

What Schools Need to Know About Bullying and the Law

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**Amy A. Matthews
Church Church Hittle &
Antrim**

Overview of the States

- 49 out of 50 states have statutes passed regarding Peer Bullying.
 - Montana does not have a statute, but the Montana Board of Education requires schools to have anti-bullying policies.

Anti-Bullying Statutes Generally

- Define bullying
 - Include harassment and intimidation
 - Some separate the concepts
 - Generally encompass conduct that is:
 1. Intentional
 2. Repeated or severe
 3. Intended to cause physical or emotional harm
 4. Create substantial interference with a student's educational performance, opportunities, or benefits
 5. Creates a hostile environment for one or more students, or substantially disrupts the orderly operation of the school.

Anti-Bullying States Generally (cont.)

- Generally recognize (through inclusion in the definition of bullying or elsewhere in the criminal code):
 - Bullying can occur through electronic means.
 - Most statutes do not specifically use the term “cyberbullying.”
- Require/encourage school districts or the state to include bullying prevention in training standards or curriculum.

Anti-Bullying States Generally (cont.)

- Require local school boards/schools to adopt and publically release:
 - Policies
 - Procedures
 - Prevention plans(many require that the documents be posted on the district web site.)

Anti-Bullying States Generally (cont.)

- Require the state department of education to develop and publish a model policy
 - School districts are usually required to adopt the state department's policy as a minimum standard.
- Require schools/districts to gather data on incidents and report to state central authority.
 - Some require reports to be made public or transmitted to the state legislature.

Indiana's Version...

- **IC 20-33-8-0.2**

"Bullying"

Sec. 0.2. As used in this chapter, "bullying" means overt, repeated acts or gestures, including:

(1) verbal or written communications transmitted;

(2) physical acts committed; or

(3) any other behaviors committed;

by a student or group of students against another student with the intent to harass, ridicule, humiliate, intimidate, or harm the other student.

IC 20-33-8-13.5

Discipline rules prohibiting bullying required and must include provisions concerning

- Education**
- parental involvement**
- Reporting**
- Investigation**
- Intervention**

Must apply when a student is:

- (1) on school grounds immediately before or during school hours, immediately after school hours, or at any other time when the school is being used by a school group;**
- (2) off school grounds at a school activity, function, or event;**
- (3) traveling to or from school or a school activity, function, or event; or**
- (4) using property or equipment provided by the school.**

Must prohibit bullying through the use of data or computer software that is accessed through a computer, computer system, or network of a school corporation.

Includes protection for schools

CIPA/E-Rate Requirements

New requirement in July 2012 for training on social media safety, cyber bullying, and appropriate responses....

Trend: Social Networks

- Some states are prohibiting or limiting student access to social networking sites:
 - July 2012 California anti-bullying statute includes within its definition of an electronic act posts left on a social networking website. CA Educ. Code §48900.
 - Rhode Island legislated that students should be prohibited from accessing social networking websites except for educational purposes. R.I. Gen. Laws Ann. §16-2-34.

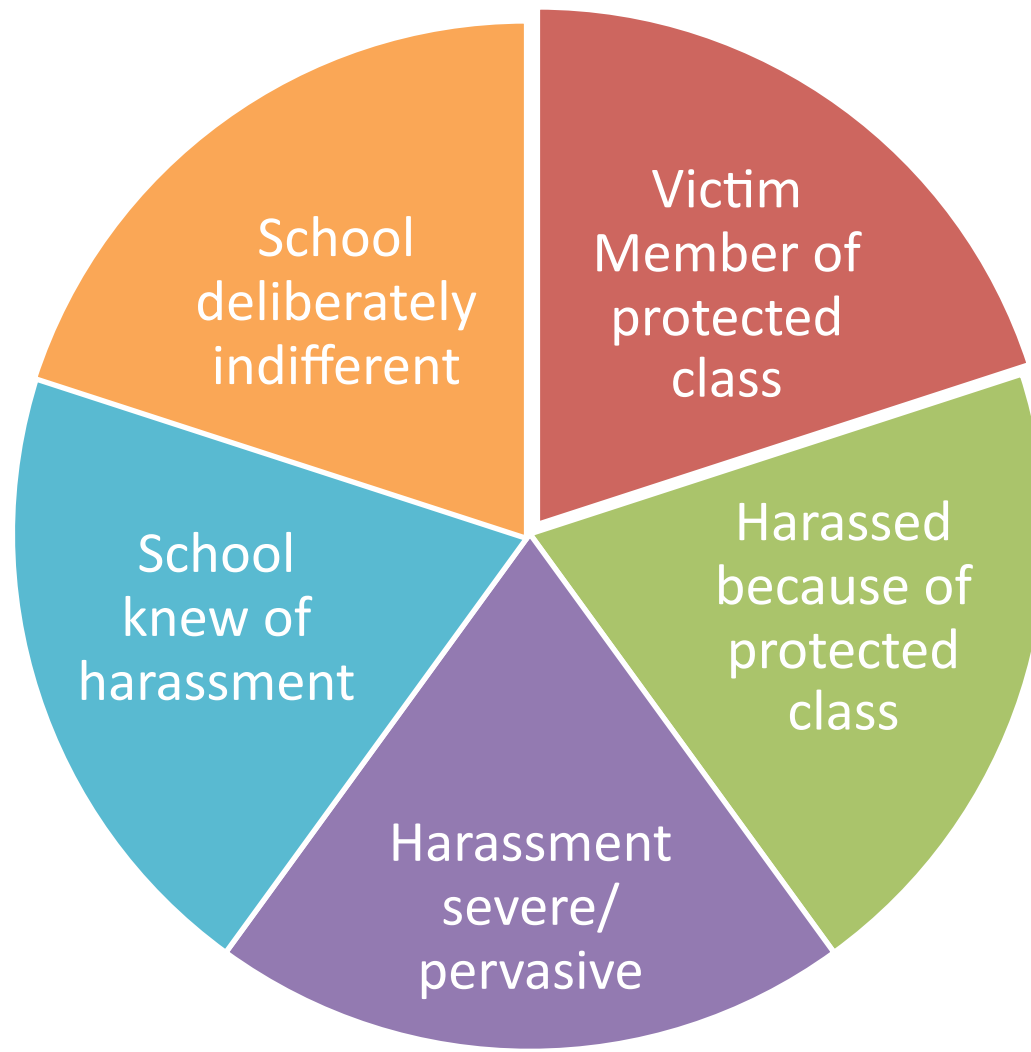
Trend: First Amendment

- Several states recognize the potential overlap between bullying statutes and First Amendment rights.
 - 9 states (Alabama, Colorado, Florida, Illinois, Louisiana, Maine, Nevada, Ohio, South Dakota, and Utah)

Most read something like this:

“this policy [or chapter] should not be construed as infringing on any student’s right under the First Amendment to the Constitution of the United States.”

Five Part Legal Liability Test



OCR DCL

Liability	OCR Enforcement
actual knowledge	knew or reasonably should have known
severe, pervasive, AND objectively offensive	severe, pervasive, OR persistent
effectively bars participation	interferes or limits participation
deliberate indifference	eliminate harassment

Prevention and Response

- Do NOT discount any complaint of bullying
- Do NOT, do NOT think “kids will be kids” (especially for protected classes)
- Do NOT, do NOT, do NOT move or otherwise alter victim’s education without clear consent and choice
- Follow your policy and handbook
- Investigate, take action, follow up

Take Proactive Steps

- Encourage communication
- Develop/update policies and procedures
- Provide training to staff and students
- Establish/sustain an environment of tolerance and respect
- Talking Point: The School encourages students, parents and staff to work together to prevent acts of harassment of any kind including but not limited to bullying.

The Basics

- Follow your policy and handbook
- Process all complaints
- Investigate all complaints
- If substantiated, do something about it
- Follow up to see how the response to the substantiated harassment is working

Thank You!



Amy A. Matthews

Two North Ninth Street, P.O. Box 10

Noblesville, IN 46061

317-773-2190

317-773-5320 (fax)

amatthews@cchalaw.com