

The District's Role in Addressing Bullying and Harassment

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What is Harassment or Bullying?

“Harassment, intimidation or bullying” is defined as a gesture, electronic communication, or a written, verbal, physical or sexual act reasonably perceived to have the effect of either of the following:

- (1) Harming a student physically or emotionally or damaging a student’s property, or placing a student in reasonable fear of personal harm or property damage; or
- (2) Insulting or demeaning a student or group of students causing substantial disruption in, or substantial interference with, the orderly operation of the school.”

S.C. Code Ann. § 59-63-120(1)

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Cyberbullying



- Cyberbullying is the use of electronic communication to bully or harass an individual, typically by sending messages of an intimidating or threatening nature.
- These bullying behaviors include, but are not limited to, offensive name calling, spreading false rumors, receiving explicit images, being harassed about location, physical threats, and having explicit images of them shared without consent.
- Typically, the more the student is online, the more likely they are to experience cyberbullying.
- "Trolling" is making a deliberately offensive or provocative online post with the aim of upsetting someone or eliciting an angry response.

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Safe School Climate Act

- On June 12, 2006, Governor Sanford signed into law House Bill 3573 creating the Safe School Climate Act. The intent of this law is to prevent school harassment, intimidation, or bullying; to instruct local school districts to adopt policies prohibiting harassment, intimidation or bullying of students; to provide that these policies be incorporated into student handbooks and employee training programs; and to provide that the State Board of Education develop model policies.

S.C. Code Ann. § 59-63-110, et seq.

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Safe School Climate Act

- The Act requires school staff and volunteers who witness or have reliable information that a student is subjected to harassment, intimidation, or bullying to report the incident to the appropriate school official.
- District policy prohibiting harassment, intimidation, and bullying must be included in both the student handbook and the district's employee training program, and in the district's publication of its rules, procedures, and code of conduct.
- Districts are encouraged to establish bullying prevention programs and initiatives.
- The S.C. Department of Education has developed model policies in compliance with the Act.

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The Policy Should Include...

- A statement prohibiting harassment, intimidation, or bullying of a student
- Definition of harassment, intimidation, and bullying
- A description of appropriate student behavior
- Consequences for persons committing acts of harassment, intimidation, or bullying, and persons engaging in retaliation
- Procedures for reporting, to include provision for reporting anonymously
- Identify the appropriate school personnel responsible for taking the report and investigating the complaint
- Procedures for prompt investigation
- A statement prohibiting retaliation against a person who makes a report
- Consequences for persons found to have falsely accused another
- A process for discussing the District's policy with students
- A statement for how the policy is to be publicized

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Policy JICFAA- Harassment, Intimidation, or Bullying

“The board prohibits acts of harassment, intimidation, or bullying of a student by students, staff and third parties that interfere with or disrupt a student's ability to learn and the school's responsibility to educate its students in a safe and orderly environment whether in a classroom, on school premises, on a school bus or other school-related vehicle, at an official school bus stop, at a school-sponsored activity or event whether or not it is held on school premises, or at another program or function where the school is responsible for the student.”

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Title IX of the Education Amendments of 1972

- ▶ **Prohibits discrimination on the basis of sex in the educational environment**
 - ▶ Specifically, “*no person in the United States shall, on the basis of sex . . . be subjected to discrimination under any education program or activity receiving Federal financial assistance.*” 20 U.S.C. §1681(a)
 - ▶ *Conduct that is sufficiently severe, pervasive, or persistent to limit an individual's ability to participate in, or benefit from, the educational program.*

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Title IX Requirements

- A school district must develop and publish grievance procedures that provide for the prompt resolution of Title IX complaints.
- Title IX Coordinator
 - The district must designate at least one person to coordinate the district's efforts to comply with and carry out the responsibilities under Title IX.
 - District should designate a person at each school responsible for receiving and investigating complaints.
 - Staff and students should be advised of reporting procedures.

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Title IX Requirements

- A school must conduct prompt, thorough, and impartial investigations of all complaints.
 - Off-campus conduct?
 - Ongoing criminal investigation?
- A school should provide notice of the outcome of the complaint.
- If a school determines that an incident of harassment or bullying has occurred, the school must take prompt and effective steps reasonably calculated to end the harassment/bullying and to prevent its recurrence.

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The Office for Civil Rights

- OCR enforces a number of anti-discrimination laws:
 - Title VI of The Civil Rights Act of 1964 (race, color, or national origin)
 - Title IX of the Education Amendments of 1972 (sex)
 - Section 504 of the Rehabilitation Act of 1973 (disability)
 - Title II of the Americans with Disabilities Act of 1990 (disability)
 - Age Discrimination Act of 1975 (age)
 - Boy Scouts of America Equal Access Act

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OCR

- Subject matter jurisdiction
 - The complaint must allege, or OCR must be able to infer from the facts given, an allegation of discrimination under the anti-discrimination statutes enforced by OCR or retaliation for engaging in protected activity or for filing a complaint.
- Personal jurisdiction over the entity
 - Title VI, Title IX, Section 504, and Age Discrimination Act = receipt of federal financial assistance
 - Title II = educational institutions regardless of receipt of federal financial assistance

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OCR

- Action by OCR is initiated upon the receipt of a complaint.
 - Must be in writing
 - Timely
- OCR can dismiss an allegation, or, if appropriate, the complaint in its entirety for a number of reasons:
 - Withdrawal
 - On its face, the complaint fails to state a violation of one of the laws OCR enforces.
 - The complaint filed with OCR involves the same operative facts that have been resolved by another federal, state, or local civil rights enforcement agency or an entity's internal grievance procedures, and all allegations were investigated and there was a resolution acceptable to OCR.
 - The complaint is against the same recipient and raises the same or similar allegations based on the same operative facts that were previously dismissed or closed by OCR.

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OCR Resolution Process

- Rapid Resolution Process (RRP)
 - Expedited case processing wherein the recipient has already taken action to resolve the complaint or has indicated that it is willing to take action in the future to resolve the complaint.
- Facilitated Resolution Between the Parties (FRBP)
 - The parties may voluntarily resolve the complaint.
 - The parties must participate in discussions and implement any agreement reached in good faith.
 - OCR serves as a facilitator, but does not sign, approve, endorse, or monitor any agreement between the parties.
 - Should FRBP be unsuccessful, investigation of the complaint will proceed.
 - ❖ Notably, OCR may suspend its investigation for up to 30 days to facilitate an agreement.

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OCR Investigations

- Investigation
 - Data Request
 - Interviews
 - Timeline
- OCR will investigate to identify if there is conduct that is sufficiently severe, pervasive, or persistent as to interfere with or limit a student's ability to participate in the educational environment which violates any one of the anti-discrimination laws under the jurisdiction of OCR.
- OCR will determine whether the District promptly, thoroughly, and impartially investigated the complaint and whether the District took prompt and effective steps reasonably calculated to end the harassment and prevent it from recurring.

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OCR Investigations

- Allegations under investigation may be resolved at any time when, prior to when the Regional Office issues a final determination, the entity expresses an interest to resolve the complaint and OCR determines that it is appropriate to resolve the complaint.
- OCR and the entity will negotiate a resolution agreement.



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Investigative Determinations

- Standard=Preponderance of the Evidence
- Findings
 - Insufficient evidence: the evidence does not support a conclusion that the district violated applicable laws and regulations
 - Non-compliance determination: the evidence supports a conclusion that the district failed to comply with applicable laws and regulations
 - Mixed determination: the investigation has revealed a violation with regard to some allegations but not others, or some allegations are appropriate to resolve prior to the conclusion of the investigation

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Investigative Determinations

- OCR and the district will negotiate to reach a resolution agreement.
 - 90-day negotiation period
 - ❖ If negotiations are ongoing, OCR can extend the period
 - Negotiation impasse
- OCR will monitor the district's efforts to comply with the terms and obligations of the agreement.
- The complaint is considered resolved and the district in compliance when the district enters into and fulfills the terms of the resolution agreement.

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OCR Resolutions

- Jonesboro School District #43 (Illinois, 2015)
 - <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/05151033-a.pdf>

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Enforcement Action

- In the event that OCR and the district cannot reach an agreement after the expiration of a 10-day period set forth in the Impasse Letter, OCR will issue a letter of impending enforcement action regarding non-compliance determinations.
- Enforcement
 - Refuse, suspend, or terminate funding
 - Refer to DOJ for criminal proceedings where appropriate

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Appeals

- A complainant may appeal a determination of insufficient evidence and certain dismissals made during the evaluation stage.
 - An appeal must be submitted within 60 days of the date on the letter of finding or dismissal.
 - Should the district choose to respond to the appeal, the response must be submitted within 14 days of the date OCR forwarded a copy of the appeal to the district.

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Can the District be liable for damages?

- Litigants may pursue a private right of action against a school district for damages.
- An OCR investigation does not prohibit a person from filing a lawsuit.
 - A person is not required to exhaust the District's grievance procedures prior to going to Court.
- The lawsuit and OCR investigation may proceed simultaneously.

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Doe v. Bd. of Education (Maryland, 2015)

- Facts: J.D. alleged that he was subjected to bullying and teasing by another student, M.O., on multiple occasions.
 - Incident 1: J.D. alleged that M.O. exposed his genitals to J.D. in the classroom library. The vice principal interviewed J.D. Following the interview, the teacher rearranged her classroom to separate the students so that she could readily see both students.
 - Incident 2: J.D. reported M.O. "accosted" him in the hallway. The vice principal relayed the information to the principal, but no further action was taken.
 - Incident 3: J.D. alleged M.O. made sexual remarks and gestures toward him.
 - Incident 4: During a classroom dance activity, M.O. grabbed J.D. and made inappropriate sexual gestures. The teacher did not see the incident, but interviewed 3 students who confirmed the report. The teacher issued a referral and M.O. received 3 days ISS.
 - Incident 5: The next school year, J.D. reported that M.O. made a harassing remark to him at the water fountain during dismissal. The principal reviewed the surveillance footage of the hallway which did not show J.D. leaving the classroom during that time. Nonetheless, the principal met with both students and talked to them about mutual respect.
 - Incident 6: J.D. alleged M.O. said something that made him feel "uncomfortable," but did not provide detail. The principal spoke to M.O. and advised that further complaints could be grounds for suspension.
 - Incident 7: J.D. reported that M.O. tried to climb into J.D.'s bathroom stall. The principal interviewed 3 students who were in the bathroom at the relevant time, each denied the incident occurred. The SRO and J.D.'s father reviewed the video footage of the bathroom's entrance, but it did not corroborate the story. Subsequently, the school established procedures to have a sign in/sign out sheet when going to the bathroom, and provided J.D. with an escort.
 - Other reports of M.O. calling J.D. names. The parents ultimately removed J.D. from school.

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Doe v. Bd. of Education

- Law Enforcement Investigation: After discovering that the two were texting each other and that M.O. had sent sexually explicit photos to J.D., J.D.'s parents filed a police report alleging that J.D. had been sexually assaulted. J.D. alleged that M.O. had sexually assaulted him at school previously.
 - Prior to this report, J.D. had not informed his parents or the administration that he had been sexually assaulted.
 - The police investigation closed, finding the report not credible.

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Doe v. Bd. of Education

- The Complaint: The parents filed a lawsuit under Title IX against the Board alleging that it had discriminated against J.D. on the basis of sex. Specifically, the parents alleged that the Board's response to known acts of harassment was unreasonable, thus, evidencing its deliberate indifference to discrimination. The parents allege that the Board failed to notice an escalating pattern of harassment and to take effective corrective action.

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Doe v. Bd. of Education

- Rule: Liability may attach when
 - (1) The district had actual knowledge of student-on-student sexual harassment; and
 - ❖ No negligence standard
 - (2) The district was deliberately indifferent to the harassment.
- A district is deliberately indifferent when its response to known harassment is clearly unreasonable.
 - The district must have knowledge that its efforts are ineffective and continued to use the same methods.

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Doe v. Bd. of Education

- Decision: The trial court granted the District's motion for summary judgment finding that the school's response to the incidents was not unreasonable, thus, it was not shown to be deliberately indifferent.
 - The court reaffirmed that the failure to follow sexual harassment grievance procedures did not prove deliberate indifference.
 - Plaintiffs presented evidence that they were compelled to withdraw J.D from school, as such, the court could not conclude that the harassment did not deprive J.D. from participating in the educational environment.
 - The 4th Circuit Court of Appeals affirmed the ruling.

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Resources

- Safe School Climate Act, S.C. Code Ann. § 59-63-110, et seq.
- Doe v. Bd. of Educ., 605 Fed. Appx. 159 (4th Cir. 2015)
- U.S. Department of Education, Office for Civil Rights, Case Processing Manual (Nov. 19, 2018)
 - <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>
- U.S. Department of Education, Office for Civil Rights, Title IX Resource Guide
- OCR Docket #05-15-1033, Jonesboro School District #43 (2015)
 - <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/05151033-a.pdf>

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THANK YOU

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