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The Specter of Bullying in Schools

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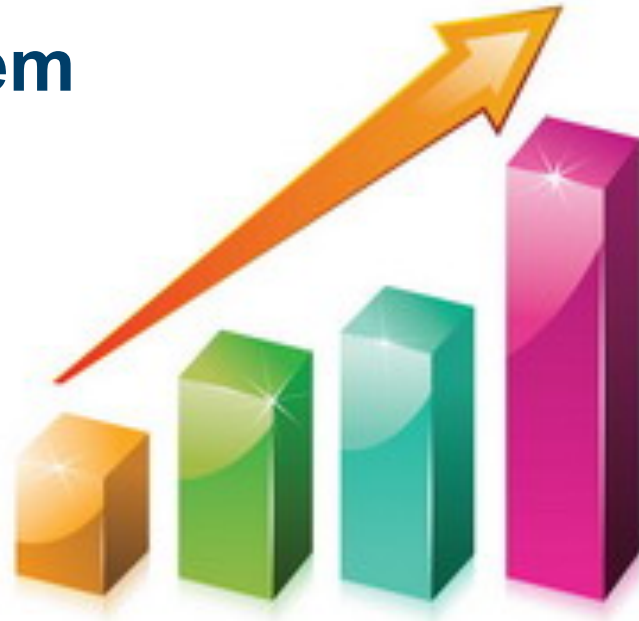
Why Bullying?

Because the specter appears in so many places and has a major impact on the school environment . . .



Why Bullying Is Our Problem

- 28% of students in grades 6-12 reported being bullied at school.
- 70.6% of young people say they have seen bullying in their schools.
- 70.4% of school staff have seen bullying and 62% witnessed bullying one or more times per month while 41% witnessed bullying once a week or more.



****When bystanders intervene, bullying stops within 10 seconds 57% of the time.**



Why Bullying Is Our Problem





Goals for Our Presentation

- Review state and federal legal obligations that address bullying in schools
- Sharpen our ability to identify issues in student bullying
- Focus in on bullying claims and how they are litigated
- Discuss strategies for a measured response



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State and Federal Laws That Address Bullying in Schools



The Policy

R.C. § 3313.666 provides that districts must develop a policy prohibiting bullying, harassment, and intimidation.

The policy must be developed in consultation with:

- Parents
- School employees
- School volunteers
- Students
- Community members

The Policy – Bullying Definition

- According to R.C. 3313.666, harassment, intimidation, or bullying means:
 1. Any intentional **written, verbal, electronic, or physical** act that a student has exhibited toward another particular student **more than once** and the behavior both:
 - Causes **mental or physical** harm to the other student, and
 - Is **sufficiently severe, persistent, or pervasive** that it creates an **intimidating, threatening, or abusive** educational environment for the other student
 2. Violence in a dating relationship

The Policy

1. A **statement prohibiting harassment, intimidation, or bullying** of any student on **school property**, on a **school bus**, or at **school-sponsored events** and expressly providing for the **possibility of suspension of a student found responsible for harassment, intimidation, or bullying by an electronic act**
2. A **definition** of harassment, intimidation, and bullying (see previous slide)
3. A procedure for **reporting**
4. A requirement that school **personnel report**
5. A requirement that the custodial parent/guardian of any student involved in a prohibited incident **be notified and have access to any written reports** pertaining to the prohibited incident

The Policy

6. A procedure for **documenting**
7. A procedure for **responding to and investigating**
8. A **strategy for protecting a victim** or other person from new or additional harassment, intimidation, or bullying and retaliation **including a means by which a person may report an incident anonymously**
9. A **disciplinary procedure** for perpetrator(s)
10. A statement prohibiting students from deliberately making **false reports**
11. A requirement that the district administration **semiannually** provide the president of the district board a written **summary of all reported incidents** and **post the summary on its website** (must comply with state and federal confidentiality laws)

Training Requirements

- To the extent that state or federal funds **are appropriated for this purpose**, each board shall require that all students enrolled in the district annually be provided with age-appropriate instruction, as determined by the board, on the board's policy, including a written or verbal discussion on the consequences for violations of the policy.
- Training and Review – All staff working with children should be **trained and retrained** on anti-bullying policies and guidelines.
- Key administrators should review these policies annually and in detail, and make necessary changes when experience shows that parts of the policy are not working.



Not So Fast – Federal Laws Apply as Well!

- Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973: Bullying on the basis of a disability
 - IDEIA could apply if bullying interferes with FAPE!
- Title VI: Bullying on the basis of race or national origin
- Title IX: Bullying on the basis of sex

Bullying in Schools – State vs. Federal

State – ODE's model policy requires conduct to take **place more than once.**

- VS. -

Federal – OCR's definition specifies that harassment **does not have to involve repeated incidents.**



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What Does Bullying Look Like in Schools?

Bullying Definition (again!)

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 2. Violence in a dating relationship

Bullying in Schools

- Who is a bully?
 - Someone who directs physical, verbal, or psychological aggression or harassment toward others with the goal of gaining power over the victim.
- Who is a victim?
 - Someone who is repeatedly and persistently exposed to physical, verbal, or psychological aggression from peers.
 - Typically victims are children who are insecure, appear physically weak, are passive, and/or seek attention often from peers.
- When does it occur?
 - Begins in elementary school, peaks in middle school, slows down in high school.

What Is Harassment

- While “hostile workplace” and “hostile learning environment” are common phrases in our society, few circumstances meet the legal definition.
- Unlawful harassment occurs when unwelcome physical, verbal, or nonverbal conduct is *based upon an individual's protected class* **and** the conduct has the purpose or effect of:
 - interfering with the individual's work or educational performance;
 - creating an intimidating, hostile, or offensive working, and/or learning environment; or
 - interfering with one's ability to participate in or benefit from an educational program or activity.

What Does Discriminatory Bullying/Harassment Look Like?

- The student falls within a **protected category** and a **perceived characteristic** is targeted.
- The student was harassed **because of** his or her protected status or characteristic.
- The harassment was **severe, pervasive, and objectively offensive** so that it deprived the student of access to educational opportunities and benefits.

IDEIA/504 Considerations

Disability-Based Harassment:

- Was a student bullied/harassed based on his/her disability?
- Was it serious enough to create a hostile environment?
- Did the district know/should have known about it?
- Did the school fail to take prompt and effective steps to end and prevent the conduct and remedy its effects?

Non-Disability-Based Harassment:

- Did the district know/ should have known that the bullying/harassment affects FAPE under IDEIA or Section 504?
- Did the district determine whether the child's educational needs were still being met?
- If not, did it amend the Section 504 plan/IEP?

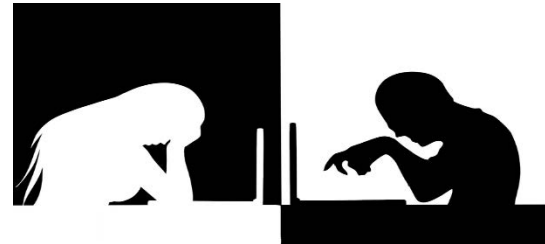
Cyberbullying

- **Cyberbullying/Cyberharassment:** sending or posting harmful or intimidating text messages or images over the Internet or through an electronic device.
- A reported 15% to 35% of students claim to have been victims of cyberbullying.



Cyberbullying Is Not Protected Speech

- Schools may categorically prohibit:
 - Lewd, vulgar, profane language on school grounds
 - School-sponsored speech because of any legitimate pedagogical concerns
 - Speech that substantially disrupts school operations or interferes with others' rights
 - Speech that is “a true threat,” defamatory, drug-promoting or “fighting words”





Quiz!

- Two students start a fight in the hallway. At the disciplinary hearing, a parent claims one student involved in the fight was bullied.
 - Does this impact your decision?
 - What if you/your staff knew about the bullying and did not respond appropriately?
 - How will you need to address bullying in the future when the kids return to school?

Quiz!

- Students participate in a Facebook group where one student allegedly threatens to kill another and makes anti-Semitic slurs.
 - How do you respond?
 - Are other policies implicated (hint!)?
 - What if the police become involved and the student accused of making the threat faces criminal charges? Does your response change?
 - Can you discipline the behavior?

Quiz!

- A student sends a “sex message” to her boyfriend, and it eventually starts to circulate throughout the student body.
 - Is this bullying?
 - Who is the “bully” in the scenario?
 - What about discipline?
 - Do you have a duty to report the incident to the police?

Quiz!

- During an IEP meeting, the parent of a student with a disability complains that other students make fun of her child and it makes him anxious to come to school.
 - What should the team's response be?
 - Is this bullying?
 - Are the behaviors directed at the child's disability?
 - Does it matter (hint)?
 - Does it prevent a child from accessing FAPE?



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Litigation of Bullying Cases

When Do Districts “Drop the Ball”?

When they fail to:

- Take allegations seriously
- Discipline as appropriate
- Notify the affected parties of the investigation results and follow up [Remember your timelines]
- Remedy the effects of the harassment/bullying
- Prevent retaliation
- Check in with the student after the investigation
- And ... when they do the same thing over and over again that does not work!



OCR Investigations

The Office for Civil Rights for the U.S. Department of Education (“OCR”) is charged with protecting civil rights in federally funded programs.

Bad News:

- After a complaint is filed, OCR investigates anything remotely relevant, not only the complaint itself.
- OCR’s standards for liability are much lower than those in courts.

Good News:

- Although the Feds can pull funding, districts typically do not risk financial liability. Instead, OCR will require them to implement various corrective measures.

What OCR Looks For

- OCR requires districts to:
 - have well-publicized policies prohibiting harassment in protected areas;
 - have well-publicized procedures for reporting and resolving complaints;
 - adopt and publish grievance procedures providing for the prompt resolution of sex and disability discrimination; and
 - when a student with a disability is bullied, the IEP or 504 team must convene to determine whether the child's education is affected.

District must “take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment, and prevent its recurrence.”



OCR's Standard

- If the district “knew or should have known” of the inappropriate behavior.
- Harassment/bullying is severe, pervasive, **and/or** objectively offensive.
- Did the behavior interfere with or limit participation in an activity?

OCR Example

- ***Monroeville Local School District:*** After a parent filed a disability-based harassment complaint, the district resolved the situation by:
 - Developing and providing parents with grievance procedures
 - Training officials in civil rights violations
 - Creating a Peer Mediation Council to address bullying
 - Implementing elementary-school activities to reduce conflict
 - Forming a parent support group
 - Implementing a positive reinforcement system
 - Offering mentoring for bullied students
- If a district engages in these activities proactively, it is even better!

Litigation in Court

- By the time the issues walk through the courthouse door, they have often grown to epic proportions.
- Districts, and individual staff or board members, find themselves in court when:
 - Someone knew about the problem
 - The problem was severe in nature and/or persistent
 - Policy was not followed
 - The district did not take reasonable steps to address the current problem and prevent future occurrences
 - The student suffered harm

Federal Standard for Liability

- Generally, courts apply the following test:
 - The bullying/harassment must be so **severe, pervasive and objectively offensive** that it could be said to deprive the plaintiff of access to the educational opportunities or benefits provided to the school; and
 - The school has **actual knowledge** of the harassment; and
 - The school was **deliberately indifferent** to the harassment.
 - **The school's "response or lack of response is clearly unreasonable in light of the known circumstances."**

Deliberate Indifference

- ***Logan v. Sycamore Cmty. Sch. Bd. of Educ.***:
In this famous sexting suicide case, school district was deliberately indifferent because the counselors and principals knew about the harassment but failed to address it.
- ***Galloway v. Chesapeake Union Exempted Vill. Schs. Bd. of Educ.***: Principal and teachers failed to address severe disability-based harassment and even participated in it.

When Discipline Isn't Enough

- ***Patterson v. Hudson Area Schools***: Verbally reprimanding bullies is not enough, even though this approach was successful with each particular child. School district changed victim's IEP and he could not attend the resource room anymore, one of the few places he was not bullied.
- ***Mathis v. Wayne Cnty Bd. of Educ.***: Even though 7th grade rape perpetrators were suspended from school for 11 days and from the basketball team, the district was deliberately indifferent because they ignored other incidents and eventually allowed the bullies back on the team.

The Right Way to Respond

- ***Williams v. Port Huron Sch. Dist.***: Racial bullying included slurs, graffiti, physical violence, and death threats. The Sixth Circuit found that the superintendent and principal were not deliberately indifferent because they:
 - Set up video surveillance
 - Reported incidents to police
 - Ordered students to remove Confederate flags
 - Expelled students
 - Hired management consultants
 - Held training seminars
 - Held parent conferences



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Strategies for a Measured Response

The Process


1. Receive Complaint
2. Initiate an investigation – be responsive
3. Notify parent/guardian of victim and of those who allegedly committed the act(s)
4. Determine whether intervention or discipline is warranted, and act expeditiously
5. Draft final report
6. Send notice and report to superintendent's office
7. Notify parties of outcome when appropriate, and discuss right to appeal
8. Be cognizant of possible retaliation



Complaints

- Formal Written Complaints – submitted pursuant to board policy
- Informal Complaints – staff receives complaints from student and submits written summary to principal
- Both must be prepared and forwarded to the principal ASAP.

Investigation Process

- A proper investigation is a **timely investigation** that includes:
 - Statement from victim
 - Statement from perpetrator
 - Statements from witnesses
 - Consideration of discipline records/incident write-ups
 - Consultation with staff
 - Involvement from parents
 - Follow-up with parents/student
 - **Be aware of related issues, policies, and processes that occur simultaneously.**
- 

Interim Safety/Action Plan

- Safety plans can be used for targets and aggressors in a bullying, cyberbullying, sexting, or other face-to-face or online incident.
- Safety planning helps develop tools in advance of potentially dangerous situations.
- Plans will differ based upon the specific set of circumstances.

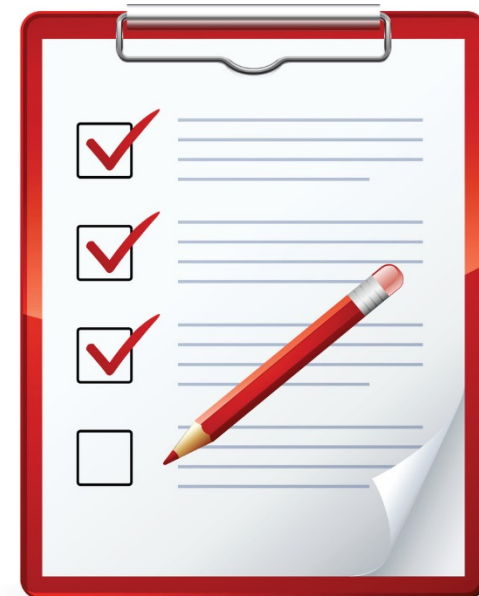
Identifying the Problem

- Context
- Nature (e.g. verbal or physical)
- Frequency
- Duration
- Location of incidents
- Identity, number, and relationships of persons involved
- Particularized characteristics
- Incidents outside complaint

Generally, the more severe the conduct, the less need to show repeated incidents.

Draft Final Report

- Findings of fact
- Determination about whether bullying occurred
- Recommendations for intervention
- Discipline?



Retaliation Is Not Permitted

Retaliation against any person who reports, is thought to have reported, files a complaint, or otherwise participates in an investigation or inquiry related to a complaint of aggressive behavior and/or bullying **is prohibited**. Such retaliation shall be considered a **serious violation** of Board policy and independent of whether a complaint is substantiated. False charges shall also be regarded as a **serious offense** and will result in **disciplinary action or other appropriate sanctions**. Suspected retaliation should be **reported in the same manner as aggressive behavior and/or bullying**.



The Measured Response

- Must be tailored to the situation
- Must be reasonably calculated to address behavior
- Must set good precedence for issues down the road
- Must be ongoing
- Must be reevaluated in the future

Responsive Interventions for Students

- **Class-wide or school-wide training:** Diversity training may be especially useful for protected-category bullying.
- **Small group intervention:** Peer- or adult-led mediation, coaching, mentoring, social skills groups, classroom strategies.
- **Individual intervention:** Offer counseling when appropriate, increased supervision, safety plans.



Can We Discipline?

- **On-campus behavior** = please refer to student code of conduct, athletic/extracurricular code of conduct
 - If your policies are up-to-date, behavior may be addressed through more traditional discipline.
 - Follow your procedures!
- **Off-campus behavior** = policies + circumstances that connect back to campus. Courts will usually uphold discipline for off-campus conduct if the conduct:
 - Substantially disrupted learning
 - Interfered with school discipline
 - Was a true threat
- Courts **do not** uphold policies that are vague or overly broad.

Dos and Don'ts – Identifying the Problem

1. **Don't** emphasize the infraction title or code to the victim/parent.
2. **Don't** insist behavior can't be bullying or harassment just because it happens only once, especially for egregious conduct.
3. **Do** emphasize that you issue consequences based on the particular facts, and there is no one-size-fits-all approach.
4. **Do** apply student code of conduct flexibly within appropriate parameters. Be careful not to overuse zero-tolerance policies.

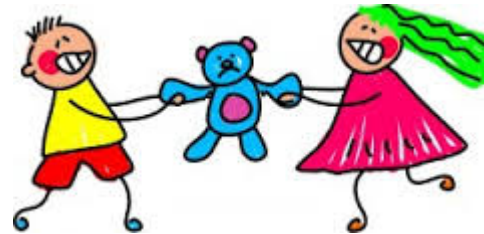
Dos and Don'ts – Seeking a Remedy



5. **Don't** issue consequences or solve problems in ways that force victims and bullies to work in close proximity to each other.
6. **Don't** mandate mediation, especially in sexual assault cases.
7. **Do** consider, when possible, practical solutions such as scheduling classes and seating to keep bullies away from victims.
8. **Do** offer mediation, unless the conflict involves sexual assault.

Dos and Don'ts – Seeking a Remedy

9. **Don't** accept a “kids-will-be-kids” approach to student conflicts.



10. **Do** recognize and address patterns, such as “whack-a-mole” bullying.



11. **Do** invite outside consultants, agencies, presenters.

Dos and Don'ts – Cyberbullying

12. Do consider:

- Location: Is there a connection to the district system or network?
- Disruptive effect
- Nature of speech
- Manner in which speech was distributed

13. Do take action even if you cannot mete out discipline: increase monitoring/supervision, offer counseling/mediation, contact the police.

Dos and Don'ts – Cyberbullying

14. **Do** include cyberbullying in your Anti-bullying Policy and your Acceptable Use Policy. Illegal or inappropriate Internet conduct should be grounds for disciplinary action.
15. **Do** require students to sign a statement agreeing to comply with district rules on Internet use and have parent sign consent and release form.



Resources

- **Safe School Helpline**

- Anonymous reporting of bullying and/or harassment for students and staff
- Student orientation video
- Anti-bullying video

- Visit: StopBullying.gov and SafeKids.com
- Visit: National Bullying Prevention Center



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