

CHAPTER 378
FORMERLY
HOUSE BILL NO. 268
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO SCHOOL BULLYING.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §4112D, Title 14 of the Delaware Code by making insertions as shown by underlining as follows:

§ 4112D. School bullying prevention.

(a) Definition of bullying. -- As used in this section, "bullying" means any intentional written, electronic, verbal or physical act or actions against another student, school volunteer or school employee that a reasonable person under the circumstances should know will have the effect of:

(1) Placing a student, school volunteer or school employee in reasonable fear of substantial harm to his or her emotional or physical well-being or substantial damages to his or her property ;or

(2) Creating a hostile, threatening, humiliating or abusive educational environment due to the pervasiveness or persistence of actions or due to a power differential between the bully and the target; or

(3) Interfering with a student having a safe school environment that is necessary to facilitate educational performance, opportunities or benefits; or

(4) Perpetuating bullying by inciting, soliciting or coercing an individual or group to demean, dehumanize, embarrass or cause emotional, psychological or physical harm to another student, school volunteer or school employee.

(b) Prohibition of bullying. --

(1) Each school district and charter school shall prohibit bullying and reprisal, retaliation or false accusation against a target, witness or one with reliable information about an act of bullying.

(2) Each school district and charter school shall establish a policy which, at a minimum, includes the following components:

a. A statement prohibiting bullying of any person on school property or at school functions or by use of data or computer software that is accessed through a computer, computer system, computer network or other electronic technology of a school district or charter school from kindergarten through grade 12. For purposes of this section, "school property" and "school functions" have the same definition as in § 4112 of this title.

b. A definition of bullying no less inclusive than that in subsection (a) of this section.

c. Direction to develop a school-wide bullying prevention program.

d. A requirement that each school establish a site-based committee that is responsible for coordinating the school's bully prevention program including the design, approval and monitoring of the program. A majority of the members of the site-based committee shall be members of the school professional staff, of which a majority shall be instructional staff. The committee also shall contain representatives of the administrative staff, support staff, student body (for school enrolling students in grades 7 through 12), parents and staff from the before- or after-school program or programs. These representatives shall be chosen by members of each respective group except that representatives of the nonemployee groups shall be appointed by the school principal. The committee shall operate on a 1-person, 1-vote principle. In the event a site-based school discipline committee has been established pursuant to § 1605(7)a. and b. of this title, that committee shall vote whether or not to accept the aforementioned responsibilities.

e. A requirement that any school employee that has reliable information that would lead a reasonable person to suspect that a person is a target of bullying shall immediately report it to the administration.

f. A requirement that each school have a procedure for the administration to promptly investigate in a timely manner and determine whether bullying has occurred, and that such procedure include investigation of such instances, including a determination of whether the target of the bullying was targeted or reports being targeted wholly or in part due to the target's race, age, marital status, creed, religion, color, sex, disability, sexual orientation, gender identity or expression, or national origin. This subsection does not preclude schools from identifying other reasons or criteria why a person is a target of bullying.

g. A requirement that, to the extent that funding is available, each school develop a plan for a system of supervision in nonclassroom areas. The plan shall provide for the review and exchange of information regarding nonclassroom areas.

h. An identification of an appropriate range of consequences for bullying.

i. A procedure for a student and parent, guardian or relative caregiver pursuant to § 202(f) of this title or legal guardian to provide information on bullying activity. However, this paragraph does not permit formal disciplinary action solely based on an anonymous report.

j. A requirement that a parent, guardian or relative caregiver pursuant to § 202(f) of this title or legal guardian of any target of bullying or person who bullies another as defined herein, be notified.

k. A requirement that all reported incidents of bullying, regardless of whether the school could substantiate the incidents be reported to the Department of Education within 5 working days pursuant to Department of Education regulations.

l. A statement prohibiting retaliation following a report of bullying.

m. A procedure for communication between school staff members and medical professionals who are involved in treating students for bullying issues.

n. A requirement that the school bullying prevention program be implemented throughout the year, and integrated with the school's discipline policies and § 4112 of this title.

(c) Dissemination of policy and accountability. --

(1) Each school district and charter school shall adopt the policy consistent with subsection (b) of this section and submit a copy to the Delaware Department of Education by January 1, 2008 or by January 1 of a newly approved charter school's first year of operation.

(2) The policy shall appear in the student and staff handbook and if no handbook is available, or it is not practical to reprint new handbooks, a copy of the policy will be distributed annually to all students, parents, faculty and staff. The telephone number of the Department of Justice School Ombudsman shall be provided in writing to parents, students, faculty and staff; and shall be on the website of each school and school district. The contact information shall also be prominently displayed in each school.

(3) The policy shall be submitted to the Delaware Department of Education by January 1 of each subsequent year. Access to the policy via the district or charter school's website will meet the criteria as being submitted. Revision(s) to an existing district or charter school policy shall be submitted to the Department within (30) days of a district's school board or charter school's board of directors approval of the revision(s). The Department shall review such policy or revision(s) to policy annually for compliance with state and federal law and regulations promulgated by the Department of Education.

(4) The Delaware Department of Education shall prepare an annual report, which shall include a summary of all reported and all substantiated incidences of bullying, and shall include a summary of the information gathered pursuant to subsection (b)(2)f. of this section and the results of audits conducted pursuant to subsection (d)(4). This report shall be posted on the Delaware Department of Education's website.

(d) Duties of the Department of Education. --

(1) The Delaware Department of Education shall collaborate with the Delaware Department of Justice to develop a model policy, that may change from time to time, that is applicable to kindergarten through grade 12, and post this policy, along with the contact information for the School Ombudsman, on their websites in order to assist the school districts and charter schools.

(2) Distribution of the Comprehensive School Discipline Improvement Program funds to a school district and charter school provided in the General Appropriations Act starting in fiscal year 2009 and thereafter is contingent upon Department of Education approval of the school district's or charter school's bullying prevention policy.

(3) To the extent that funding is available the State Department of Education will provide for an award system for schools with exemplary programs based on criteria promulgated by the Delaware Department of Education.

(4) The Department of Education shall conduct random audits of schools to insure compliance with subsections (b)(2)(i) and (b)(2)(k) of this section. The Department shall report the results of these audits annually.

(e) Immunity. -- A school employee, school volunteer or student is individually immune from a cause of action for damages arising from reporting bullying in good faith and to the appropriate person or persons using the procedures specified in the school district and charter school's bullying prevention policy, but there shall be no such immunity if the act of reporting constituted gross negligence and/or reckless, wilful or intentional conduct.

(f) Other defenses. --

(1) The physical location or time of access of a technology-related incident is not a valid defense in any disciplinary action by the school district or charter school initiated under this section provided there is sufficient school nexus.

(2) This section does not apply to any person who uses data or computer software that is accessed through a computer, computer system, computer network or other electronic technology when acting within the scope of that person's lawful employment or investigation of a violation of this section in accordance with school district or charter school policy.

(g) Relationship to school crime reporting law. -- An incident may meet the definition of bullying and also the definition of a particular crime under state or federal law. Nothing in this section or in the policies promulgated as a result thereof shall prevent school officials from fulfilling all of the reporting requirements of § 4112 of this title, or from reporting probable crimes that occur on school property or at a school function which are not required to be reported under that section. Nothing in this section shall abrogate the reporting requirements for child abuse or sexual abuse set forth in Chapter 9 of Title 16, or any other reporting requirement under state or federal law.

(h) Rules and regulations. -- Notwithstanding any provision to the contrary, the Delaware Department of Education may promulgate rules and regulations necessary to implement this section.

Approved July 27, 2012