Virginia Board of Education Agenda Item

Agenda Item: L **Date:** October 24, 2013

Title	Final Review of the Board of Education's *Model Policy to Address Bullying in Virginia's Schools*		
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Purpose of Presentation:
Action required by state or federal law or regulation.

Previous Review or Action:
Previous Review: September 26, 2013
Action taken: The Board of Education accepted for first review the proposed *Model Policy to Address Bullying in Virginia's Schools.*

Action Requested:
Final review: Action requested at this meeting.

Alignment with Board of Education Goals: Please indicate (X) all that apply:

	Goal 1: Accountability for Student Learning
	Goal 2: Rigorous Standards to Promote College and Career Readiness
	Goal 3: Expanded Opportunities to Learn
	Goal 4: Nurturing Young Learners
	Goal 5: Highly Qualified and Effective Educators
	Goal 6: Sound Policies for Student Success
X	Goal 7: Safe and Secure Schools
	Other Priority or Initiative. Specify:

Background Information and Statutory Authority:
Goal 7: This model policy to address bullying in Virginia's schools will contribute to the Board of Education's provision of leadership to ensure that Virginia's school environments are safe and secure.

HB 1871 (McClellan), enacted in 2013, amended § 22.1-276.01 of the *Code* to provide a definition of "bullying" as follows:

> *"...any aggressive and unwanted behavior that is intended to harm, intimidate, or humiliate the victim; involves a real or perceived power imbalance between the aggressor or aggressors and victim; and is repeated over time or causes severe emotional trauma. 'Bullying' includes cyber bullying. 'Bullying' does not include ordinary teasing, horseplay, argument or peer conflict."*

The bill also added a new *Code* § 22.1-291.4 to require that "Each school board shall implement, by July 1, 2014, policies and procedures to educate school board employees about bullying, as defined in § 22.1-276.01, and the need to create a bully-free environment."

The new § 22.1-291.4 requires:

> *"That the Board of Education develop, by January 1, 2014, model policies and procedures for use by each school board to educate school board employees about bullying, as defined in § 22.1-276.01, and the need to create a bully-free environment."*

Summary of Important Issues:
Virginia school boards have been required to include bullying prevention as a part of character education since 2005 (§ 22.1-208.01 of the *Code of Virginia*). School boards are expected to include bullying as a prohibited behavior in their student codes of conduct (§ 22.1-279.6.D. of the *Code*) and to implement policies and procedures to educate school board employees about bullying and the need to create a bully-free environment (§ 22.1-291.4 of the *Code*). The proposed *Model Policy to Address Bullying in Virginia's Schools* incorporates findings and recommendations of a study of the nature and effectiveness of Virginia school divisions' antibullying policies conducted by the Virginia Department of Education in response to the 2011 Virginia General Assembly's Joint Resolution 625.

The proposed model policy addresses:

1. a definition of bullying;
2. examples of behaviors indicative of bullying;
3. communication and education with staff, students and parents about bullying;
4. expectations of staff and students in preventing and addressing bullying; and
5. reporting, investigating, and responding to bullying incidents.

In response to the Board of Education's first review on September 26, 2013, revisions were made. Edits in wording were made throughout the document to ensure consistency in its purpose of providing guidance, not requirements. Throughout the document, references to bullying behavior by school employees or personnel have been removed where appropriate. The phrase "public K-12 institution" has been deleted because it is unnecessary. In addition, the sample school board policy was edited and moved to the appendix.

Page Number	Brief Description
Table of Contents	The word "Cyberstalking" was removed. The "model school board policy regarding bullying" was renamed to the "Sample School Board Policy Regarding Anti-Bullying" and is identified as Appendix A. Page numbers were changed to correspond with the revisions.
1	In the first paragraph, the word "It" was replaced with "This model policy" for clarification. In the second paragraph, the date "by July 1, 2014" was added to reference the date school boards must have a policy in place.

2	Within the section presenting the *Code* definition of bullying, the words "similar to" were replaced with "which, at a minimum is consistent."
4	Clarification was added to item b to expand the modes of transportation used by school divisions on which a bullying incident may occur, i.e., "for school sponsored activities and other means of transportation funded by public schools." Footnote number two was added to alert divisions to emerging case law addressing bullying activities occurring outside of schools which may impact the learning environment. Unnecessary adjectives and nouns were removed, i.e., "particular" and "public K-12 educational institution." Under 2.d., the phrase "threatening a disturbance in a school" was deleted and replaced with "poses a reasonable forecast of substantial disruption of school activities." References to cyberstalking were removed because it is encompassed under cyberbullying. The following sentence was added to the section on cyberbullying: "The Virginia General Assembly has also required that policies and procedures regarding bullying and cyberbullying may not prohibit expression of religious, philosophical, or political views, unless that expression creates an actual, material disruption of the work of the school." A footnote was added regarding reviewing emerging case law on bullying incidents occurring outside of school.
5	For clarity the word "since" was replaced with "if" in the text box referring to school division policy. In the text box below "Essential Elements of School Board Policy," the word "consequencing" was replaced by "accountability and consequences."
6	Justification was added to item four to support the designation of a bullying prevention coordinator.
8	In Step 1 a., the words "unresolved, severe, or persistent" were removed to encourage the reporting of bullying whenever it is suspected.
10-11	Language was added to Step 3: "Reporting investigations results" to denote a continuum of consequences and interventions for bullying behavior that is appropriate to the context and severity of the behavior. Deletions were made to Step 4: "Additional considerations" to ensure the rights, confidentiality and privacy of all parties involved in the investigation of bullying. In addition, in Step 4 b.3 the words "file an appeal" were replaced with "challenge the findings."

12	Within the Notification box, a sentence was added noting when law enforcement should be contacted.

The proposed policy has been developed with consultation and review by professionals working in public education and representatives of child advocacy groups.

Impact on Fiscal and Human Resources:
None expected.

Timetable for Further Review/Action:
Upon final approval, the proposed policy will be posted on the Virginia Department of Education's Web site, and announced through a Superintendent's Memorandum.

Superintendent's Recommendation:
The Superintendent of Public Instruction recommends that the Board of Education approve the *Model Policy to Address Bullying in Virginia's Schools.*

Model Policy to Address Bullying in Virginia's Schools

Board of Education
Commonwealth of Virginia

~~September~~ October 2013

Acknowledgements

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The Department expresses its deepest appreciation to all professionals who reviewed and offered comment on this model policy prior to its publication, especially Dr. Catherine Bradshaw of Johns Hopkins University and the University of Virginia.

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Research consistently demonstrates that a strong, proactive stance against aggression and bullying behavior is the best means of discouraging bullying in school settings; however, nothing replaces teaching and reinforcing positive and socially accepted behaviors in children.

Introduction

Bullying is a problem in many spheres of our culture: it exists in the work place, it exists in intimate relationships, and it exists in families and communities. Bullying exists in public schools but public schools are in a unique position to educate children and adolescents about its presence, danger, and negative consequences. Schools can also teach behaviors that will protect students from the harmful effects of bullying. Based on the findings of past and current research, this model policy promotes school practices that address bullying behaviors in schools.[1] This document provides the *Code of Virginia's* definition of "bullying" established in § 22.1-276.01. ~~It~~ This model policy unequivocally considers bullying, aggression, and harassment as unacceptable behaviors; it promotes adoption of age-appropriate strategies designed for prevention, intervention, and accountability for bullying behaviors; and it promotes the use of whole-school and evidence-based practices in the classroom, in the school, and across the school division.

Virginia school boards have been required to include bullying prevention as a part of character education since 2005 (§ 22.1-208.01 of the *Code of Virginia*). In addition, school boards are expected to include bullying as a prohibited behavior in their student codes of conduct (§ 22.1-279.6.D of the *Code of Virginia*) and to implement policies and procedures to educate school board employees about bullying and the need to create a bully-free environment (§ 22.1-291.4 of the *Code of Virginia*) by July 1, 2014. The Virginia General Assembly's House Joint Resolution 625 (2011) required the Virginia Department of Education (VDOE) to study local school divisions' antibullying policies. This current model policy is an outgrowth of that study, and is designed to guide every school division in the development, promotion, and implementation of policies prohibiting bullying. In order to best address local conditions, such policy should be developed, promoted, and implemented through a collaborative process that includes all interested stakeholders: school administrators, school educators and staff, students, families, and the community-at-large. HB1871 enacted by the 2013 General Assembly required the Virginia Board of Education to develop by January 1, 2014, model policies and procedures for use by each school board regarding the prevention of bullying in their schools.

Bullying has been linked to negative outcomes for students who are its victims, for bystanders, and for students who are bullies themselves. Bullying negatively affects school climate. Bullying also has negative impacts on learning, health, behavior and school outcomes. For these reasons, every school division should be committed to providing a safe and civil environment for all students, employees, parents or guardians, volunteers, and visitors. Every school division should adopt policies that indicate bullying is not acceptable and that it will be met with consequences that are developmentally appropriate and sensitive to context.

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[1]Words and phrases in italics signify core facets and elements for school divisions to consider including in their policies, non-italicized words and phrases provide introduction, clarification, and deeper understanding of the italicized text.

A basic assumption of this model policy is that schools and school divisions will mobilize the energies within the school community and the community-at-large to promote and facilitate the reporting of suspected bullying incidents, to investigate all incidents thoroughly, and to use the resulting data to bolster and improve bullying reduction and prevention efforts. The model policy promotes the practices of educating students about bullying and its prevention, training staff in proactive ways to prevent and intervene in bullying situations, and maintaining a clearly defined investigation protocol overseen by a trained coordinator. Included in the appendices is a letter from United States Department of Education's Office of Civil Rights advising school leaders that some instances of bullying could constitute a violation of an individual's civil rights.

Research shows that a comprehensive approach to bullying in schools includes the following ten components: (1) A clear definition of bullying; (2) utilization of effective evidence-based program(s); (3) staff communication and training (annually); (4) feedback from teachers and other school staff; (5) student education (annually); (6) student surveys; (7) parent communication, education and surveys; (8) intervention(s) with victim; (9) intervention(s) with a student(s) who bullies(y); and (10) evaluation of prevention and intervention efforts. Many of these components are programmatic, rather than policy based. Thus, the sample policy wording below does not address each of them specifically. Lastly, while bullying behavior is reprehensible, school officials should remember that education is a developmental process and should not rush to criminalize bullying behavior.

Defining Bullying Behavior

Every school division policy should include a definition of bullying, ~~similar~~ which, at a minimum, is consistent to that adopted by Virginia's 2013 General Assembly (§ 22.1-276.01 the Code of Virginia):

> ***"Bullying means any aggressive and unwanted behavior that is intended to harm, intimidate, or humiliate the victim; involves a real or perceived power imbalance between the aggressor or aggressors and victim; and is repeated over time or causes severe emotional trauma. 'Bullying' includes cyber bullying. 'Bullying' does not include ordinary teasing, horseplay, argument, or peer conflict."***

Bullying means systematically and chronically inflicting physical hurt or psychological distress on another person. ~~one or more students or employees~~. Bullying involves physical and emotional behaviors that are intentional, controlling, and hurtful, thus creating harassing, intimidating, hostile or otherwise offensive educational environments. Bullying behaviors include unwanted and repeated written, verbal, or physical behavior, including any threatening, insulting, or dehumanizing gesture, by a student or adult, that is severe or pervasive enough to create an intimidating, hostile, or offensive educational environment; cause discomfort or humiliation; or unreasonably interfere with an individual's school performance or participation; or creates a disruption in the educational environment.

Bullying is characterized by the following:

- Intentionally aggressive behavior designed to inflict harm;
- Repetitive behavior planned into the future;
- Interpersonal relationship marked by an imbalance of power.

Bullying behavior often occurs without apparent provocation, and is considered a form of abuse (i.e., peer abuse). Such peer abuse may be manifested both openly and directly or subtly and indirectly. Bullying may be communicated directly, in person, or via other communication method, including via technology (cyberbullying).

Bullying may be physical or emotional.

Physical bullying includes: hitting, punching, poking, shoving, pinching, jabbing, kicking, choking, unwanted touching, blocking, chasing and cornering, tripping, vandalizing, stealing, and writing graffiti (on both public and private property and by use of computers or other technological devices).

Emotional bullying includes: name-calling; threatening; taunting; malicious and incessant teasing; spreading rumors; mocking; public humiliation; stalking; making faces or obscene gestures; making offensive racial, religious or sexual comments; ganging-up on others; belittling; persistently excluding others from a group or activity (shunning); ignoring and lying.

Bullying also encompasses:

1. Retaliation against a student or school employee by another student ~~or school employee~~ for asserting or alleging an act of bullying. Intentional false reporting of bullying or harassment is considered retaliation.

2. Perpetuation of conduct listed in the definition of bullying or harassment by an individual or group with intent to demean, dehumanize, embarrass, or cause emotional or physical harm ~~to a student or school employee~~ by

    a. inciting, goading or coercing,

    b. accessing, or knowingly and willingly causing or providing access to, data or computer software through a computer, computer system, or computer network within the scope of the school division's system, and

    c. acting in a manner that has an effect substantially similar to the effect of bullying, e.g., hazing.

Bullying is of ~~particular~~ concern for a school division when an incident occurs at any time during an education program or activity conducted ~~by a public K-12 educational institution~~

a. at any school-related or school-sponsored program or activity;

b. on a school bus or chartered transportation for school sponsored activities and other means of transportation funded by public schools ~~of a public K-12 educational institution;~~

c. in any community setting where the behavior or interaction of students extended beyond the school environment but has negative impact on the academic setting ~~of any public K-12 educational institution;~~ or[2]

d. through a communication device, computer system, or computer network in a school ~~K-12 education institution~~ or off campus which ~~threatens a disturbance in a school~~ poses a reasonable forecast of substantial disruption of school activities.

Cyberbullying/~~Cyberstalking~~ refers to any threats by one student toward another typically through e-mails or on Web sites (e.g., blogs, social networking sites). Electronic communication that supports deliberate, hostile, hurtful messages intended to harm others is a form of bullying. Cyberbullying includes such things as sending mean, vulgar or threatening messages or images; posting sensitive, private information about another person; pretending to be someone else in order to make that person look bad; and defamatory online personal polling Web sites. ~~Cyberstalking refers to a number of methods individuals use to track, lure, or harass another person online~~.

Bullying behaviors executed outside of school should not be tolerated if they negatively impact school climate, e.g., texting threats in the evening about physically assaulting a person the next day instills a climate of fear and intimidation which compromises the school climate. Such incidents should be investigated and handled by school staff as quickly and expediently as possible. The Virginia General Assembly has also required that policies and procedures regarding bullying and cyberbullying may not prohibit expression of religious, philosophical, or political views, unless that expression creates an actual, material disruption of the work of the school.

Related Definitions

Harassment is a course of conduct which annoys, threatens, intimidates, alarms, or puts a person in fear of his/her safety. Harassment is unwanted, unwelcomed and uninvited behavior that demeans, threatens or offends the victim and results in a hostile environment for the victim and bystanders. Harassing behavior may include, but is not limited to, epithets; derogatory comments or slurs and lewd propositions; assault; impeding or blocking movement; offensive touching or any physical interference with normal school activity, work or movement, and visual insults such as derogatory posters or cartoons.

Sexual Harassment includes any unwelcome sexual advances, regardless of sexual orientation, requests for sexual favors, and other inappropriate verbal or physical conduct of a sexual nature that creates an intimidating, hostile, or offensive environment.

[2] Case law regarding the ability for schools to address activities occurring outside of the academic setting is emerging and should be reviewed as a school board policy is being developed.

Discriminatory Harassment is harassment based on sex, gender, race, color, national origin, disability, religion, ancestry, age, marital status, genetic information or any other characteristic protected by law (or based on a belief that such characteristic exists) which is prohibited by federal and/or state law. (See Appendix ~~A~~ B.)

Conduct that may rise to the level of harassment, intimidation, and bullying may take many forms: slurs, rumors, jokes, innuendoes, demeaning comments, drawings, cartoons, pranks, ostracism, physical attacks or threats, gestures, or acts relating to an individual or group, whether electronic, written, oral, or physically transmitted messages or images. There is no requirement that targeted students actually possess any characteristic that is the basis for harassment, ridicule, intimidation, or bullying.

Bullying and Harassment Prohibited

A school division's policy needs to affirm that bullying or harassment of any student ~~or school employee~~ is prohibited, regardless of where it originated, ~~since~~ if it disrupts the educational environment.

Additional Definitions

Aggressor/Bully – is a student, staff member, or other member of the school community who engages in the bullying of others.

Bystanders – are individuals that allow bullying to persist by simply watching and remaining passive. Passive observers give tacit permission to bullies while more active bystanders *instigate* the aggressor by prodding her/him to continue or by laughing, cheering, or making comments that encourage the bullying behavior.

Retaliation – when an aggressor bullies another who has reported incidents of bullying.

Staff – includes, but is not limited to, educators, administrators, counselors, school nurses, cafeteria workers, custodians, bus drivers, athletic coaches, advisors to extracurricular activities, classified staff, substitute and temporary teachers, volunteers, or paraprofessionals.

Targeted Student/Victim – is a student against whom bullying has allegedly been perpetrated.

Essential Elements of School Board Policy

School division policy should reflect a range of whole-school, evidence-based intervention strategies that use individual, classroom, school, and division-level approaches. These strategies should encompass the ~~tri-fold~~ aspects of prevention, intervention,* and *~~consequencing~~ accountability and consequences. These strategies should be evidence-based and developmentally appropriate and should incorporate a spirit of rehabilitation and restoration wherever possible. Annual training for faculty and staff on identifying and intervening on-the-spot, as well as procedures for reporting and following up, should be provided. All students and parents should be provided annual education regarding identifying bullying behaviors, intervening in developmentally appropriate ways, and reporting and providing consequences. Annual surveys of students, faculty, staff and parents should be conducted to develop, evaluate and modify efforts and programming.

Prevention and Intervention

It is recommended that ~~S~~ school divisions' ~~should ensure their~~ policies incorporate

1. schoolwide evidence-based anti-bullying programs as part of a system of postive behavioral supports and school improvement efforts across grade levels,

2. school climate improvement efforts to promote student involvement in the anti-bullying efforts, peer support, mutual respect, and creation of a culture which encourages students to report bullying to adults,

3. collaboration 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, the means of preventing it, and the methods of reporting it should it happen or occur, and

4. the designation of a bullying prevention coordinator. Research indicates this single point of contact is an essential component for planning, implementing and managing programs, and completing investigations according to procedures.

   A bullying prevention coordinator is a person who serves as the primary school division contact to receive copies of all formal and informal reports of bullying incidents. S/he ensures policy is implemented and that all staff within the division are properly educated and trained. Every school division should have a designated bullying prevention coordinator.

   The bullying prevention coordinator

   a. serves as the school division's primary contact for harassment, intimidation, and bullying;

   b. supports and assists the school principal (or designee) in resolving complaints (except where the complaint is against the principal or designee);

   c. reviews all copies of incident reporting forms, discipline referral forms, and letters to parents providing the outcomes of investigations, before these are mailed to parents;

   d. uses school bullying and complaint data to identify divisionwide patterns of behavior and areas of concern;

   e. implements school division policy and procedures by overseeing the investigative processes, including ensuring that investigations are prompt, impartial, and thorough;

   f. assesses the training needs of staff and students to ensure successful implementation of policy throughout the school division ensuring that staff receive annual training and technical assistance based on the results of staff and student surveys;

g. develops a procedure for maintaining written records of all incidents of bullying and their individual resolution; and

h. disseminates her/his contact information liberally throughout the school division.

5. information dissemination

The school division's Web site, and each school Web site in the division, should prominently post information on reporting bullying; the name and contact information for making a report to a school administrator; and the name and contact information for the school division prevention coordinator. The school division's policy and procedure(s), including a defintion of bullying, examples of bullying behaviors, and methods for reporting, should be available in each school in user-friendly language.

Annually, the superintendent should ensure that a report summarizing the bullying prevention policy and procedure(s) is provided in student, staff, volunteer, and parent handbooks throughout schools and school division offices, and is posted on the school division's Web site.

6. education

Each year students should receive age-appropriate information on the recognition and prevention of harassment, intimidation, or bullying behaviors at student orientation sessions and on other appropriate occasions. Information provided ~~will~~ should include a copy of the Bullying Incident Report Form (Appendix D) or a link to a Web-based reporting form.

7. training

Staff should receive annual training on the school division's bullying prevention policy and procedures as regards their roles and responsibilities in responding immediately to bullying incidents, as well as the reporting, intervening and following-up with victims and bullies. Annual professional development should increase staff awareness of the prevalence, causes, and consequences of bullying, and continually promote the use of evidence-based strategies for preventing bullying. Professional development should be provided for employees hired after the annual training has been conducted.

8. conducting of school safety surveys

Students and staff should be surveyed at least biennially regarding the prevalence and characteristics of bullying in their school; data collected should be used to guide local decision making and program planning related to surveillance needs, prevention, intervention, and professional development. School safety survey results should be shared with the school board for eventual dissemination to the public.

Reporting, Investigating and Recording Incidents

School division policies should outline procedures that will be followed to ensure prompt investigation and response to any report of an incident of bullying. These procedures should protect the victim from additional bullying or retaliation.

School division policy and procedures should include clear instructions for reporting, filing and investigating instances of bullying. Reporting may be anonymous, and students and parents should be encouraged to report any behaviors that they question. All reports should be documented on the school form(s) and appropriate records kept.

Step 1: Reporting an incident (see sample Bullying Incident Report Form in Appendix D)

a. Any student who believes s/he has been the target of ~~unresolved, severe, or persistent~~ bullying, or any other person in the school community who observes or receives notice that a student has or may have been the target of ~~unresolved, severe, or persistent~~ bullying, may report incidents verbally or in writing to any staff member.

b. An incident reporting form may be filed anonymously (schools may make submission of the form available via the Web, a physical drop box, and/or a verbal or written report may be made to any school staff member); the reporting form should note that no disciplinary action will be taken against an alleged aggressor based solely on an anonymous report. (Example: An unsigned incident reporting form dropped on a teacher's desk led to the increased monitoring of the boys' locker room in 5th period.)

c. All reports of intimidation or bullying should be recorded on a school division incident reporting form and submitted to the principal or designee, unless the designee is the subject of the complaint, and to the bullying prevention coordinator. All reports that have an identified complainant should be investigated.

d. All staff should document oral reports of bullying incidents made to them.

Step 2: Investigating

Upon receipt of a report of bullying, the school principal or designee shall promptly conduct an investigation.

a. When investigating the incident all of the surrounding facts, circumstances, severity, and age/developmental factors should be considered.

b. At each school in the school division, the procedures for investigating bullying should include

1) investigation by a trained individual employed by the school division, and selected by the principal or designee. The designee(s) may not be the accused perpetrator (harasser or bully) or victim.

2) documentation of interviews conducted by the bullying prevention coordinator with the victim, alleged perpetrator, and witnesses (interviews are confidential, and are conducted privately and separately). At no time should the alleged perpetrator and victim be interviewed together.

3) the collection and evaluation of the facts including, but not limited to

   a) a description of the incident(s) including the nature of the behavior and the context in which the alleged incident(s) occurred;

   b) how often the conduct occurred;

   c) whether there were past incidents or past continuing patterns of behavior;

   d) the relationship between the parties involved;

   e) the characteristics of parties involved (i.e., grade, age, gender, ethnicity, etc.);

   f) the identity and number of individuals who participated in bullying or harassing behavior;

   g) where the alleged incident(s) occurred (time/date/place of incident);

   h) whether the conduct adversely affected the student's education or adversely affected the educational environment;

   i) whether an imbalance of power is evident; and

   j) the date, time, and method of informing parents/legal guardians of all parties involved in the incident.

Whether conduct is "substantially interfering with a student's education" should be determined by considering a targeted student's grades, attendance, demeanor, interaction with peers, participation in school and extracurricular activities, and other performance or behavioral indicators. Negative changes in behavior would be particularly noteworthy.

c. Whether a particular action or incident constitutes a violation of bullying prevention policy requires a determination based on all the facts and surrounding circumstances and includes

   1) recommended remedial steps necessary to stop the bullying and/or harassing behavior,

2) a safety plan and follow-up with the victim, and

3) a final written report to the principal.

Step 3: Reporting investigation results

The bullying prevention coordinator should provide a report of the investigation with recommendations to the principal.

Three possible outcomes exist:

a. If the incident falls within the scope of school division policy, appropriate consequences and/or interventions should be implemented. ~~should be assigned~~. The prescribed actions should be designed to prevent and remediate the bullying and should include graduated interventions that are appropriate to the context and severity of the behavior. Appropriate support services should be provided for others affected by the bullying behavior.

b. If the incident falls outside of the scope of school division policy, and/or is determined to be a criminal act, referral should be made to appropriate law enforcement authorities.

c. If the incident falls outside of the scope of school division policy, and is determined ~~to~~ not be a criminal act, the parents/legal guardians of all students involved should be informed.

Step 4: Additional considerations

a. The principal or designee may determine that other steps must be taken before the investigation is complete.

b. The investigation should be completed within two school days from the initial complaint or report. If more time is needed to complete an investigation, the school division should provide all involved parent(s)/guardian(s) and/or the student(s) with weekly updates.

Following the completion of the investigation and the submission to the school division administrator, the principal or designee shall respond to the parent/guardian of the alleged aggressor and victim(s) stating

1) the results of the investigation,

~~1) whether the allegations were found to be substantiated,~~

~~2) 2) whether there was a violation of policy,~~

~~3)~~ 2) if the allegations were substantiated and there was a violation of policy, ~~the prescribed discipline,~~ and

~~4)~~ 3) the process for any party to ~~file an appeal~~ challenge the findings.

If the school principal or designee determines that bullying or retaliation has occurred, the school principal or designee should take appropriate disciplinary action, notify the parents or guardians of the perpetrator, and notify the parents or guardians of the victim. If the school principal or designee believes that the situation is placing the victim in a position of harm or danger, s/he should notify local law enforcement.

Step 5: School division recordkeeping and review

a. It is recommended that statistics regarding the number of incident reports submitted at each school be reported to division level data managers on a monthly or quarterly basis. These summaries should include the number of incidents, and number of students involved, that were substantiated and the number still under investigation. It should also include demographics about those involved in the reported incidents, i.e., each student's grade, race/ethnicity, or other pertinent information. Locations where bullying took place should be noted. Regular review of bullying incident data will aid the school division and school in prevention planning.

b. The statistics about incident reports should parallel the reports of behaviors on the discipline, crime and violence reporting form and have "bullying" disaggregated from other behaviors.

Considerations for students with disabilities:

Any bullying of a student with a disability that results in the student not receiving meaningful educational benefits constitutes a denial of a free appropriate public education (FAPE) under the Individuals with Disabilities Education Act (IDEA). (See Appendix ~~B~~ C.) Furthermore, some bullying of students with disabilities may also constitute discriminatory harassment and trigger additional responsibilities under the civil rights laws. (See Appendix ~~A~~ B.)

School division policies should outline procedures that will be followed when a student with a disability is involved in any bullying incident.

A. Convene the Individualized Education Program (IEP) Team to determine whether, as a result of the effects of the bullying, the student's needs have changed, and if the IEP is no longer designed to provide meaningful educational benefit. The decisions must be made by the IEP Team and be consistent with the IDEA parental participation provisions. Parents have the right to request an IEP Team meeting at any time that a student's needs may have changed as a result of the bullying.

1) If the IEP is no longer designed to provide a meaningful educational benefit to the student, the IEP Team must then determine to what extent additional or different special education or related services are needed to address the student's needs, and revise the IEP accordingly.

2) IEP Teams should exercise caution when considering a change in placement or the location of services and should keep the student in the original placement unless the student can no longer receive FAPE in the least restrictive environment (LRE) placement.

3) The placement of a student with disabilities in a more restrictive "protected" environment setting to avoid bullying behavior may constitute a denial of the IDEA's requirement that the school provide FAPE in the LRE.

4) Schools may not attempt to resolve the bullying situation by unilaterally changing the frequency, duration, intensity, placement, or location of the student's special education and related services.

5) If a student with a disability engages in bullying behavior, the IEP Team should review the student's IEP to determine if additional supports and services are needed to address the inappropriate behavior.

6) The IEP Team and other school personnel should examine the environment in which the bullying occurred to determine if changes to the environment are necessary.

Notification

A school division policy on bullying should include a procedure for providing notification to the parents/legal guardians of an alleged victim of bullying and the parents/legal guardians of the alleged perpetrator of an act of bullying, as well as notification to all local agencies where criminal charges may be pursued against the perpetrator. Such a notice would occur when and if the behavior is determined to reach the level of criminal behavior.

Notification language might be modeled after the following:

The principal, or designee, shall promptly report via telephone, personal conference, and/or in writing, the occurrence of any incident of bullying as defined by this policy to the parent or legal guardian of all students involved on the same day an investigation of the incident(s) has been initiated. Notification must be consistent with the student privacy rights under the applicable provisions of the Family Educational Rights and Privacy Act of 1974 (FERPA).

Once the investigation has been completed and it has been determined that criminal charges may be pursued against the perpetrator, all appropriate local law enforcement agencies should be notified.

Additional considerations:

A. Statement of rights to other legal recourse

This model policy may not be interpreted to prevent a victim of harassment, intimidation or bullying or a victim of cyberbullying from seeking redress or other legal remedies under any other available law, whether civil or criminal.

B. Relationship to other laws

The school division should ensure its compliance with all state and federal laws regarding harassment, intimidation or bullying. Nothing in this model policy or its procedures prevents a student, parent/guardian, school or school division from taking action to remediate harassment or discrimination based on a person's gender or membership in a legally protected class under local, state, or federal law.

C. Procedure to refer victims and perpetrators of bullying for counseling

A school division referral procedure should establish a protocol for intervening when bullying or harassment is suspected or when a bullying incident is reported. School division leadership ~~will~~ should provide a continuum of supports appropriate to the range of possible severity of incidents (from students who could benefit from social skills training to those who will face criminal charges). School policy should include

1. a process by which the teacher or parent/legal guardian may request informal consultation with school staff, such as the school counselor, school psychologist, student assistance specialist/team to determine the severity of concern and appropriate steps to address the concern (the involved students' parents or legal guardian may be included),

2. a referral process to provide professional assistance or services that includes:

    a. a process by which school personnel or a parent/legal guardian may refer a student to the school intervention team (or an equivalent school-based team with a problem-solving focus) for consideration of appropriate services (Parent or legal guardian involvement is required at this point), and

    b. a school-based component to address intervention and assistance as determined appropriate by the intervention team that includes

        1) counseling and support to address the needs of the victims of bullying or harassment,

        2) research-based counseling/interventions to address the behavior of the students who bully and harass others (e.g., empathy training, anger management), and

        3) research-based counseling/interventions which include assistance and support provided to parents/legal guardians, if deemed necessary or appropriate.

Conclusion

In addition to inspiring and educating the mind, one of education's long-standing functions has been the instilling of values and character traits for successful functioning in and movement through society. Educators and administrators in Virginia's public schools have not been ignorant of bullying behavior, it is only recently, however, that social science research has demonstrated the detrimental and devastating impact that unchecked and unaddressed bullying behavior can have on individuals and groups of students, and the whole school climate.

Social and political forces are demanding more humane, civil, and courteous behavior of citizens. These forces make it necessary for school boards and school leadership to adopt explicit policies that regard bullying behavior as unacceptable and intolerable. Schools must seek to prevent bullying and harassing behavior, and they must intervene respectfully and effectively in each particular context so that victims are restored to a settled and peaceful state of being, and aggressors are appropriately corrected, rehabilitated and socialized.

APPENDIX A

Sample ~~Model~~ School Board Policy Regarding Anti-Bullying[3]

Bullying is the systematic and chronic inflicting of physical hurt or psychological distress on another person. ~~one or more students or employees~~. The Code of Virginia at § 22.1-276.01 defines bullying as

> *...any aggressive and unwanted behavior that is intended to harm, intimidate, or humiliate the victim; involves a real or perceived power imbalance between the aggressor or aggressors and victim; and is repeated over time or causes severe emotional trauma. 'Bullying' includes cyber bullying. 'Bullying' does not include ordinary teasing, horseplay, argument, or peer conflict.*

The ABC School Board adopts the definition of bullying as stated in the Code of Virginia and expound upon it for further clarification to ensure an anti-bullying learning environment is maintained in all schools.

Bullying involves physical and emotional behaviors that are intentional, controlling, and hurtful that create harassing, intimidating, hostile or otherwise offensive educational environments. Bullying is unwanted and repeated written, verbal, or physical behavior, including any threatening, insulting, or dehumanizing gesture, by a student or adult, that is severe or pervasive enough to create feelings of intimidation, alienation, or humiliation which unreasonably interfere with the school performance or participation of others.

The ~~Manhasset~~ ABC ~~County~~ School Board is committed to instilling in students ~~and staff~~ the finest values of humanity and civility that civilization knows. ~~We find~~ ~~b~~ Bullying ~~to be~~ is unproductive and unacceptable in ~~our~~ schools. ~~and among the individuals who learn in them, teach in them, and oversee them.~~ Bullying harms the school culture and climate, and ~~harms~~ the individual lives of the victim, the bystander, and the bully. ~~This Board seeks to prevent~~ ~~b~~ Bullying should be prevented ~~in school buildings and among the children and adults who inhabit them~~, and ~~it commits itself to~~ intervention ~~ing~~ should be taken ~~effectively~~ in cases where bullying has been reported or is suspected.

~~Our school~~ Bullying prevention and intervention programming ~~and curricula, in particular the XYZ program which is~~ should include evidenced-based curricula and practices and strategies. ~~and our character education and family life education curricula, serve as a first line of offense in combating bullying in our schools. The behavior of our professional staff, the conduct expected of individuals working in our buildings, and our school guidance curriculum serve to reinforce the XYZ program, character education and family life education curricula. This School Board expects~~ ~~i~~Incidents of bullying are to be reported and investigated as soon as possible. ~~We expect d~~ Developmentally appropriate intervention with students accused of bullying, as well as those identified as the victims, and ~~we expect~~ resolution of all complaints are essential to maintaining a safe learning environment. ~~We expect good r~~ Records are to be kept~~,~~ and ~~we will~~

~~3 The following paragraphs provide a sample school board policy statement.~~

collected, and the data analyzed ~~that data~~ annually. ~~We will report results of the data analysis at our June school board meeting each year.~~

~~We will oversee the hiring of a~~ A bullying prevention coordinator should be designated to oversee program planning and implementation that includes: (1) annual training for faculty, staff and students on how to prevent and identify bullying, how to report suspected bullying, and how to take developmentally appropriate steps to intervene with bullying; (2) procedures for receiving, reporting and investigating complaints; (3) parental involvement; (4) privacy and confidentiality for all involved individuals; and (5) notification of law enforcement when it is suspected a criminal offense may have occurred. ~~, and that s/he communicates these procedures to all individuals employed by the school division. We will see that the school division prevention coordinator maintains contact with administrative and teaching staff in each school building. We will see that all faculty, staff and students receive annual training on how to identify bullying, how to report suspected bullying, and how to take developmentally appropriate steps to intervene with bullying. Our procedures invite anonymous reporting of complaints, and they invite parents into the process of problem resolution and reconciliation. Our process will continue to respect the privacy and confidentiality of all individuals to the extent that we are required to by law.~~ This policy ~~will~~ should be prominently displayed on the ~~school~~ division's and individual school's Web sites and in every school building. ~~and county building~~

APPENDIX A B

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

October 26, 2010

Dear Colleague:

In recent years, many state departments of education and local school districts have taken steps to reduce bullying in schools. The U.S. Department of Education (Department) fully supports these efforts. Bullying fosters a climate of fear and disrespect that can seriously impair the physical and psychological health of its victims and create conditions that negatively affect learning, thereby undermining the ability of students to achieve their full potential. The movement to adopt anti-bullying policies reflects schools' appreciation of their important responsibility to maintain a safe learning environment for all students. I am writing to remind you, however, that some student misconduct that falls under a school's anti-bullying policy also may trigger responsibilities under one or more of the federal antidiscrimination laws enforced by the Department's Office for Civil Rights (OCR). As discussed in more detail below, by limiting its response to a specific application of its anti-bullying disciplinary policy, a school may fail to properly consider whether the student misconduct also results in discriminatory harassment.

The statutes that OCR enforces include Title VI of the Civil Rights Act of 1964[4] (Title VI), which prohibits discrimination on the basis of race, color, or national origin; Title IX of the Education Amendments of 1972[5] (Title IX), which prohibits discrimination on the basis of sex; Section 504 of the Rehabilitation Act of 1973[6] (Section 504); and Title II of the Americans with Disabilities Act of 1990[7] (Title II). Section 504 and Title II prohibit discrimination on the basis of disability.[8] School districts may violate these civil rights statutes and the Department's implementing regulations when peer harassment based on race, color, national origin, sex, or disability is sufficiently serious that it creates a hostile environment and such harassment is encouraged, tolerated, not adequately addressed, or ignored by school employees.[9] School personnel who understand their legal obligations to address harassment under these laws are in the best position to prevent it from occurring and to respond appropriately when it does. Although this letter focuses on the elementary and secondary school context, the legal principles also apply to postsecondary institutions covered by the laws and regulations enforced by OCR.

Some school anti-bullying policies already may list classes or traits on which bases bullying or harassment is specifically prohibited. Indeed, many schools have adopted anti-bullying policies that go beyond prohibiting bullying on the basis of traits expressly protected by the federal civil rights laws enforced by OCR—race, color, national origin, sex, and disability—to include such bases as sexual orientation and religion. While this letter concerns your legal obligations under the laws

[4] 42 U.S.C. § 2000d *et seq.*
[5] 20 U.S.C. § 1681 *et seq*
[6] 29 U.S.C. § 794.
[7] 42 U.S.C. § 12131 *et seq.*
[8] OCR also enforces the Age Discrimination Act of 1975, 42 U.S.C. § 6101 *et seq.*, and the Boy Scouts of America Equal Access Act, 20 U.S.C. § 7905. This letter does not specifically address those statutes.
[9] The Department's regulations implementing these statutes are in 34 C.F.R. parts 100, 104, and 106. Under these federal civil rights laws and regulations, students are protected from harassment by school employees, other students, and third parties. This guidance focuses on peer harassment, and articulates the legal standards that apply in administrative enforcement and in court cases where plaintiffs are seeking injunctive relief.

enforced by OCR, other federal, state, and local laws impose additional obligations on schools.[10] And, of course, even when bullying or harassment is not a civil rights violation, schools should still seek to prevent it in order to protect students from the physical and emotional harms that it may cause.

Harassing conduct may take many forms, including verbal acts and name-calling; graphic and written statements, which may include use of cell phones or the Internet; or other conduct that may be physically threatening, harmful, or humiliating. Harassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents. Harassment creates a hostile environment when the conduct is sufficiently severe, pervasive, or persistent so as to interfere with or limit a student's ability to participate in or benefit from the services, activities, or opportunities offered by a school. When such harassment is based on race, color, national origin, sex, or disability, it violates the civil rights laws that OCR enforces.[11]

A school is responsible for addressing harassment incidents about which it knows or reasonably[12] should have known. In some situations, harassment may be in plain sight, widespread, or well-known to students and staff, such as harassment occurring in hallways, during academic or physical education classes, during extracurricular activities, at recess, on a school bus, or through graffiti in public areas. In these cases, the obvious signs of the harassment are sufficient to put the school on notice. In other situations, the school may become aware of misconduct, triggering an investigation that could lead to the discovery of additional incidents that, taken together, may constitute a hostile environment. In all cases, schools should have well-publicized policies prohibiting harassment and procedures for reporting and resolving complaints that will alert the school to incidents of harassment.[13]

When responding to harassment, a school must take immediate and appropriate action to investigate or otherwise determine what occurred. The specific steps in a school's investigation will vary depending upon the nature of the allegations, the source of the complaint, the age of the student or students involved, the size and administrative structure of the school, and other factors. In all cases, however, the inquiry should be prompt, thorough, and impartial.

If an investigation reveals that discriminatory harassment has occurred, a school must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring. These duties are a school's responsibility

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[10] For instance, the U.S. Department of Justice (DOJ) has jurisdiction over Title IV of the Civil Rights Act of 1964, 42 U.S.C. § 2000c (Title IV), which prohibits discrimination on the basis of race, color, sex, religion, or national origin by public elementary and secondary schools and public institutions of higher learning. State laws also provide additional civil rights protections, so districts should review these statutes to determine what protections they afford (*e.g.*, some state laws specifically prohibit discrimination on the basis of sexual orientation).

[11] Some conduct alleged to be harassment may implicate the First Amendment rights to free speech or expression. For more information on the First Amendment's application to harassment, see the discussions in OCR's Dear Colleague Letter: First Amendment (July 28, 2003), *available at* http://www.ed.gov/about/offices/list/ocr/firstamend.html, and OCR's *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties* (Jan. 19, 2001) (*Sexual Harassment Guidance*), *available at* http://www.ed.gov/about/offices/list/ocr/docs/shguide.html.

[12] A school has notice of harassment if a responsible employee knew, or in the exercise of reasonable care should have known, about the harassment. For a discussion of what a "responsible employee" is, see OCR's *Sexual Harassment Guidance*.

[13] Districts must adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee sex and disability discrimination complaints, and must notify students, parents, employees, applicants, and other interested parties that the district does not discriminate on the basis of sex or disability. *See* 28 C.F.R. § 35.106; 28 C.F.R. § 35.107(b); 34 C.F.R. § 104.7(b); 34 C.F.R. § 104.8; 34 C.F.R. § 106.8(b); 34 C.F.R. § 106.9

even if the misconduct also is covered by an anti-bullying policy, and regardless of whether a student has complained, asked the school to take action, or identified the harassment as a form of discrimination.

Appropriate steps to end harassment may include separating the accused harasser and the target, providing counseling for the target and/or harasser, or taking disciplinary action against the harasser. These steps should not penalize the student who was harassed. For example, any separation of the target from an alleged harasser should be designed to minimize the burden on the target's educational program (*e.g.*, not requiring the target to change his or her class schedule). In addition, depending on the extent of the harassment, the school may need to provide training or other interventions not only for the perpetrators, but also for the larger school community, to ensure that all students, their families, and school staff can recognize harassment if it recurs and know how to respond. A school also may be required to provide additional services to the student who was harassed in order to address the effects of the harassment, particularly if the school initially delays in responding or responds inappropriately or inadequately to information about harassment. An effective response also may need to include the issuance of new policies against harassment and new procedures by which students, parents, and employees may report allegations of harassment (or wide dissemination of existing policies and procedures), as well as wide distribution of the contact information for the district's Title IX and Section 504/Title II coordinators.[14]

Finally, a school should take steps to stop further harassment and prevent any retaliation against the person who made the complaint (or was the subject of the harassment) or against those who provided information as witnesses. At a minimum, the school's responsibilities include making sure that the harassed students and their families know how to report any subsequent problems, conducting follow-up inquiries to see if there have been any new incidents or any instances of retaliation, and responding promptly and appropriately to address continuing or new problems.

When responding to incidents of misconduct, schools should keep in mind the following:

- The label used to describe an incident (*e.g.*, bullying, hazing, teasing) does not determine how a school is obligated to respond. Rather, the nature of the conduct itself must be assessed for civil rights implications. So, for example, if the abusive behavior is on the basis of race, color, national origin, sex, or disability, and creates a hostile environment, a school is obligated to respond in accordance with the applicable federal civil rights statutes and regulations enforced by OCR.
- When the behavior implicates the civil rights laws, school administrators should look beyond simply disciplining the perpetrators. While disciplining the perpetrators is likely a necessary step, it often is insufficient. A school's responsibility is to eliminate the hostile environment created by the harassment, address its effects, and take steps to ensure that harassment does not recur. Put differently, the unique effects of discriminatory harassment may demand a different response than would other types of bullying.

Below, I provide hypothetical examples of how a school's failure to recognize student misconduct as discriminatory harassment violates students' civil rights.[15] In each of the examples, the school was on Notice of the harassment because either the school or a responsible employee knew or should have

[14] Districts must designate persons responsible for coordinating compliance with Title IX, Section 504, and Title II, including the investigation of any complaints of sexual, gender-based, or disability harassment. *See* 28 C.F.R. § 35.107(a); 34 C.F.R. § 104.7(a); 34 C.F.R. § 106.8(a).

[15] Each of these hypothetical examples contains elements taken from actual cases.

known of misconduct that constituted harassment. The examples describe how the school should have responded in each circumstance.

Title VI: Race, Color, or National Origin Harassment

Some students anonymously inserted offensive notes into African-American students' lockers and notebooks, used racial slurs, and threatened African-American students who tried to sit near them in the cafeteria. Some African-American students told school officials that they did not feel safe at school. The school investigated and responded to individual instances of misconduct by assigning detention to the few student perpetrators it could identify. However, racial tensions in the school continued to escalate to the point that several fights broke out between the school's racial groups.

In this example, school officials failed to acknowledge the pattern of harassment as indicative of a racially hostile environment in violation of Title VI. Misconduct need not be directed at a particular student to constitute discriminatory harassment and foster a racially hostile environment. Here, the harassing conduct included overtly racist behavior (*e.g.*, racial slurs) and also targeted students on the basis of their race (*e.g.*, notes directed at African-American students). The nature of the harassment, the number of incidents, and the students' safety concerns demonstrate that there was a racially hostile environment that interfered with the students' ability to participate in the school's education programs and activities.

Had the school recognized that a racially hostile environment had been created, it would have realized that it needed to do more than just discipline the few individuals whom it could identify as having been involved. By failing to acknowledge the racially hostile environment, the school failed to meet its obligation to implement a more systemic response to address the unique effect that the misconduct had on the school climate. A more effective response would have included, in addition to punishing the perpetrators, such steps as reaffirming the school's policy against discrimination (including racial harassment), publicizing the means to report allegations of racial harassment, training faculty on constructive responses to racial conflict, hosting class discussions about racial harassment and sensitivity to students of other races, and conducting outreach to involve parents and students in an effort to identify problems and improve the school climate. Finally, had school officials responded appropriately and aggressively to the racial harassment when they first became aware of it, the school might have prevented the escalation of violence that occurred.[16]

Over the course of a school year, school employees at a junior high school received reports of several incidents of anti-Semitic conduct at the school. Anti-Semitic graffiti, including swastikas, was scrawled on the stalls of the school bathroom. When custodians discovered the graffiti and reported it to school administrators, the administrators ordered the graffiti removed but took no further action. At the same school, a teacher caught two ninth-graders trying to force two seventh-graders to give them money. The ninth-graders told the seventh-graders, "You Jews have all of the money, give us some." When school administrators investigated the incident, they determined that the seventh-graders were not actually Jewish. The school suspended the perpetrators for a week because of the serious nature of their misconduct. After that incident, younger Jewish students started avoiding the school library and computer lab because they were located in the corridor housing the lockers of the ninth-graders. At the same school, a group of eighth-grade students

[16] More information about the applicable legal standards and OCR's approach to investigating allegations of harassment on the basis of race, color, or national origin is included in *Racial Incidents and Harassment Against Students at Educational Institutions: Investigative Guidance*, 59 Fed. Reg. 11,448 (Mar. 10, 1994), *available at* http://www.ed.gov/about/offices/list/ocr/docs/race394.html.

repeatedly called a Jewish student "Drew the dirty Jew." The responsible eighth-graders were reprimanded for teasing the Jewish student.

The school administrators failed to recognize that anti-Semitic harassment can trigger responsibilities under Title VI. While Title VI does not cover discrimination based solely on religion,[17] groups that face discrimination on the basis of actual or perceived shared ancestry or ethnic characteristics may not be denied protection under Title VI on the ground that they also share a common faith. These principles apply not just to Jewish students, but also to students from any discrete religious group that shares, or is perceived to share, ancestry or ethnic characteristics (*e.g.*, Muslims or Sikhs). Thus, harassment against students who are members of any religious group triggers a school's Title VI responsibilities when the harassment is based on the group's actual or perceived shared ancestry or ethnic characteristics, rather than solely on its members' religious practices. A school also has responsibilities under Title VI when its students are harassed based on their actual or perceived citizenship or residency in a country whose residents share a dominant religion or a distinct religious identity.[18]

In this example, school administrators should have recognized that the harassment was based on the students' actual or perceived shared ancestry or ethnic identity as Jews (rather than on the students' religious practices). The school was not relieved of its responsibilities under Title VI because the targets of one of the incidents were not actually Jewish. The harassment was still based on the perceived ancestry or ethnic characteristics of the targeted students. Furthermore, the harassment negatively affected the ability and willingness of Jewish students to participate fully in the school's education programs and activities (*e.g.*, by causing some Jewish students to avoid the library and computer lab). Therefore, although the discipline that the school imposed on the perpetrators was an important part of the school's response, discipline alone was likely insufficient to remedy a hostile environment. Similarly, removing the graffiti, while a necessary and important step, did not fully satisfy the school's responsibilities. As discussed above, misconduct that is not directed at a particular student, like the graffiti in the bathroom, can still constitute discriminatory harassment and foster a hostile environment. Finally, the fact that school officials considered one of the incidents "teasing" is irrelevant for determining whether it contributed to a hostile environment.

Because the school failed to recognize that the incidents created a hostile environment, it addressed each only in isolation, and therefore failed to take prompt and effective steps reasonably calculated to end the harassment and prevent its recurrence. In addition to disciplining the perpetrators, remedial steps could have included counseling the perpetrators about the hurtful effect of their conduct, publicly labeling the incidents as anti-Semitic, reaffirming the school's policy against discrimination, and publicizing the means by which students may report harassment. Providing teachers with training to recognize and address anti-Semitic incidents also would have increased the effectiveness of the school's response. The school could also have created an age-appropriate program to educate its students about the history and dangers of anti-Semitism, and could have conducted outreach to involve parents and community groups in preventing future anti-Semitic harassment.

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[17] As noted in footnote seven, DOJ has the authority to remedy discrimination based solely on religion under Title IV.

[18] More information about the applicable legal standards and OCR's approach to investigating complaints of discrimination against members of religious groups is included in OCR's Dear Colleague Letter: Title VI and Title IX Religious Discrimination in Schools and Colleges (Sept. 13, 2004), *available at* http://www2.ed.gov/about/offices/list/ocr/religious-rights2004.html.

Title IX: Sexual Harassment

Shortly after enrolling at a new high school, a female student had a brief romance with another student. After the couple broke up, other male and female students began routinely calling the new student sexually charged names, spreading rumors about her sexual behavior, and sending her threatening text messages and e-mails. One of the student's teachers and an athletic coach witnessed the name calling and heard the rumors, but identified it as "hazing" that new students often experience. They also noticed the new student's anxiety and declining class participation. The school attempted to resolve the situation by requiring the student to work the problem out directly with her harassers.

Sexual harassment is unwelcome conduct of a sexual nature, which can include unwelcome sexual advances, requests for sexual favors, or other verbal, nonverbal, or physical conduct of a sexual nature. Thus, sexual harassment prohibited by Title IX can include conduct such as touching of a sexual nature; making sexual comments, jokes, or gestures; writing graffiti or displaying or distributing sexually explicit drawings, pictures, or written materials; calling students sexually charged names; spreading sexual rumors; rating students on sexual activity or performance; or circulating, showing, or creating e-mails or Web sites of a sexual nature.

In this example, the school employees failed to recognize that the "hazing" constituted sexual harassment. The school did not comply with its Title IX obligations when it failed to investigate or remedy the sexual harassment. The conduct was clearly unwelcome, sexual (*e.g.*, sexual rumors and name calling), and sufficiently serious that it limited the student's ability to participate in and benefit from the school's education program (*e.g.*, anxiety and declining class participation). The school should have trained its employees on the type of misconduct that constitutes sexual harassment. The school also should have made clear to its employees that they could not require the student to confront her harassers. Schools may use informal mechanisms for addressing harassment, but only if the parties agree to do so on a voluntary basis. Had the school addressed the harassment consistent with Title IX, the school would have, for example, conducted a thorough investigation and taken interim measures to separate the student from the accused harassers. An effective response also might have included training students and employees on the school's policies related to harassment, instituting new procedures by which employees should report allegations of harassment, and more widely distributing the contact information for the district's Title IX coordinator. The school also might have offered the targeted student tutoring, other academic assistance, or counseling as necessary to remedy the effects of the harassment.[19]

Title IX: Gender-Based Harassment

Over the course of a school year, a gay high school student was called names (including anti-gay slurs and sexual comments) both to his face and on social networking sites, physically assaulted, threatened, and ridiculed because he did not conform to stereotypical notions of how teenage boys are expected to act and appear (e.g., effeminate mannerisms, nontraditional choice of extracurricular activities, apparel, and personal grooming choices). As a result, the student dropped out of the drama club to avoid further harassment. Based on the student's self-identification as gay and the homophobic nature of some of the harassment, the school did not recognize that the misconduct included discrimination covered by Title IX. The school responded to complaints from the student by reprimanding the perpetrators consistent with its anti-bullying policy. The reprimands

[19] More information about the applicable legal standards and OCR's approach to investigating allegations of sexual harassment is included in OCR's *Sexual Harassment Guidance, available at* http://www.ed.gov/about/offices/list/ocr/docs/shguide.html.

of the identified perpetrators stopped the harassment by those individuals. It did not, however, stop others from undertaking similar harassment of the student.

As noted in the example, the school failed to recognize the pattern of misconduct as a form of sex discrimination under Title IX. Title IX prohibits harassment of both male and female students regardless of the sex of the harasser—*i.e.*, even if the harasser and target are members of the same sex. It also prohibits gender-based harassment, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping. Thus, it can be sex discrimination if students are harassed either for exhibiting what is perceived as a stereotypical characteristic for their sex, or for failing to conform to stereotypical notions of masculinity and femininity. Title IX also prohibits sexual harassment and gender-based harassment of all students, regardless of the actual or perceived sexual orientation or gender identity of the harasser or target.

Although Title IX does not prohibit discrimination based solely on sexual orientation, Title IX does protect all students, including lesbian, gay, bisexual, and transgender (LGBT) students, from sex discrimination. When students are subjected to harassment on the basis of their LGBT status, they may also, as this example illustrates, be subjected to forms of sex discrimination prohibited under Title IX. The fact that the harassment includes anti-LGBT comments or is partly based on the target's actual or perceived sexual orientation does not relieve a school of its obligation under Title IX to investigate and remedy overlapping sexual harassment or gender-based harassment. In this example, the harassing conduct was based in part on the student's failure to act as some of his peers believed a boy should act. The harassment created a hostile environment that limited the student's ability to participate in the school's education program (*e.g.*, access to the drama club). Finally, even though the student did not identify the harassment as sex discrimination, the school should have recognized that the student had been subjected to gender-based harassment covered by Title IX.

In this example, the school had an obligation to take immediate and effective action to eliminate the hostile environment. By responding to individual incidents of misconduct on an *ad hoc* basis only, the school failed to confront and prevent a hostile environment from continuing. Had the school recognized the conduct as a form of sex discrimination, it could have employed the full range of sanctions (including progressive discipline) and remedies designed to eliminate the hostile environment. For example, this approach would have included a more comprehensive response to the situation that involved notice to the student's teachers so that they could ensure the student was not subjected to any further harassment, more aggressive monitoring by staff of the places where harassment occurred, increased training on the scope of the school's harassment and discrimination policies, notice to the target and harassers of available counseling services and resources, and educating the entire school community on civil rights and expectations of tolerance, specifically as they apply to gender stereotypes. The school also should have taken steps to clearly communicate the message that the school does not tolerate harassment and will be responsive to any information about such conduct.[20]

Section 504 and Title II: Disability Harassment

Several classmates repeatedly called a student with a learning disability "stupid," "idiot," and "retard" while in school and on the school bus. On one occasion, these students tackled him, hit him with a school binder, and threw his personal items into the garbage. The student complained to his teachers and guidance counselor that he was continually being taunted and teased. School officials offered him counseling services and a psychiatric evaluation, but did not discipline the

[20] Guidance on gender-based harassment is also included in OCR's *Sexual Harassment Guidance, available at* http://www.ed.gov/about/offices/list/ocr/docs/shguide.html.

offending students. As a result, the harassment continued. The student, who had been performing well academically, became angry, frustrated, and depressed, and often refused to go to school to avoid the harassment.

In this example, the school failed to recognize the misconduct as disability harassment under Section 504 and Title II. The harassing conduct included behavior based on the student's disability, and limited the student's ability to benefit fully from the school's education program (*e.g.*, absenteeism). In failing to investigate and remedy the misconduct, the school did not comply with its obligations under Section 504 and Title II. Counseling may be a helpful component of a remedy for harassment. In this example, however, since the school failed to recognize the behavior as disability harassment, the school did not adopt a comprehensive approach to eliminating the hostile environment. Such steps should have at least included disciplinary action against the harassers, consultation with the district's Section 504/Title II coordinator to ensure a comprehensive and effective response, special training for staff on recognizing and effectively responding to harassment of students with disabilities, and monitoring to ensure that the harassment did not resume.[21]

I encourage you to reevaluate the policies and practices your school uses to address bullying[22]and harassment to ensure that they comply with the mandates of the federal civil rights laws. For your convenience, the following is a list of online resources that further discuss the obligations of districts to respond to harassment prohibited under the federal antidiscrimination laws enforced by OCR:

- *Sexual Harassment: It's Not Academic* (Revised 2008): http://www.ed.gov/about/offices/list/ocr/docs/ocrshpam.html
- *Dear Colleague Letter: Sexual Harassment Issues* (2006): http://www2.ed.gov/about/offices/list/ocr/letters/sexhar-2006.html
- *Dear Colleague Letter: Religious Discrimination* (2004): http://www2.ed.gov/about/offices/list/ocr/religious-rights2004.html
- *Dear Colleague Letter: First Amendment* (2003): http://www.ed.gov/about/offices/list/ocr/firstamend.html
- *Sexual Harassment Guidance* (Revised 2001): http://www.ed.gov/about/offices/list/ocr/docs/shguide.html
- *Dear Colleague Letter: Prohibited Disability Harassment* (2000): http://www.ed.gov/about/offices/list/ocr/docs/disabharassltr.html
- *Racial Incidents and Harassment Against Students* (1994): http://www.ed.gov/about/offices/list/ocr/docs/race394.html

[21] More information about the applicable legal standards and OCR's approach to investigating allegations of disability harassment is included in OCR's Dear Colleague Letter: Prohibited Disability Harassment (July 25, 2000), available at http://www2.ed.gov/about/offices/list/ocr/docs/disabharassltr.html.

[22] For resources on preventing and addressing bullying, please visit http://www.bullyinginfo.org, a Web site established by a federal Interagency Working Group on Youth Programs. For information on the Department's bullying prevention resources, please visit the Office of Safe and Drug-Free Schools' Web site at http://www.ed.gov/offices/OESE/SDFS. For information on regional Equity Assistance Centers that assist schools in developing and implementing policies and practices to address issues regarding race, sex, or national origin discrimination, please visit http://www.ed.gov/programs/equitycenters.

Please also note that OCR has added new data items to be collected through its Civil Rights Data Collection (CRDC), which surveys school districts in a variety of areas related to civil rights in education. The CRDC now requires districts to collect and report information on allegations of harassment, policies regarding harassment, and discipline imposed for harassment. In 2009-10, the CRDC covered nearly 7,000 school districts, including all districts with more than 3,000 students. For more information about the CRDC data items, please visit http://www2.ed.gov/about/offices/list/ocr/whatsnew.html.

OCR is committed to working with schools, students, students' families, community and advocacy organizations, and other interested parties to ensure that students are not subjected to harassment. Please do not hesitate to contact OCR if we can provide assistance in your efforts to address harassment or if you have other civil rights concerns.

For the OCR regional office serving your state, please visit: http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm, or call OCR's Customer Service Team at 1.8000.421.3481.

I look forward to continuing our work together to ensure equal access to education, and to promote safe and respectful school climates for America's students.

Sincerely,

/s/

Russlynn Ali
Assistant Secretary for Civil Rights

APPENDIX ~~B~~ C

UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABIITATIVE SERVICES

Aug. 20, 2013

Dear Colleague:

The U.S. Department of Education's Office of Special Education and Rehabilitative Services (OSERS) is committed to working with States to ensure that school districts provide all children with positive, safe, and nurturing school environments in which they can learn, develop, and participate. OSERS is issuing this letter to provide an overview of a school district's responsibilities under the Individuals with Disabilities Education Act (IDEA) to address bullying of students with disabilities.[23]

As discussed in this letter, and consistent with prior Dear Colleague Letters the Department has published, bullying of a student with a disability that results in the student not receiving meaningful educational benefit constitutes a denial of a free appropriate public education (FAPE) under the IDEA that must be remedied.[24] However, even when situations do not rise to a level that constitutes a denial of FAPE, bullying can undermine a student's ability to achieve his or her full academic potential. Attached to this letter are specific strategies that school districts and schools[25] can implement to effectively prevent and respond to bullying, and resources for obtaining additional information.

Bullying of any student by another student, for any reason, cannot be tolerated in our schools.[26] Bullying is no longer dismissed as an ordinary part of growing up, and every effort should be made to structure environments and provide supports to students and staff so that bullying does not occur. Teachers and adults should respond quickly and consistently to bullying behavior and send a message that bullying is not acceptable. Intervening immediately to stop bullying on the spot can help ensure a safer school environment.

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[23] This letter is intended to supplement the July 25, 2000, joint Dear Colleague Letter from OSERS and the Department's Office for Civil Rights (OCR), which addressed disability harassment under Section 504 of the Rehabilitation Act of 1973 (Section 504), Title II of the Americans with Disabilities Act of 1990 (Title II of the ADA), and the IDEA (available at: http://www.ed.gov/ocr/docs/disabharassltr.html).

[24] Some bullying of students with disabilities may also constitute discriminatory harassment and trigger additional responsibilities under the civil rights laws that OCR enforces, including Section 504, Title II of the ADA, Title VI of the Civil Rights Act of 1964, and Title IX of the Education Amendments of 1972. See OCR's October 26, 2010, Dear Colleague Letter on Harassment and Bullying (available at: http://www.ed.gov/ocr/letters/colleague-201010.html).

[25] In the context of this letter "school" includes public preschools; elementary, middle, and high schools; and public agencies, including the State Educational Agency (SEA), Educational Service Agencies (ESA), Local Educational Agencies (LEA), nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities. See 34 C.F.R. §300.33.

[26] Although the focus of this letter is peer-to-peer bullying, it is important to acknowledge that it is also intolerable for teachers and school staff to be party promptly addressing any problematic behaviors.

Bullying is characterized by aggression used within a relationship where the aggressor(s) has more real or perceived power than the target, and the aggression is repeated, or has the potential to be repeated, over time. Bullying can involve overt physical behavior or verbal, emotional, or social behaviors (*e.g.,* excluding someone from social activities, making threats, withdrawing attention, destroying someone's reputation) and can range from blatant aggression to far more subtle and covert behaviors. Cyberbullying, or bullying through electronic technology (*e.g.,* cell phones, computers, online/social media), can include offensive text messages or e-mails, rumors or embarrassing photos posted on social networking sites, or fake online profiles.

Addressing and reporting bullying is critical. Students who are targets of bullying behavior are more likely to experience lower academic achievement and aspirations, higher truancy rates, feelings of alienation from school, poor relationships with peers, loneliness, or depression.[27] Bystanders, or those who only see or hear about bullying, also may be negatively affected as bullying tends to have harmful effects on overall school climate. Bullying can foster fear and disrespect and negatively affect the school experience, norms, and relationships of all students, families, and school personnel.[28] The consequences may result in students changing their patterns of school participation or schools eliminating school activities (*e.g.,* dances, sporting events) where bullying has occurred. Teachers, school personnel, parents, and students should report bullying when they become aware of it.

Students with disabilities are disproportionately affected by bullying.[29] For example, students with learning disabilities, attention deficit or hyperactivity disorder, and autism are more likely to school bullying and disability harassment (*i.e.,* being active participants in bullying), or observers to school bullying without taking action to address the behavior. While teacher-student disability harassment also may constitute a denial of FAPE, those issues are beyond the scope of this letter. We recommend that States and school districts consult with legal counsel regarding their responsibilities and duties in cases of bullying that involve school personnel, including taking the matter seriously, and promptly addressing any problematic behaviors. to be bullied than their peers.[30] Any number of factors -- physical characteristics, processing and social skills, or intolerant environments -- may increase the risk that students with disabilities will be bullied. Due to the characteristics of their disabilities, students with intellectual, communication, processing, or emotional disabilities may not understand the extent to which bullying behaviors are harmful, or may be unable to make the situation known to an adult who can help. In circumstances involving a student who has not previously been identified as a child with a disability under the IDEA, bullying may also trigger a school's child find obligations under the IDEA. 34 C.F.R. §§300.111, 300.201.

Whether or not the bullying is related to the student's disability, any bullying of a student with a disability that results in the student not receiving meaningful educational benefit constitutes a

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[27] Gini G., & Pozzoli T. (2009). Association between bullying and psychosomatic problems: A meta-analysis. *Pediatrics,* 123(3):1059-1065.

[28] O'Brennan, L. M., Bradshaw, C. P., & Sawyer, A. L. (2009). Examining developmental differences in the social-emotional problems among frequent bullies, victim, and bully/victims. Psychology in the Schools, 46(2), 100-115.

[29] Swearer, S. M., Wang, C., Maag, J. M., Siebecker, A., B., & Frerichs, L. J. (2012). Understanding the bullying dynamic among students in special and general education. *Journal of School Psychology, 50,* 503-520.

[30] Twyman, K. A., Saylor, C. F., Saia, D., Macias, M. M., Taylor, L. A., & Spratt, E. (2010). Bullying and ostracism experiences in children with special health care needs. *Journal of Developmental Behavioral Pediatrics, 31,* 1-8.

denial of FAPE under the IDEA that must be remedied.[31] States and school districts have a responsibility under the IDEA, 20 U.S.C. § 1400, *et seq.*, to ensure that FAPE in the least restrictive environment (LRE) is made available to eligible students with disabilities. In order for a student to receive FAPE, the student's individualized education program (IEP) must be reasonably calculated to provide meaningful educational benefit.[32]

Schools have an obligation to ensure that a student with a disability who is the target of bullying behavior continues to receive FAPE in accordance with his or her IEP. The school should, as part of its appropriate response to the bullying, convene the IEP Team to determine whether, as a result of the effects of the bullying, the student's needs have changed such that the IEP is no longer designed to provide meaningful educational benefit. If the IEP is no longer designed to provide a meaningful educational benefit to the student, the IEP Team must then determine to what extent additional or different special education or related services are needed to address the student's individual needs; and revise the IEP accordingly. Additionally, parents have the right to request an IEP Team meeting at any time, and public agencies generally must grant a parental request for an IEP Team meeting where a student's needs may have changed as a result of bullying. The IDEA placement team (usually the same as the IEP Team) should exercise caution when considering a change in the placement or the location of services provided to the student with a disability who was the target of the bullying behavior and should keep the student in the original placement unless the student can no longer receive FAPE in the current LRE placement. While it may be appropriate to consider whether to change the placement of the child who was the target of the bullying behavior, placement teams should be aware that certain changes to the education program of a student with a disability (*e.g.*, placement in a more restrictive "protected" setting to avoid bullying behavior) may constitute a denial of the IDEA's requirement that the school provide FAPE in the LRE. Moreover, schools may not attempt to resolve the bullying situation by unilaterally changing the frequency, duration, intensity, placement, or location of the student's special education and related services. These decisions must be made by the IEP Team and consistent with the IDEA provisions that address parental participation.

If the student who engaged in the bullying behavior is a student with a disability, the IEP Team should review the student's IEP to determine if additional supports and services are needed to address the inappropriate behavior. In addition, the IEP Team and other school personnel should consider examining the environment in which the bullying occurred to determine if changes to the environment are warranted.

As discussed above, any bullying of a student with a disability that results in the student not receiving meaningful educational benefit from the special education and related services provided by the school is a denial of FAPE. A student must feel safe in school in order to fulfill his or her full academic potential. We encourage States and school districts to alert Boards of Education, school administrators, teachers, and staff that bullying can result in a denial of FAPE for students with disabilities. We also encourage States and school districts to reevaluate their

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[31] OCR also has authority to investigate complaints alleging denial of FAPE under Section 504 and Title II. See the July 25, 2000, joint Dear Colleague Letter on Disability Harassment; (available at: http://www.ed.gov/ocr/docs/disabharassltr.html); and OCR's October 26, 2010, Dear Colleague Letter on Harassment and Bullying (available at: http://www.ed.gov/ocr/letters/colleague-201010.html).

[32] See *Hendrick Hudson Central Sch. Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176, 201 (1982).

policies and practices addressing problematic behaviors, including bullying, in light of the information provided in this letter, as well as in OSERS' July 25, 2000, joint Dear Colleague Letter and OCR's October 26, 2010, Dear Colleague Letter. The enclosure to this letter, "Effective Evidence-based Practices for Preventing and Addressing Bullying," includes practices for use as part of any bullying prevention and intervention program to help ensure that school and classroom settings are positive, safe, and nurturing environments for all children and adults.

We look forward to continuing to work with you to ensure that students with disabilities have access to high-quality services in positive, safe, and respectful school environments.

Sincerely,

Melody Musgrove, Ed. D.
Director
Office of Special Education Programs

Michael K. Yudin
Acting Assistant Secretary

Enclosure: Effective Evidence-based Practices for Preventing and Addressing Bullying

Enclosure

Effective Evidence-based Practices for Preventing and Addressing Bullying

There is no one-size-fits-all or simple solution for addressing bullying behavior. Rather, efforts to prevent and address bullying behavior should be embedded within a comprehensive, multitiered behavioral framework used to establish a positive school environment, set high academic and behavioral expectations for all students, and guide delivery of evidence-based instruction and interventions that address the needs of students, including students with disabilities. In such a framework, policies and practices would be aligned and consistently implemented school wide; that is, across general and special education, each grade level, and in all school settings and activities. Data-based decision making would be used to identify needs, analyze problem situations, outline clear evidence-based practices to be used in delivery of instruction and implementation of interventions, and monitor progress toward clear, positive academic and behavioral outcomes as part of an ongoing, continuous improvement model.

When deciding which strategy or strategies to use to address bullying behavior, each school needs to consider the relevant factors given its school environment, students' social and cognitive development, and the evidence on programmatic prevention and intervention. Teachers, administrators, and staff understand that students' social behavior affects their academic learning. In many high-performing schools, academic instruction is combined with effective behavioral supports to maximize academic engagement and in turn, student achievement. That is, successful schools focus on decreasing academic failure and problem behaviors, including bullying, and increasing opportunities for all students to fully participate in learning. There is a growing body of research on promising school bullying interventions that can inform practice. For example, a meta-analysis of research across a 25-year period found that school bullying prevention programs led to changes in knowledge, attitudes, and self-perceptions of those targeted by bullying, engaging in bullying, and bystanders.[1] Another meta-analysis of school-based programs implemented in the United States and internationally to reduce bullying concluded that overall school-based antibullying programs were often effective in reducing bullying, and identified program elements (*i.e.,* critical practices or strategies) associated with effective programs; but results varied based on context.[2] Experimental research has also demonstrated lower rates of bullying and peer rejection when critical practices or strategies were used within a multitiered behavioral framework.[3]

The following effective evidence-based practices are found in many multitiered behavioral frameworks. We encourage you to carefully consider each of these practices as part of any bullying prevention and intervention program you undertake to help ensure that your school and classroom settings are positive, safe, and nurturing environments for all children and adults.

[1] Merrell, K. W., Gueldner, B. A., Ross, S. W., & Isava, D. M. (2008). How effective are school bullying intervention programs? Meta-analysis of intervention research. *School Psychology Quarterly, 23*, 26-42.

[2] Farrington, D. P., & Ttofi, M. M. (2009). School-based programs to reduce bullying and victimization. *Campbell Systemic Reviews, 2009:6.*

[3] Bradshaw, C. P., Mitchell, M. M., & Leaf, P. J. (2010). Examining the effects of school-wide Positive Behavioral Interventions and Supports on student outcomes: Results from a randomized controlled effectiveness trial in elementary schools. *Journal of Positive Behavior Interventions, 12*, 133-148.

Use a comprehensive multitiered behavioral framework

Just as important as determining which strategies will be used is knowing how, when, and by whom those strategies will be implemented. Evidence-based instructional and intervention strategies for preventing and addressing bullying of students, including students with disabilities, are most effective when used as part of a comprehensive multitiered behavioral framework that engages the whole school community, and establishes and maintains positive, safe, and nurturing school environments conducive to learning for all students. Providing clear and formal instruction for all students, and staff on how to behave in respectful and responsible ways across all school settings and activities is a vital component of this approach.

Issues related to the bullying of students with disabilities should be included in the topics addressed by the school's comprehensive multitiered behavioral framework, and also as a specific area of focus in policies and practices addressing behavioral expectations. In addition to implementing certain steps for the whole school (*e.g.,* consistent rules and rewards for good behavior), a comprehensive multitiered behavioral framework of instruction and interventions also includes using strategies that address bullying and other problematic behaviors, such as steps for groups of students exhibiting at-risk behavior and individual services for students who continue to exhibit troubling behavior.

Using a comprehensive multitiered behavioral framework for making decisions on identifying, implementing, and evaluating effective evidence-based practices helps schools to: (a) organize evidence-based practices, including those that will be used to address bullying of students with disabilities; (b) support the use of evidence-based practices according to the practice guidelines; and (c) monitor the outcomes for students to determine the effectiveness of the evidence-based practices and need for any additional instruction and intervention. Preventing and addressing bullying of students with disabilities needs to be aligned with, and embedded as part of each school's comprehensive multitiered behavioral planning, and given explicit consideration to ensure that the individual needs of each student with a disability are addressed fully in the school-wide plans for creating and sustaining a positive, safe, and nurturing school environment.

One example of a multitiered behavior framework that school personnel can use to plan, implement, and evaluate evidence-based instruction and intervention practices is Positive Behavioral Interventions and Supports (PBIS). The PBIS framework can help to create an appropriate social culture, learning and teaching environment, achieve academic and social success, and minimize problem behavior, including reducing the risks and decreasing the occurrence of bullying. Using this multitiered framework, school personnel establish a continuum of evidence-based behavioral practices that include school-wide strategies, more intense strategies for groups of students exhibiting at-risk behaviors, and individual services for students who continue to exhibit problematic behavior and need additional support.[4] Rather than offering a packaged curriculum, a manualized strategy, or a prescripted intervention, PBIS provides school personnel with a decision-making structure that they can use to identify, implement, and evaluate effective evidence-based instruction and intervention strategies within a comprehensive multitiered framework to prevent and respond to bullying in their school setting.[5] By outlining a comprehensive school-wide approach with

[4] Bradshaw et al. (2010).

[5] Sugai, G., Horner, R.H., Algozzine, R., Barrett, S., Lewis, T., Anderson, C., Bradley, R., Choi, J. H., Dunlap, G., Eber, L., George, H., Kincaid, D., McCart, A., Nelson, M., Newcomer, L., Putnam, R., Riffel, L., Rovins, M., Sailor, W., & Simonsen, B. (2010). *School-Wide Positive Behavior Support: Implementers' Blueprint and Self-Assessment.* Eugene, OR: University of Oregon.

multitiered instruction and intervention, schools work to create school cultures that prevent the development and reduce the occurrence of bullying. In addition, schools are prepared to respond to problematic behavior using a team-based, data-driven problem-solving process when needed.

The following are practices found in many effective, evidence-based behavioral prevention and intervention school-wide frameworks.

Teach appropriate behaviors and how to respond

Preventing bullying begins by actively and formally teaching all students and all school personnel: (1) what behaviors are expected at school and during school activities; (2) what bullying looks like; and (3) how to appropriately respond to any bullying that does occur. Specifically, clear behavioral expectations are taught to students and adults in the same manner as any core curriculum subject.[6] Consistency in behavioral expectations from class to class, adult to adult, and across settings is very important in establishing shared and predictable expectations that both students and school personnel understand and follow.

Provide active adult supervision

Adults play an important role in actively supervising and intervening early to correct behavior problems, especially in common areas (*e.g.,* hallways, cafeteria, playgrounds, and extracurricular events). By moving continuously throughout an area and having positive interactions with students, adults are able to teach and model expected behavior and routines, notice and reward appropriate behavior, and intervene early so that minor rule violations are handled effectively before problematic behaviors escalate.

Train and provide ongoing support for staff and students

Training, ongoing professional development, and support, including coaching, to all personnel on the use of effective evidence-based strategies for responding to inappropriate behavior, including bullying, as well as evidence-based instruction and classroom management practices, are important tools to ensure that school staff are equipped to effectively address bullying. In addition, clear guidance on legal requirements, policy, and practice implications for students with disabilities needs to be explicitly provided in training.

School personnel need to be aware that students with disabilities are significantly more likely than their peers without disabilities to be the targets of bullying.[7] Any number of factors may explain their increased risk of being bullied, including but not limited to the student's physical characteristics, processing and social skills, or simply being in environments with others who are intolerant.

[6] Sugai et al. (2010).

[7] Young, J., Ne'eman, A., & Gelser, S. (2011). *Bullying and Students with Disabilities. A Briefing Paper from the National Council on Disability.* Washington, DC: National Council on Disability (available at: http://www.ncd.gov/publications/2011/March92011http://www.ncd.gov/publications/2011/March92011).

Training is essential in helping school personnel recognize the different forms of bullying that may be directed at students with disabilities, and the unique vulnerabilities these students may have to social isolation, manipulation, conditional friendships, and exploitive behaviors. Students, with and without disabilities, do not always recognize problem behaviors as bullying, or may be reluctant to stand up for themselves or others, seek help, or report bullying due to fear of retaliation, particularly if adults are involved. Due to the complexities of their disabilities, students with intellectual, communication, processing, or emotional disabilities may not understand manipulation or exploitive behavior as harmful, or have the knowledge and skills to explain the situation to an adult who can help.

All students should receive clear, explicit instruction on how to respond to and report bullying. For students with disabilities, instruction on how to respond to and report bullying needs to be provided in a manner consistent with their IEPs and any accommodations that are provided to support learning. In addition, school staff should monitor for bullying and its possible effects on FAPE for students with disabilities, as it is not sufficient for school personnel to rely only on students to report bullying or identify how the bullying is interfering with FAPE.

Develop and implement clear policies to address bullying

We encourage schools to develop clear policies and procedures, consistent with Federal, State, and local laws, to prevent and appropriately address bullying of students, including students with disabilities.[9] In these antibullying policies, schools may want to include a reminder that harassment against a student on the basis of disability and retaliation against any student or other person are also prohibited under Section 504, Title II, and other Federal civil rights laws enforced by the U.S. Department of Education's Office for Civil Rights.[10]

Schools should widely disseminate their antibullying policies and procedures to staff, parents, and students, and post the policies in the school and on the school's website. Any published policies and procedures must be accessible to students with visual or other disabilities. Schools should provide ongoing training to staff, parents, and students on their antibullying policies and procedures so that everyone in the school community is aware that bullying behavior will not be tolerated.

When bullying occurs, school personnel need to respond quickly, to act in accordance with school policies and procedures, and to address the issue in a professional manner. School personnel should be sure to document the response to a bullying incident in writing.

[8] Young et al. (2011).

[9] Under Title II and Section 504, school districts must notify students, parents, and school personnel (including persons with impaired vision or hearing) that the district does not discriminate on the basis of disability; must adopt grievance procedures providing for the prompt and equitable resolution of complaints alleging disability discrimination (including harassment); and must designate at least one person to coordinate compliance with those laws. See 28 C.F.R. § 35.106; 28 C.F.R. § 35.107; 34 C.F.R. § 104.7; 34 C.F.R. § 104.8.

[10] It is unlawful to retaliate against an individual for the purpose of interfering with any right or privilege secured by Section 504, Title II, Title VI of the Civil Rights Act of 1964 (Title VI), Title IX of the Education Amendments of 1972 (Title IX), the Age Discrimination Act of 1975 (Age Act), or the Boy Scouts of America Equal Access Act (BSA Act). See 34 C.F.R. § 100.7(e) (Title VI); 34 C.F.R. § 104.61 (Section 504) (incorporating 34 C.F.R. § 100.7(e) by reference); 28 C.F.R. § 35.134 (Title II); 34 C.F.R. § 106.71 (Title IX) (incorporating 34 C.F.R. § 100.7(e) by reference); 34 C.F.R. § 110.34 (Age Act); and 34 C.F.R. § 108.9 (BSA Act) (incorporating 34 C.F.R. § 100.7(e) by reference).

Monitor and track bullying behaviors

Collecting and analyzing data on bullying behaviors can provide a clearer picture of what is happening in school and school activities, guide planning of prevention, instruction, and intervention efforts, and inform decision making on the effectiveness of current policies and practices over time. Adults tend to underestimate the rates of bullying because students rarely report it, and it often happens when adults are not around.[11] Thus, data collected from multiple sources, including surveys of students, will help establish a more accurate understanding of bullying behaviors occurring in school and school activities. Data collection should be linked to existing data systems (e.g., attendance, discipline) when possible, and include information such as the frequency, types, and location of bullying behavior, other contextual factors, adult and peer responses, and also perceptions of safety and school climate.

Notify parents when bullying occurs

Parents or guardians should be promptly notified of any report of bullying that directly relates to their child in accordance with Federal, State, and local law, policies, and procedures. Clear and accurate communication is needed to inform the parents or guardians of both the student who was the target of bullying behavior and the student who engaged in the bullying behavior.[12] Parents and guardians should also be encouraged to work with their child's teachers and other school personnel to determine the steps that need to be taken to address the bullying and prevent its recurrence.

Address ongoing concerns

Expected school behaviors and routines should be taught to and known by all students and staff. Students whose school behavior is not safe, responsible, and respectable, and consistent with the established school expectations may need: (a) more focused social skills instruction; (b) frequent, specific feedback on their behavior, or (c) increased adult engagement.[13] School personnel should use data measuring an individual student's responsiveness to antibullying instruction and intervention to determine the need for continued, more intensive, and specialized assistance for each student.

Additionally, if a school suspects that bullying is becoming a problem school-wide, a team-based and data-driven problem-solving process should be initiated. Such an approach should examine discipline and performance data to determine: (1) the current status of bullying, including how often, when, and where specific bullying incidents occur, how many and which students are involved, including whether any are students with disabilities, and which adults, if any, are involved; (2) the extent to which positive school-wide behavioral expectations have been explicitly taught, as well as the extent to which students easily and naturally meet those expectations by routinely behaving in a manner consistent with the expectations at school and school activities; and (3) whether all students are actively academically engaged, successful, and appropriately challenged. Based on the data, a

[11] Cohen et al. (2009).

[12] The Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, restricts the nonconsensual disclosure of personally identifiable information from a student's education record, including information on disciplinary actions taken against a student. State and local officials are encouraged to seek guidance to be sure that all policies are implemented consistent with these provisions.

[13] Sugai et al. (2010).

common strategy should be outlined to address the settings (*e.g.,* hallways, cafeterias, and buses) and situations (*e.g.,* unstructured class time, transitions, field trips, and during assemblies) in which bullying frequently occurs. The strategy should include certain steps that will be taken for the whole school (e.g., consistent rules and rewards for good behavior), more intense steps that will be taken for groups of students exhibiting at-risk behavior, and individual services that will be provided for students who continue to exhibit problematic behavior.

Sustain bullying prevention efforts over time

Prevention of bullying should be ongoing, and accepted as an integral component of the school's overall behavioral framework that delineates a school's environment and routine operation. We must remain mindful of the importance of providing positive, safe, and nurturing environments in which all children can learn, develop, and participate. Just as each year schools work to maximize academic engagement and learning outcomes for all students, including students with disabilities, we also must take steps to prevent and address bullying behavior. Effective, evidence-based practices created and sustained within a comprehensive multitiered framework will prevent the occurrence and reduce the impact of bullying in our schools, and also enhance learning and developmental outcomes for all students.

Resources on Preventing and Addressing Bullying

Additional information about preventing and addressing bullying behavior is available from the resources listed below.

• **StopBullying.gov -** This U.S. government website is hosted by the U.S. Department of Health and Human Services in partnership with the U.S. Department of Education. It provides information on how kids, teens, young adults, parents, educators, and others in the community can address bullying behaviors. Information about cyberbullying also is available. **http://www.stopbullying.gov**

• **PACER.org/bullying/** - This National Parent Center funded by the Office of Special Education Programs (OSEP) supports families with children with disabilities by providing assistance to individual families, conducting workshops, and providing information through materials and websites. PACER's National Bullying Prevention Center educates communities nationwide to address bullying through creative, relevant, and interactive resources. PACER's bullying prevention resources are designed to benefit all students, including students with disabilities. PACER also hosts TeensAgainstBullying.org, created by and for teens to address bullying. In addition, PACER hosts KidsAgainstBullying.org, designed by and for elementary school students to learn about bullying prevention. **http://www.pacer.org/bullying**

• **PBIS.org** – The Technical Assistance Center on Positive Behavioral Interventions and Supports (PBIS), funded by OSEP, gives schools capacity-building information and technical assistance for identifying, adapting, and sustaining effective school-wide disciplinary practices. It also: (a) provides technical assistance to encourage large-scale implementation of PBIS; (b) provides the organizational models, demonstrations, dissemination, and evaluation tools needed to implement PBIS with greater depth and fidelity across an extended array of contexts; and (c) extends the lessons learned from PBIS implementation to the broader agenda of educational reform. **http://www.pbis.org**

• **NICHCY.org** - This national dissemination center funded by OSEP provides a wealth of information on disabilities in children and youth; programs and services available for infants, toddlers, children, and youth with disabilities under IDEA; and research-based information on effective practices for children with disabilities (birth through 21 years of age). Information and links to resources that address bullying relative to children with disabilities are also provided. **http://nichcy.org/schoolage/behavior/bullying/**

• FindYouthInfo.gov - This U.S. government website was developed by 12 Federal agencies, including the Department of Education, in partnership with the White House, to disseminate information and to leverage resources to support programs and services focusing on positive, healthy outcomes for youth. The website provides facts and information on a wide range of topics including bullying, cyberbullying, and positive youth development. It also contains information on assessing community assets, generating maps of local and Federal resources, searching for evidence-based youth programs, and keeping up-to-date on the latest, youth-related news. Information is provided on funding opportunities available to those interested in addressing bullying and related topics, as well as on Federal funds awarded to states and communities for use in locating potential resources or partners already available. **http://www.FindYouthInfo.gov**

• **Safesupportiveschools.ed.gov** - The National Center on Safe Supportive Learning Environments is funded by the U.S. Department of Education's Office of Safe and Healthy Students, and the U.S. Department of Health and Human Services' Substance Abuse and Mental Health Services Administration (SAMHSA) to help schools and communities contend with many factors that impact the conditions for learning, such as bullying, harassment, violence, and substance abuse. The Center provides resources, training, and technical assistance for State and local educational agency administrators, teachers, and staff; institutions of higher education; communities, families, and students seeking to improve schools' conditions for learning through measurement and program implementation, so that all students have the opportunity to realize academic success in safe and supportive environments. **http://safesupportiveschools.ed.gov/index.php?id=01**

APPENDIX ~~C~~ D

Bullying Incident Report Form

(Sample)

1. Name of reporter/person filing the report: _____
   (Note: Reports may be made anonymously, but no disciplinary action will be taken against an alleged aggressor solely on the basis of an anonymous report.)

2. Are you the target of the bullying: ____ Yes ____ No

3. Are you ____ Student ____ Staff member (specify role)_____
   ____ Parent ____ Administrator ____Other (specify)
   _____

   Your contact information/telephone number:_____

4. If student, what school do you attend? _____ Grade: _____

5. If staff member, name of your school or work site: _____

6. Information about the incident:

   Name of target/victim (of aggression): _____

   Name of aggressor (Person who started the aggression): _____

Date(s) of incident(s): _____
Time when incident(s) occurred: _____
Location of incident(s) (Be as specific as possible): _____

7. Witnesses (List people who saw the incident or have information about it):

Name: _____ ____Student ____Staff ____Other
Name: _____ ____Student ____Staff ____Other
Name: _____ ____Student ____Staff ____Other

Describe the details of the incident (people involved, what occurred, and what each person did and said, including specific words used). Use additional space on back if necessary.

Signature of person filing this report: _____ **Date:** _____
(Note: Reports may be filed anonymously.)

Form given to: _____ **Position:** _____ **Date:** _____

Signature: _____ **Date received:** _____

II. INVESTIGATION

1. Investigator(s):_____ **Position(s):**_____

If the incident is within scope of the school division, move to procedures for investigating bullying.

If the incident is outside the scope of the school division, and determined a criminal act, refer to appropriate law enforcement. Referred to _____ Date _____

If the incident is outside the scope of the school division, and determined not a criminal act, inform parents/legal guardians of all students involved.

2. Interviews:

Interviewed aggressor	Name: _____	Date: _____
Interviewed target	Name: _____	Date: _____
Interviewed witnesses	Name: _____	Date: _____
	Name: _____	Date: _____

3. Behaviors exhibited were intended to harm the target or targeted group? □ Yes □ No

4. Are there any prior documented incidents by the aggressor? □ Yes □ No

If yes, have incidents involved target or target group previously? □ Yes □ No

Any previous incidents with findings of BULLYING, RETALIATION □ Yes □ No

5. The aggressor's relationship to the target or target group included an imbalance of power/the target or targeted group felt the aggressor was in a position with more physical or social power? □ Yes □ No

6. The investigator shall collect and evaluate the facts including, but not limited to

a. a description of incident(s) including nature of the behavior; context in which the alleged incident(s) occurred, etc.;

b. how often this conduct occurred;

c. whether there were past incidents or past continuing patterns of behavior;

d. the relationship between the parties involved;

e. the demographics of the parties involved (i.e., grade, age, etc.);

f. the identity and number of individuals who participated in bullying or harassing behavior;

g. the location of the alleged incident;

h. whether the conduct adversely affected the student's education or educational environment;

i. whether an imbalance of power is evident; and

j. the date, time, and method in which parents/legal guardians of all parties involved were contacted.

7. Whether a particular action or incident constitutes a violation of this policy requires a determination based on all the facts and surrounding circumstances and includes

a. recommended remedial steps necessary to stop the bullying and/or harassing behavior

and

b. a safety plan

Summary of Investigation:

(Please use additional paper and attach to this document as needed)

Date: _____ **Signature:** _____

III. FOLLOW-UP TO THE INVESTIGATION

1. Finding of bullying or retaliation: ___YES ___ NO

Bullying incident documented as _____

___ Retaliation ___Discipline referral only

2. Contacts:

Target's parent/guardian: Date:_____ Aggressor's parent/guardian: Date: _____

Division Compliance/Discipline Officer: Date: _____

Law Enforcement Date: _____

3. Action Taken (Note action taken with <u>all</u> students if more than 1)

___Loss of Privileges ___Detention ___STEP referral ___Suspension

___Community Service ___Education ___Other _____

4. Description of Safety Plan (for Target/Victim)

_____

_____

_____

_____

_____.

Follow-up with Target: Scheduled for _____ Initial and date when completed: _____

Follow-up with Aggressor: Scheduled for _____ Initial and date when completed: _____

Report forwarded to Principal: Date_____ Report forwarded to Superintendent: Date_____
(If principal was not the investigator)

Signature and Title:_____

Date:_____

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