

Policy News

Washington State
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Association



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Cyberbullying Policy Required

Original Anti-bullying Bill

In 2002, the legislature passed a law requiring school districts to prohibit harassment, intimidation and bullying between students. Districts were required to adopt policies by August 1, 2003. At that time, WSSDA issued a model policy containing provisions for districts to consider. The primary requirement was that districts include a definition of bullying that was consistent with the legislature's definition:

"Harassment, intimidation, or bullying" means any intentional written, verbal, or physical act, including but not limited to one shown to be motivated by any characteristic in RCW 9A.36.080(3), or other distinguishing characteristics, when the intentional written, verbal, or physical act: (a) Physically harms a student or damages the student's property; or (b) Has the effect of substantially interfering with a student's education; or (c) Is so severe, persistent, or pervasive that it creates an intimidating or threatening educational environ-

ment; or (d) Has the effect of substantially disrupting the orderly operation of the school. Nothing in this section requires the affected student to actually possess a characteristic that is a basis for harassment." (RCW 28A.300.285)

WSSDA's model policy explains specifically the characteristics required and clarifies that the policy applied to all bullying regardless of motivation and regardless of whether or not the student even possessed the characteristic for which they were bullied.

The model policy provided flexibility and the ability for administrative decision makers to use their discretion. The ultimate goal was to help the bullied student, restore the culture of the school and change the negative behavior.

Cyberbullying

At the time of the original legislation, the methods of bullying were primarily written or verbal. The emergence of technology has provided an additional vehicle for

messages that may be considered harassment, intimidation or bullying. In an Olweus Bully/Victim Questionnaire: Bullying is defined as "when another student, or several other students do any of the following: say mean and hurtful things or make fun of him or her or call him or her mean and hurtful names; completely ignore or exclude him or her from their group of friends or leave him or her out of things on purpose; hit, kick, punch, shove around, or lock him or her inside a room; tell lies or spread false rumors about him or her or send mean notes and try to make other students dislike him or her; and other hurtful things like that." Cyberbullying occurs when these acts are committed electronically. Cyberbullying is also succinctly defined as "an overt, intentional act of aggression towards another person online." Cyberbullying includes misusing technology such as e-mail, cell phones, pager text messages or instant messaging to harass, tease, intimidate, threaten or terrorize another per-

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Policy News

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Ted Thomas
President

Martharose Laffey
Executive Director

Marilee Scarbrough
Director of Policy and Legal Services, Editor

Linda Lowery
Administrative Assistant
Layout and Design

The Washington State
School Directors' Association
221 College Street N.E.
Olympia, WA 98516

Phone
360/252-3019
Toll Free: 800/562-8927

Fax
360/493-9247

Internet
wssda.org

E-Mail
mail@wssda.org

About the WSSDA

Founded in 1922, the Washington State School Directors' Association is comprised of all 1,477 school board members from Washington's 295 school districts. The districts they lead serve more than one million students, have a combined annual budget of \$6 billion, and employ nearly 100,000 people. WSSDA's core mission is focused on ensuring that school board members have the knowledge, tools and services they need to effectively govern their districts and improve student learning.

son by sending or posting inappropriate and hurtful e-mail messages, instant messages, text messages, digital pictures or images or Web site postings, including blogs.

Cyberbullying presents challenges for school districts in several ways because of the devastation it brings to the student victim and the disruption to the school and environment. Cyberbullying is harmful to individual students because bullies easily hide behind the anonymity that the Internet provides, the misinformation is spread very quickly to a wide audience and it can be challenging to identify the source of the bullying.

Administrative challenges include responding and inflicting appropriate punishment for behavior that occurs in "cyberspace." From the district perspective, it is clear that if students use district computers discipline is appropriate. However, grey areas exist because the bullying can start outside of school and outside of the school day, but impact students in the school environment. The district administrator must then determine their authority to impose discipline. In making that determination the district must consider the safety and security of all students as well as the individual free speech rights of students.

The impacts of cyberbullying in the educational environment led our legislature to revisit the issue of harassment, intimidation and bullying, but this time with the emphasis on electronic transmission of messages or images.

Cyberbullying Legislation

In 2007 the legislature passed a new law requiring WSSDA, with the assistance of the Office of Superintendent of Public Instruction (OSPI), to convene an advisory committee and develop a policy

"prohibiting acts of harassment, intimidation, or bullying that are conducted via electronic means by a student while on school grounds and during the school day." The law also requires that districts disseminate information to parents on the seriousness of cyberbullying.

Each district is required to adopt its own policy by August 1, 2008. A district is not required to adopt the WSSDA model, but must adopt a policy. The WSSDA model can be used as a framework for the policy the district chooses to adopt.

Workgroup

In response to the legislative directive, working with OSPI, WSSDA convened a workgroup representing various stakeholders. The groups invited to participate in the taskforce included representatives of principals, teachers, law enforcement, American Civil Liberties Union, superintendents, school board members, the Parent Teachers Association and legislative staff.

Over the course of several months, the workgroup reviewed the legislative charge, reviewed cyberbullying policies from other states and drafted various proposals. The workgroup agreed that cyberbullying is not a new concept but rather the act of bullying carried out with a different mode of transmission. Therefore, a completely new policy was not necessary, because all districts are currently required to have a harassment, intimidation and bullying policy adopted consistent with the legislative mandate from 2002.

For content as well as logistical reasons, it made sense to include cyberbullying in the existing policy. The policy does not contain the word "cyberbullying" but rather refers to "electronically transmitted" messages or images. The workgroup chose not to put a definition

of “cyberbullying” in the sample policy because although it could be instructive, a definition could also be another area subject to interpretation and consequently create more uncertainty for school administrators.

“On school grounds and during school day”

The 2007 law, specifically contained language prohibiting cyberbullying “on school grounds and during the school day.” This language was designed to ensure that school districts operate only within their legal authority. The taskforce chose not to include this specific phrase in the policy because of the uncertain and evolving nature of the law.

It is true that harassment often occurs off school grounds and outside of the school day and this is an area over which a school district does not have authority. However, the U.S. Supreme court has given schools the ability to censor inappropriate on-campus speech. But this right is based on the premise that the prohibited speech will cause disruption at school and cause an adverse impact to the educational environment. If the speech does not happen at school and is not disruptive to the school environment, the district does not have a right to intervene. The challenge is that the electronic speech is not “cut and dried.” Obviously, if there are threats that will be acted out at school or a school-related event the district can intervene.

Due to the fluid nature of cyberbullying, we did not try to capture all the nuances of the legal requirements in our policy. Responses to cyberbullying will be a case-by-case determination, weighing the facts and determining whether the school is within its legal authority.

Districts are advised to consult their school attorney for guidance when responding to cyberbullying in their districts.

We acknowledge that the legal uncertainty is particularly challenging for administrators. It is clear that an administrator may discipline a student when the student’s behavior causes substantial disruption to the educational environment. Obviously, a district has the authority to monitor their own systems and to take away computer privileges and impose discipline for improper use. In the case of electronic harassment, it is unclear what the courts will consider as substantial disruption. To date, the outcome of the court decisions are mixed. It is conceivable that the courts would permit administrators to discipline where the activity results in cessation of instruction or educational activities, the inability of students or staff to focus on learning or function as an educational unit because of a hostile environment.

Due to the legal uncertainty, commentaries on the legal issues for off-campus student speech often cite, *Tinker v. Des Moines Independent Community School District*. In *Tinker*, the court clarified that school personnel have the burden of demonstrating that the speech or behavior resulted in a substantial interference with the educational environment or the rights of others.

Although not binding on Washington school districts, a Pennsylvania case (*J.S. v. Bethlehem Area School District*, 2000) found that schools do have the authority to discipline students when off-campus speech or behavior results in a clear disruption of the classroom environment. In that case, a student had been expelled for creating a Web site that included threatening and derogatory

comments about specific school staff. Similarly, in *Laycock v. Hermitage School District* (2006), a U.S. District Court found that a Web site parody making fun of the principal in a nonthreatening, non-obscene manner was subject to discipline because it did disrupt the educational program by requiring staff time to resolve the problem and resulted in a shutdown of the school computer system.

One Washington case had the opposite result, in *Emmett v. Kent School District No. 415* (2000), the U.S. District Court for western Washington found that a student’s Web site with mock obituaries of students and an online mechanism for visitors to vote on who should die next did not actually intend to threaten anyone and therefore was insufficient evidence of school disruption. A case with a similar outcome was, *Beussink v. Woodland R-IV School District*, a federal court in eastern Missouri found that a student’s use of vulgar language to criticize his school and its faculty on an off-campus Web site was protected by the First Amendment because it was not materially disruptive.

A recent U.S. Supreme Court decision may also impact a district’s ability to impose discipline for off-campus conduct. In *Frederick v. Morse*, the court confirmed that a student’s free speech rights are limited by the special circumstances of the school environment and that a student could be disciplined because his banner proclaiming *Bong Hits 4 Jesus* could be viewed as promoting illegal drug use, and not merely offensive speech.

The impact of these decisions in Washington is yet to be determined. It is recommended that districts consult legal counsel before

implementing formal discipline in cases involving off-campus conduct.

What can the district do in situations when discipline is not within their scope of authority? There are other options available such as contacting the parents of the students involved, notifying the Internet host or the cell phone carrier. If the harassment involves threats, notify law enforcement authorities and, possibly most effective, the district should use a proactive approach with students. Educating students regarding appropriate and inappropriate uses for electronic media may be the best method for preventing cyberbullying. All of these factors are important considerations as the board develops its policy.

Policy Considerations

The sample policy should be considered in the context of the district's overall approach to school safety. The district's overall goal is to provide a positive school environment that maximizes student learning. WSSDA's Policy 3207, Harassment, Intimidation and Bullying, has been expanded to include electronic messages and images. In addition, model policy 2022, Electronic Information System (WSSDA's sample will be updated this summer), model policy 3220, Freedom of Expression, and the district's comprehensive safety plan should all be considered if the board decides to make major policy changes regarding cyberbullying.

As districts develop, review or revise policies, they should consider the following issues:

✓ **Education of students, parents and staff.**

Students should be informed of the dangers of cyberbullying, what to do if they or someone they know is being bullied in this way, and the district's

policy pertaining to appropriate use of district technology and the consequences of improper conduct. Similarly, school staff and parents should be educated on how to recognize warning signs of harassing/intimidating behaviors and be provided with effective prevention and intervention strategies. The OSPI has developed an Internet safety brochure which provides guidance for students, parents and staff. The brochure can be downloaded from the OSPI Safety Center Web site and schools/districts may provide a link to the brochure on their Web sites:

- www.k12.wa.us/safetycenter/pubdocs/internetsafetywithcyber.pdf;
- www.k12.wa.us/safetycenter/pubdocs/internetsafetywithcyberbw.pdf.

✓ **Acceptable use of the district's technological resources.**

Schools can exercise reasonable precautions against using the district's Internet system for inappropriate activity. Board policies, as well as the district's acceptable use agreement which some districts have students and parents sign as a condition of using the district's technological resources, should include an explicit statement that prohibits the use of the district's system to bully or harass other students.

✓ **Supervision and monitoring of students' online activity.**

A necessary precaution against cyberbullying includes supervision of students while they are using the district's online services. Classroom teachers, computer lab teachers, library/media teachers or other staff overseeing student use of the

district's online services should understand their responsibility to closely supervise students' online activities. If teacher aides, student aides or volunteers are asked to assist with this supervision, they should receive training or information about the district's policy on acceptable use.

In addition, districts have the right to monitor the use of their equipment and systems. If a district receives Federal Title II technology funds or E-rate discounts, it is obligated under 20 USC 6777 or 47 USC 254 to enforce the operation of technology protection measures, including monitoring the online activities of minors. Districts determine how such monitoring will be accomplished, including whether they want to track Internet use through personally identifiable Web monitoring software or other means.

Maintenance and monitoring of the district's system should be routine, technical and conducted by appropriate staff. Some districts use "intelligent content analysis" which monitors all Internet traffic and reports on traffic that has elements that raise a "reasonable suspicion."

Students should understand that there is no expectation of privacy and that use of the district's system can be monitored. Clear notice of this fact may deter improper activity.

✓ **Reporting Cyberbullying.**

Students should be informed to notify school staff, their parents or another adult when they are being cyberbullied, they suspect that another student is being victimized or they

see a threat posted online. The district needs to remember that students are often reluctant to report such incidents to an adult because they fear retaliation by the aggressor or his or her friends. Thus the district should consider ways that students can confidentially and anonymously report incidents.

✓ **Investigation of reported incidents.**

WSSDA's sample policy includes a grievance procedure that is based on the sexual harassment procedure. It describes an effective vehicle for reporting and handling complaints of cyberbullying. The student who is being victimized should be encouraged not to respond to the cyberbullying and to save and print out the messages or pictures as evidence, rather than deleting them.

The investigation should include efforts to identify the individual who is harassing the student. There may be a way to track him or her through the Internet service provider, even

if the individual is using a fake name or someone else's identity. If the district suspects that the cyberbullying is criminal, local law enforcement may be asked to track the individual's identity.

If the cyberbullying is initiated off campus, it will be necessary to show that it has substantially impacted school attendance or the educational program in order for the district to impose discipline on the student perpetrator. The investigation should include a process for assessing and documenting the impact of the cyberbullying on students, staff or school operations.

✓ **Responses to incidents of cyberbullying.**

Existing school rules pertaining to student discipline may be used in the event that a student is found to have engaged in cyberbullying or the district may decide that other actions are needed on a case-by-case basis. Depending on the seriousness of the harassment, responses might include: (1) noti-

fying the parents of both the victim and perpetrator; (2) filing a complaint with the Internet service provider or social networking site to have the content removed and/or the student's user privileges revoked; (3) using conflict resolution procedures; (4) suspending or expelling the perpetrator and/or (5) contacting law enforcement if the behavior involves: (a) a threat of violence to a person; (b) a threat of damage to property; (c) extortion; (d) obscene or harassing phone calls or text messages; (e) stalking; (f) a hate crime; (g) invading someone's privacy by taking a photo where there should be a reasonable expectation of privacy; or (h) sending sexually explicit images of children or teens. The student perpetrator and his or her parents should be informed of the potential consequences to which they may be subjected, including potential civil law liabilities. The district should also support the victim through counseling or referral to mental health services.

Highly Capable Programs

Districts that receive state funding for highly capable programs must comply with OSPI's rules regarding nomination, assessment, and selection of students. If a district re-

ceives categorical funding, the board is required to adopt policies and procedures governing selection of the most highly capable students by the multi-disciplinary selection

committee. WSSDA's model policy and procedure 2190, Highly Capable Programs, are updated to reflect the most recent OSPI rules.