

# TO THE BARRICADES: THE BATTLE AGAINST BULLYING ABATETH NAUGHT

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# BULLYING, INTIMIDATION AND HARASSMENT

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## What is Bullying?

- Section 27-23.7 of the *Illinois School Code* prohibits bullying on the basis of actual or perceived race, color, religion, sex, national origin, ancestry, age, marital status, physical or mental disability, military status, sexual orientation, gender-related identity or expression, unfavorable discharge from military service, association with a person or group with one or more of these actual or perceived characteristics, or “any other distinguishing characteristic.”

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## Currently, Section 27-23.7 prohibits bullying in three contexts:

- During any school-sponsored education program or activity
- While in school, on school property, on school buses or other school vehicles, at designated school bus stops waiting for the school bus, or at school-sponsored or school-sanctioned events or activities; or
- Through the transmission of information from a school computer, a school computer network, or other similar electronic school equipment.

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## But Wait!

- Public Act 98-801, effective January 1, 2015 (available online at [www.ilga.gov](http://www.ilga.gov)), prohibits bullying “through the transmission of information from a computer that is accessed at a nonschool-related location, activity, function or program or from the use of technology or an electronic device that is not owned, leased, or used by a school district or school if the bullying causes a substantial disruption to the educational process or orderly operation of a school.”

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## The *Illinois School Code* defines bullying as...

“Any severe or pervasive physical or verbal act or conduct, including communications made in writing or electronically, directed toward a student or students that has or can be reasonably predicted to:

- Place the student or students in reasonable fear of harm to the student’s or students’ person or property;
- Cause a substantially detrimental effect on the student’s or students’ physical or mental health;
- Substantially interfere with the student’s or students’ academic performance; or
- Substantially interfere with the student’s or students’ ability to participate in or benefit from the services, activities, or privileges provided by a school. See *105 ILCS 5/27-23.7(b)*.

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### Note that the *Illinois School Code* definition of bullying:

- Does not include an intent component.
- Uses the objective reasonable person standard.
- Contains language resembling the “substantial disruption” test of *Tinker*.
- Does not address bullying of staff.

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### Bullying may take various forms, including:

- |  |  |
|--|--|
| <input type="checkbox"/> Harassment        | <input type="checkbox"/> Sexual violence                             |
| <input type="checkbox"/> Threats           | <input type="checkbox"/> Theft,                                      |
| <input type="checkbox"/> Intimidation      | <input type="checkbox"/> Public humiliation                          |
| <input type="checkbox"/> Stalking          | <input type="checkbox"/> Destruction of property                     |
| <input type="checkbox"/> Physical violence | <input type="checkbox"/> Retaliation for alleging an act of bullying |
| <input type="checkbox"/> Sexual harassment |  |

## **Bullying Policies and Procedures Required by Public Act 98-669**

- Effective June 26, 2014, Public Act 98-669 (available online at [www.ilga.gov](http://www.ilga.gov)) significantly amended the requirements for school district bullying policies.

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## **Section 27-23.7 of the Illinois School Code now requires bullying policies to contain the following:**

- The statutory definition of bullying;
- A statement that bullying is contrary to state law and district policy;
- Procedures for promptly reporting bullying, including, but not limited to:
  - Identifying and providing the school e-mail address and telephone number for the staff person(s) responsible for receiving reports of bullying; and
  - Procedures for anonymous reporting.

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**Section 27-23.7 of the Illinois School Code now requires bullying policies to contain the following:**

- Procedures (consistent with student privacy laws) for promptly reporting to parents/guardians of all students involved in the alleged bullying incident and discussing with them, as appropriate, the availability of social work services, counseling, school psychological services, other interventions, and restorative measures;

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**Section 27-23.7 of the Illinois School Code now requires bullying policies to contain the following:**

- Procedures for promptly investigating and addressing reports of bullying incidents, including:
  - Making all reasonable efforts to complete the investigation within 10 school days after the date the report received;
  - Taking into consideration additional relevant information received during the investigation about the reported incident;
  - Involving school support personnel and other staff with knowledge, experience, and training on bullying prevention, as deemed appropriate, in the investigation;
  - Notifying the principal or school administrator or designee of the report of the bullying incident as soon as possible after the report is received;
  - Consistent with student privacy laws, providing parents/guardians of students who are parties to the investigation with:
    - Information about the investigation; and
    - An opportunity to meet with the principal or school administrator or designee to discuss the investigation, the findings of the investigation, and the actions taken to address the reported incident of bullying.

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**Section 27-23.7 of the Illinois School Code now requires bullying policies to contain the following:**

- Interventions that can be taken to address bullying may include but are not limited to:
  - ▣ School social work services;
  - ▣ Restorative measures (defined below);
  - ▣ Social-emotional skill building;
  - ▣ Counseling;
  - ▣ School psychological services; and
  - ▣ Community-based services.
- A statement prohibiting reprisal or retaliation against anyone who reports an act of bullying, and describing the consequences and potential disciplinary or remedial actions for a person who engages in reprisal or retaliation;

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**Section 27-23.7 of the Illinois School Code now requires bullying policies to contain the following:**

- Consequences and potential disciplinary or remedial actions for a person found to have falsely accused another of bullying as a means of retaliation or bullying; and
- A policy evaluation process to assess the outcomes and effectiveness of the policy which includes, but is not limited to, factors such as:
  - ▣ The frequency of victimization;
  - ▣ Student, staff and family observations of safety at a school;
  - ▣ Identification of areas of a school where bullying occurs;
  - ▣ The types of bullying engaged in; and
  - ▣ Bystander intervention or participation.

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## School district bullying policies **MUST** also be:

- Based on (the engagement of) a range of school stakeholders, including students and parents/guardians;
- Posted on the school district's website;
- Included in the student handbook;
- Posted where other policies, rules, and standards of conduct are currently posted in the school;
- Distributed annually to parents, guardians, students and school personnel (including new employees, when hired).

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## Section 27-23.7 defines “restorative measures” as...

A continuum of school-based alternatives to exclusionary discipline, such as suspensions and expulsions, that:

- Are adapted to the particular needs of the school and community,
- Contribute to maintaining school safety,
- Protect the integrity of a positive and productive learning climate,
- Teach students the personal and interpersonal skills they will need to be successful in school and society,
- Serve to build and restore relationships among students, families, schools, and communities, and
- Reduce the likelihood of future disruption by balancing accountability with an understanding of students' behavioral health needs in order to keep students in school.

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## Can Schools Be Liable for Bullying Committed by Students?

Bullying victims and their parents have filed lawsuits on various grounds, most of which boil down to a claim that even though the school had an anti-bullying policy or knew that the student was being bullied, the school encouraged, tolerated, inadequately addressed or ignored the bullying.

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## Federal Claims

- Violation of Federal Antidiscrimination Laws
  - Actions may be brought alleging violations of the following Federal antidiscrimination laws:
    - Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex;
    - Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color or national origin; and
    - Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act ("ADA"), which prohibit discrimination on the basis of disability.

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## Federal Claims

- To avoid violating federal antidiscrimination laws, districts should seek to ensure that their schools do not create a “hostile environment.”
- Harassment creates a hostile environment when the conduct is so severe, pervasive or persistent 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. See OCR’s *October 26, 2010 Dear Colleague Letter, attached as Appendix B*.

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## Federal Claims

- *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629 (1999)  
In order to establish liability:
  - Harassment must be severe, pervasive and persistent;
  - Harassment must have a concrete, negative effect on the victim’s ability to participate in or benefit from educational programs or activities;
  - The district must have actual knowledge of the harassment; and
  - The district must have been deliberately indifferent to the harassment (failure to respond adequately and promptly to the situation; responses that are clearly unreasonable in light of known circumstances).

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## Federal Claims

- The *Davis* standard has been applied to cases alleging the violation of federal antidiscrimination laws under various statutes, including Title IX, Title VI, and Section 504 and Title II of the ADA.
- *Doe v. Board. of Educ. of Prince George's Co.*, 982 F.Supp. 2d 641 (D. Ma. 2013).

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## Federal Claims

- Constitutional Claims
  - Fourteenth Amendment – Substantive Due Process
    - “A due process violation exists where governmental action has been arbitrary, conscience-shocking, or oppressive in a constitutional sense, not just incorrect or ill-advised.” *Scruggs v. Meriden Bd. of Educ.*, 2007 WL 2318851 (D. Conn. 2007).
  - Fourteenth Amendment – Equal Protection
    - The Equal Protection Clause requires all similarly situated persons to be treated alike, and its guarantees concern classifications.
  - First Amendment – Retaliation
    - *Wolfe v. Fayetteville School District*, 600 F.Supp.2d 1011 (W.D. Ark. 2009)

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## Federal Claims

- State Claims
  - Violation of Student Confidentiality
    - *Albers v. Breen*, 346 Ill.App.3d 799 (4<sup>th</sup> Dist. 2004)
  - Negligence
    - Even though Illinois school districts are protected from negligence suits by the *Tort Immunity Act*, parents and victims continue to bring suits alleging willful and wanton misconduct.
    - *Hascall v. Williams*, 996 N.E.2d 1168 (4 Dist. 2013)
  - Non-Compliance with the *Illinois School Code*
    - There is no cause of action pursuant to the *Illinois School Code*, but parents and victims may still allege failure to uphold its provisions in a lawsuit (as did the plaintiff in *Hascall*).

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## Bullying Prevention Resources and Strategies

- Schools need to assess bullying, and may do so by:
  - Forming a bullying prevention committee;
  - Administering an anonymous questionnaire to students to assess the nature, frequency and location of bullying;
  - Meeting with staff members to determine how they perceive the school climate and whether they are making any current efforts to prevent or address bullying;
  - Soliciting parent feedback (e.g. through surveys or meetings); and
  - Reviewing data regarding incidents of past misconduct.

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## Bullying Prevention Resources and Strategies

- Learn about effective bullying prevention programs. Resources include:
  - Boston Public Schools' *Embedding Bullying Prevention in Core Curriculum: A Teacher's Guide K-12*, available online at [www.bostonpublicschools.org](http://www.bostonpublicschools.org)
  - The National Center on Safe Supportive Learning Environments (NCSSLE), online at <http://safesupportivelearning.ed.gov>, which is funded by the U.S. Department of Education's Office of Safe and Healthy Students to address issues affecting conditions for learning, including bullying and harassment.
  - [www.stopbullying.gov](http://www.stopbullying.gov) - A federal government website managed by the U.S. Department of Health and Human Services that provides information from various government agencies on what bullying is, what cyberbullying is, who is at risk, and how to prevent and respond to bullying.

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## Bullying Prevention Resources and Strategies

- Provide in-service training to school staff so they can identify bullying behavior, learn what to do when they observe or hear about it and how they can help students who are bullied.
- Coordinate with school resource officers and staff to ensure they monitor areas where bullying can be expected (such as isolated hallways, bathrooms, locker rooms).

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## Bullying Prevention Resources and Strategies

- When bullying is reported, schools should:
  - Respond immediately;
  - Investigate thoroughly;
  - Ensure that the parents of all involved students are notified in a timely manner;
  - Make a written record;
  - Impose reasonable sanctions;
  - If necessary, refer students involved in bullying incidents to the school's counselor, social worker or school psychologist; and
  - Follow up with students/staff/parents

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## Bullying Prevention Resources and Strategies

- Consider alternatives or supplements to standard discipline.
  - According to a 2009 guide for Illinois schools published by the Illinois Criminal Justice Information Authority, restorative justice is “a philosophy based on a set of principles that guide the response to conflict and harm”. Restorative justice’s three main goals are:
    - Accountability;
    - Community safety; and
    - Competency development.

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## Bullying Prevention Resources and Strategies

- In addition, the Illinois School Bullying Task Force favors restorative justice/discipline, stating in its report that “discipline should include comprehensive efforts to help students learn alternative ways to handle conflict and relational aggression and the ability to practice those behaviors until fluency is gained.”

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## Bullying Prevention Resources and Strategies

- Restorative justice/discipline responses may include educational and/or behavioral consequences, and often bring affected parties together to resolve conflict through tools such as peacemaking circles, mediation, conferencing and peer juries.
- If one response measure does not work in a particular situation, do not continue to use it. Instead, try an alternative measure.

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# QUESTIONS?

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