

# Education Law

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## NEW LAW REQUIRES SCHOOL DISTRICTS TO CREATE AND IMPLEMENT ANTI-BULLYING POLICIES

On March 30, 2007, new legal obligations regarding anti-bullying, harassment and intimidation took effect for school districts. These obligations, which arise from H.B. 276, the Safe Schools Bill, are found in O.R.C. 3313.666 and 3313.667. Among the new requirements created by the law are: (1) creating and implementing an anti-bullying, harassment and intimidation policy; (2) establishing a procedure for reporting, documenting and responding to incidents of bullying, harassment or intimidation; (3) providing notice of bullying incidents to parents of all children involved to the extent permitted by privacy laws; (4) posting a written summary of all bullying incidents on the district's website twice a year; and (5) providing anti-bullying training when federal or state money is used to establish an anti-bullying committee.

The following is a brief summary of the more pertinent provisions of the Bill and the obligations they impose upon school districts:

### **Definition of Bullying, Harassment and Intimidation**

- Defines bullying, harassment and intimidation as:
  - any intentional written, verbal, or physical act;
  - that a student has exhibited toward another particular student;
  - more than once; AND
  - the behavior causes both:
    - mental or physical harm to the other student; AND
    - is sufficiently severe, persistent or pervasive that it creates an intimidating, threatening or abusive educational environment for the other student.

### **Anti-Bullying Policy Creation and Implementation Requirements**

- Provides that schools must implement anti-bullying, harassment and intimidation policies to combat bullying;
- Requires the anti-bullying policy to be adopted in consultation with parents, school employees, school volunteers, students and community members;
- Requires the policy to be included in student handbooks, employee training materials, and any publications that set forth the rules, procedures and standards of conduct for schools and students in the district.

## Requisite Policy Contents

- The anti-bullying policy must contain:
  - Statement prohibiting harassment, intimidation or bullying of any student on school property or at school-sponsored events;
  - The definition of bullying, harassment, and intimidation;
  - A procedure for reporting prohibited incidents;
  - Procedures for documenting, investigating and responding to a reported incident;
  - A strategy for protecting the victim from additional harassment and retaliation;
  - Policy must require school personnel to report incidents to principal or designee;
  - Policy must require parents or guardians of any student involved in a prohibited incident to be notified;
  - Policy must require access to any written reports regarding the prohibited incident except as prohibited by state or federal law such as FERPA and Ohio's privacy laws;
  - A disciplinary procedure for any student guilty of harassment, intimidation or bullying that does not infringe on the student's First Amendment rights;
  - A requirement that the administration provide the Board president with a written summary of all reported incidents twice a year, and post the summary on the district's website to the extent permitted by state and federal privacy law.

## Civil Immunity For Reporting Bullying, Harassment and Intimidation

- Provides that a school employee, student, or volunteer is immune from civil liability for damages that arise from the reporting of an incident of harassment, intimidation, or bullying if: (1) s/he reports the incident promptly; (2) in good faith; and (3) in compliance with the procedures specified in the district's policy;
- Provides that while the statutes do not create a new cause of action, nothing in the statute prohibits a victim of harassment, intimidation, or bullying from suing a school district for alleged violations under statutory or common law.

## Anti-Bullying Committee and Training

- Provides that a district may establish an anti-bullying committee;
- Requires that if federal or state funds are used for this purpose, training on anti-bullying must be provided.

## How Can Districts Effectively Respond to the New Obligations?

Given the newly-imposed obligations and the potential legal liability for failing to comply, districts need to make sure they have created and implemented anti-bullying policies which comply with these requirements. Further, for districts that already had anti-bullying policies prior to the law's effective date, administrators should review those policies to ensure that they contain all of the elements mandated above. Districts should also consider undertaking training efforts to educate their personnel on the new law and any policy and protocol changes. These steps will help protect the district from any legal challenges that may result from alleged violations.

For more information on these or other education law issues, please contact one of our Education Law lawyers:

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