sup>211</sup>*

### 14. May students express religious views in their assignments?

“Religious Expression in Public Schools,” guidelines published by the U.S. Department of Education, offers the following guidance about religious expression in student assignments:

*Students may express their beliefs about religion in the form of homework, artwork, and other written and oral assignments free of discrimination based on the religious content of their submissions. Such home and classroom work should be judged by ordinary academic standards*

*of substance and relevance, and against other legitimate pedagogical concerns identified by the school.*<sup>111</sup>

## 15. How should public schools respond to excusal requests from parents?

In “A Parent’s Guide to Religion in the Public Schools,” the National PTA and the First Amendment Center give the following advice concerning excusal requests:

*Whenever possible, school officials should try to accommodate the requests of parents and students for excusal from classroom discussions or activities for religious reasons. If focused on a specific discussion, assignment, or activity, such requests should be routinely granted in order to strike a balance between the student’s religious freedom and the school’s interest in providing a well-rounded education.*

*If it is proved that particular lessons substantially burden a student’s free exercise of religion and if the school cannot prove a compelling interest in requiring attendance, some courts may require the school to excuse the students.*<sup>112</sup>

## 16. May public schools accommodate students with special religious needs?

Public schools are sometimes asked to accommodate students with special religious needs or practices. Sensitive and thoughtful school officials may easily grant many of these requests without raising constitutional questions. Muslim students, for example, may need a quiet place at lunch or during breaks to fulfill their prayer obligation during the school day. Jehovah’s Witnesses ask for their children to be excused from birthday celebrations. As long as honoring these requests is feasible, school officials should do so in the spirit of the First Amendment.

Administrators and teachers should not, however, be placed in the position of monitoring a child’s compliance

with a particular religious requirement. Enforcing religious obligations such as prayer, dietary restrictions, or wearing a head covering is the responsibility of parents, not teachers.<sup>113</sup>

## 17. May students form extracurricular religious clubs?

The Equal Access Act passed by Congress in 1984 ensures that students in secondary public schools may form religious clubs, including Bible clubs, if the school allows other “noncurriculum-related groups.” The Act is intended to protect *student-initiated* and *student-led* meetings in secondary schools. According to the Act, outsiders may not “direct, conduct, control, or regularly attend” student religious clubs, and teachers acting as monitors may be present at religious meetings in a **nonparticipatory capacity only**.<sup>114</sup>

The U.S. Department of Education in “Religious Expression in Public Schools” gives the following guidance for interpreting the Equal Access Act:

*The Equal Access Act is designed to ensure that, consistent with the First Amendment, student religious activities are accorded the same access to public school facilities as are student secular activities. Based on decisions of the Federal courts, as well as its interpretations of the Act, the Department of Justice has advised that the Act should be interpreted as providing, among other things, that:*

*> Student religious groups at public secondary schools have the same right of access to school facilities as is enjoyed by other comparable student groups. Under the Equal Access Act, a school receiving Federal funds that allows one or more student noncurriculum-related clubs to meet on its premises during noninstructional time may not refuse access to student religious groups.*

> A meeting, as defined and protected by the Equal Access Act, may include a **prayer service**, **Bible reading**, or other worship exercise.

> A school receiving Federal funds must allow student groups meeting under **the Act** to use the school media—including the public address system, the school newspaper, and the **school bulletin board**—to announce their meetings on the same terms as other noncurriculum-related **student groups** are allowed to use the school media. Any policy concerning the use of school media must be applied to all noncurriculum-related student groups in a nondiscriminatory manner. Schools, however, may **inform students** that certain groups are not school-sponsored.

> A school creates a limited **open forum** under the Equal Access Act, triggering equal access rights for religious groups, when it allows students to meet during their lunch periods or **other noninstructional** time during the school day, as well as when it **allows students** to meet before and after the school day.

## 18. May students distribute religious literature in school?

An increasing number of students are requesting permission to distribute religious literature on public-school campuses. According to the guidelines issued by the U.S. Department of Education:

*Students have a right to distribute religious literature to their schoolmates on the same terms as they are permitted to distribute other literature that is unrelated to school curriculum or activities. Schools may impose the same reasonable time, place, and manner or other constitutional restrictions on distribution of religious literature as they do on nonschool literature generally, but they may not single out religious literature for special regulation.*

This shared vision of religious liberty in public education is remarkable both for who says it and for what it says. The National Education Association, the American Federation of Teachers, the National School Boards Association, the Association for Supervision and Curriculum Development, the National PTA and the American Association of School Administrators join with the Christian Legal Society, the American Center for Law and Justice, and Citizens for Excellence in Education in asserting these principles. People for the American Way, the Anti-Defamation League and the Union of American Hebrew Congregations are on the list, as are the Council on Islamic Education, the Christian Educators Association International, and the Christian Coalition. Free copies are available through the First Amendment Center.

<sup>10</sup> *Finding Common Ground* by Charles C. Haynes and Oliver Thomas is available at [www.amazon.com](http://www.amazon.com). A discount is available through the First Amendment Center for orders of 10 books or more. For the discount, call 202/292-6288.

<sup>11</sup> Based on guidelines originally published by the Public Education Religion Studies Center at Wright State University.

<sup>12</sup> "Religious Holidays and Public Schools: Questions and Answers" may be found in *Finding Common Ground*.

<sup>13</sup> For details about the 3Rs (Rights, Responsibilities, & Respect) programs, contact Charles Haynes, [chaynes@freedomforum.org](mailto:chaynes@freedomforum.org).

<sup>14</sup> For more information about the Program in Religion and Secondary Education at Harvard University, contact The Divinity School, 45 Francis Ave., Cambridge, MA 02138, 617/384-8047. Attention: Diane Moore, Director. Inquiries about the Religion in Public Life Certificate Program at the University of Pennsylvania should be addressed to Christopher Pastore, Director, Master of Liberal Arts Program, College of General Studies, University of Pennsylvania, 3440 Market St., Suite 100, Philadelphia, PA 19104-3335, 215/898-7326.

<sup>15</sup> Direct questions about the Religion and Public Education Resource Center to Dr. Bruce Grelle, Dept. of Religious Studies, California State University - Chico, CA 95929-0740, [bgrelle@csuchico.edu](mailto:bgrelle@csuchico.edu), 530/898-4739, or visit [www.csuchico.edu/rs/rperc/](http://www.csuchico.edu/rs/rperc/).

<sup>16</sup> The Council on Islamic Education may be reached by calling 714 839-2929, writing to P.O. Box 20186, Fountain Valley, CA 92728-0186, e-mailing [info@cie.org](mailto:info@cie.org), or visiting [www.cie.org](http://www.cie.org).

<sup>17</sup> For more information about the Oxford University Press series Religion in American Life, call 800-445-9714, e-mail [custserv.us@oup.com](mailto:custserv.us@oup.com), or visit <http://www.oup.com/us/catalog/general/series/ReligioninAmericanLife/>.

<sup>18</sup> For more information about the CD-ROM *On Common Ground: World Religions in America*, call 800/944-8648.

<sup>19</sup> The Character Education Partnership is located at 1025 Connecticut Ave., NW, Suite 1011, Washington, DC 20036. Call 800/988-8081 or visit [www.character.org](http://www.character.org).

<sup>20</sup> "Religion in the Public Schools: A Joint Statement of Current Law" may be obtained by writing: "Religion in the Public Schools," 15 East 84th St., Suite 501, New York, NY 10028, or visiting <http://www.ed.gov/Speeches/04-1995/prayer.html>.

<sup>21</sup> The full text of the 1998 U.S. Department of Education guidelines may be found in *Finding Common Ground*.

<sup>22</sup> Copies of "A Parent's Guide to Religion in the Public Schools," published by the National PTA and the First Amendment Center, are available free from the First Amendment Center.

<sup>23</sup> A good resource for understanding the religious needs and practices of students is *America's Religions: An Educator's Guide to Beliefs and Practices* by Benjamin J. Hubbard, John T. Hatfield, and James A. Santucci. It is available by contacting Teacher Ideas Press at 800/225-5800, P.O. Box 6926, Portsmouth, NH 03802-6926, [custserv@teacherideaspress.com](mailto:custserv@teacherideaspress.com), or [www.teacherideaspress.com](http://www.teacherideaspress.com).

<sup>24</sup> The requirements of the Equal Access Act are described in detail in "Equal Access and the Public Schools: Questions and Answers," a pamphlet sponsored by 21 religious and educational groups. The full text is contained in *Finding Common Ground*.



## FIRST AMENDMENT CENTER

The First Amendment Center serves as a forum for the study and exploration of the five freedoms protected by the First Amendment. The center conducts programs and events nationwide and has offices in Nashville, Tenn., and Washington, D.C.

*A Teacher's Guide to Religion in the Public Schools* is one of a series of consensus documents on religious liberty and public education published by the center. Through its First Amendment Education programs, the center helps schools and communities throughout the nation address religious liberty and other First Amendment issues in public education. Contact: Charles Haynes, [chaynes@freedomforum.org](mailto:chaynes@freedomforum.org)

Other programs and resources include:

**First Amendment Center Online** — Your first stop for news and information about the First Amendment. [firstamendmentcenter.org](http://firstamendmentcenter.org)

**Inside the First Amendment** — Syndicated newspaper column by Gene Policinski and Charles C. Haynes, available free. Contact: Brian Buchanan, 615/727-1543

**Freedom Sings** — A critically acclaimed multimedia experience featuring an all-star cast of musicians. Contact: Denise Philp, 615/727-1302



*A Teacher's Guide to Religion in the Public Schools*  
is published by the First Amendment Center.

The guide has been endorsed by the following organizations:

American Association of School Administrators  
American Federation of Teachers  
American Jewish Committee  
American Jewish Congress  
Association for Supervision and Curriculum Development  
Baptist Joint Committee on Public Affairs  
Christian Educators Association International  
Christian Legal Society  
Council on Islamic Education  
National Association of Elementary School Principals  
National Association of Evangelicals  
National Association of Secondary School Principals  
National Council of Churches of Christ in the U.S.A.  
National Council for the Social Studies  
National Education Association  
National PTA  
National School Boards Association  
Union of American Hebrew Congregations  
Union of Orthodox Jewish Congregations of America

For more information, please contact:

**FIRST AMENDMENT CENTER**

1207 18th Ave. S. Nashville, TN 37212 615/727-1600

[firstamendmentcenter.org](http://firstamendmentcenter.org)

For additional copies, see

[http://www.firstamendmentcenter.org/about.aspx?item=FAC\\_publications](http://www.firstamendmentcenter.org/about.aspx?item=FAC_publications)

Section 3  
Center for Safe Schools Guidelines,  
endorsed by NSBA



## Bullying Prevention

Home · Bullying Prevention · About Bullying Prevention

### About Bullying Prevention

Center for Safe Schools is committed to providing schools with information and resources to create and maintain safe, productive learning environments by addressing issues that interfere with the educational process. The Center's focus on bullying prevention is significant, providing resources for effective implementation, sustainability, transfer of knowledge, and evaluation of bullying prevention programs that contribute to changes in student attitudes and behavior, and cultivate nurturing school and community environments. The Center's approach integrates professional development trainings, web-based courses, community-learning opportunities, rigorous technical assistance, and support to school personnel in ways that are timely, easy to understand and convenient to access.

In recent years, bullying has gained national attention following research that documents its pervasive negative impact on American youth, including serious health and developmental outcomes. According to the National Education Association, on any given day, nearly 160,000 children in the U.S. miss school due to a fear of being bullied. Research suggests that the most effective way to address bullying is through schoolwide efforts that are evidence-based and comprehensively focus on changing the climate of a school.

Through a unique partnership with Highmark Healthy High 5, an initiative of the Highmark Foundation; the Pennsylvania Department of Education; and the Pennsylvania Commission on Crime and Delinquency, the Center for Safe Schools:

**Assists schools, districts and communities as they research, select and implement bullying prevention programs** and other successful strategies to address incidents of bullying and cyberbullying.

**Coordinates the Pennsylvania Bullying Prevention Network**, a cadre of certified bullying prevention trainers and provides information for the Olweus Bullying Prevention program. With approximately 100 active trainers, Pennsylvania's network is recognized as the largest of its kind in the U.S. to provide strategies for establishing effective classroom rules, techniques for resolving classroom and playground conflicts, ways to strengthen peer-to-peer respect, and much more.

**Delivers PACARES** (Creating an Atmosphere of Respect and Environment for Success), a bullying prevention initiative to support school personnel in the implementation of the Olweus Bullying Prevention Program; funded by Highmark Healthy High 5, an initiative of the Highmark Foundation.

**Delivers professional development opportunities** addressing all aspects of bullying prevention through regional, state and national conferences; on a fee-for-service basis; and through live and archived web-based sessions.

**Educates about cyberbullying through Protecting Kids Online**, a program designed

**Bullying and Suicide:  
What Educators Need  
to Know**

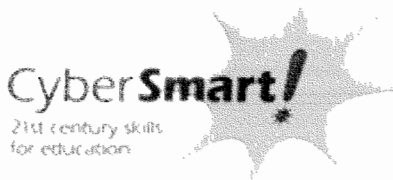
5/24/2011

## About Bullying Prevention

to inform parents, teachers and children about Internet safety. This partnership with the Pennsylvania Commission on Crime and Delinquency and local law enforcement educates audiences about laws, personal responsibilities and safeguards to be taken against online victimization.

**Provides bullying prevention resources** including books, programs, websites, campaigns and contact information for experts in the field.

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## Cyberbullying Package

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Dear Educators,

NSBA's Technology Leadership Network is pleased to partner with CyberSmart! to distribute the free CyberSmart! Cyberbullying Package to schools nationwide.

In developing these lessons, CyberSmart! adopted an integrated approach, examining all current research findings and using best practices from the fields of cyber security, school violence prevention, and character education to impact behavioral change. Together, these materials offer schools the opportunity to begin a dialogue with students and build a sustained cyberbullying prevention campaign to continually remind the school community about safe, ethical online use.

### CyberSmart! did their homework

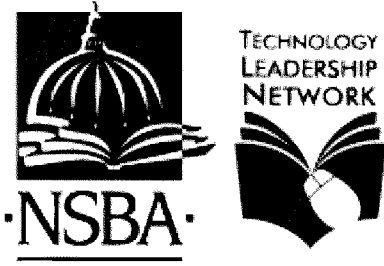
Their carefully developed cyberbullying package

- uses a social constructivist learning approach to allow students/educators to construct their own knowledge, defining the problems and issues themselves and thus “owning” them. Without this ownership, no behavioral change can occur
- focuses on developing critical thinking and decision-making skills rather than teaching about technologies that change monthly
- recognizes that research shows that getting tough on the bullies themselves is not an effective intervention
- addresses research that reveals most youths do not disclose online harassment to adults for fear of adults overreacting and cutting off online access. Students need to have a student-initiated mechanism for confidential reporting to adults
- focuses on the critical role of the bystander, recognizing research that students do not want to identify themselves as either bullies or targets
- enables discussions with students about online safety and cyberbullying to be easily sustained throughout the school years, similar to the ongoing programs advocated by cyber security experts
- emphasizes the core character values of caring, honesty, fairness, responsibility, and respect for self and others as the underlying message of cyberbullying education
- recognizes that issues regarding cyberbullying are intertwined with those associated with Internet safety, security, free speech, tolerance, and cyber citizenship

### Tell us what you think

We encourage you to try the CyberSmart! Cyberbullying Package and tell us what you think. We listen very carefully to your feedback and appreciate you taking time from your busy day to contact us.

Warm regards,  
*Gene Broderson*  
 Director, National Affiliate Services



Cyberbullying is a concern among parents and educators, but it is a manageable problem that can be addressed in a positive manner to both empower safe, ethical online use and support schools' ability to enhance instruction with technology. This package allows cyberbullying prevention instruction to be easily woven into the regular curriculum and extends out to families and the entire community.

**Manners**  
**Cyberbullying**  
**Plagiarism**  
**Ethics**  
**Character**

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**CyberSmart! Online Workshops**  
**Facilitated Professional**  
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**in 21st Century Skills**

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CyberSmart! is still a provider of professional development in 21st century skills for educators: [www.cybersmart.org](http://www.cybersmart.org)

## About NSBA...

The National School Boards Association is a not-for-profit organization representing State Associations of school boards and their more than 90,000 local school board members throughout the United States. Its mission is, working with and through our State Associations, to advocate for equity and excellence in public education through school board leadership. NSBA achieves that mission by representing the school board perspective in working with federal government agencies and national organizations that impact education, and provides vital information and services to State Associations of school boards throughout the nation.

NSBA advocates local school boards as the ultimate expression of grassroots democracy. NSBA supports the capacity of each school board, acting on behalf of and in close concert with the people of its community, to envision the future of education in its community, to establish a structure and environment that allow all students to reach their maximum potential, to provide accountability to the community on performance in the schools, and to serve as the key community advocate for children and youth and their public schools.

Founded in 1940, NSBA represents its State Association members and their more than 90,000 local school board members, virtually all of whom are elected. These local officials govern 13,809 local school districts serving the nation's 50 million public school students.

NSBA policy is determined by a 150-member Delegate Assembly of local school board members who represent their State Associations of school boards. The 25-member Board of Directors translates this policy into action. Programs and services are administered by the NSBA executive director and a 100-person staff. NSBA's office is located in metropolitan Washington, D.C.



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