



STATE OF DELAWARE
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MEMORANDUM

DATE: April 23, 2012

TO: All Members of the Delaware State Senate
and House of Representatives

FROM: Ms. Daniese McMullin-Powell, ^{Dmp/KH} Chairperson
State Council for Persons with Disabilities

RE: H.B. 268 [School Bullying]

The State Council for Persons with Disabilities (SCPD) has reviewed H.B. 268 which requires that all reported incidents of bullying are reported to the Department of Education by a school district or charter school. SCPD endorses the proposed legislation and has the following observations.

As background, attached please find an informative article from the Winter 2012 issue of the PACER Center's newsletter. It notes that children with disabilities are at increased risk for bullying. Such conduct may qualify as disability harassment in violation of federal civil rights laws. The article describes a variety of strategies to protect students with disabilities from bullying, including "shadowing" victims, identifying an adult in the school to whom bullying can be reported, and allowing the student to leave class early to avoid hallway incidents.

The impetus behind the Delaware legislation is discussed in the attached December 16, 2011 News Journal article and the March 5, 2012 News Journal editorial endorsing H.B. 268. Also, attached please find an April 9, 2012 News Journal article describing State efforts to address cyberbullying. Although current Title 14 DeL.C. §4112D(b)(2)k requires districts and charter schools to report bullying incidents to the DOE within 5 working days, compliance is not uniform. For example, the December 16 article includes a critical observation from Attorney General Biden that one New Castle County district reported zero incidents of bullying in the 2010-2011 school year.

The bill would amend the current State law as follows: 1) requiring reporting of all reported bullying incidents to the DOE, whether substantiated or not; 2) advertising the phone number of the DOJ School Ombudsman; 3) requiring the DOE to conduct random audits of school

compliance with information collection and reporting standards; and 4) requiring the DOE to publish an annual report with audit findings.

Thank you for your consideration and please contact SCPD if you have any questions regarding our position or observations on the proposed legislation.

cc: The Honorable Jack A. Markell
Mr. Brian Hartman, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

Hb 268 bullying 4-23-12

Use positive strategies to protect you

Jane has a severe learning disability and delayed social skills. Taking advantage of this, a group of popular girls invited her to join them on "clash day," when they said they would all wear outlandish clothes. On "clash day," Jane was the only one to dress in this manner. The stares, laughter, and name calling from classmates humiliated her.

School staff thought Jane was deliberately disrupting classes and suspended her for the day. She was too embarrassed and hurt to explain. After this experience, Jane never raised her hand in class, did not attend extracurricular activities, and her grades plummeted.

By Julie Holmquist

While any child can be a target of bullying, children with disabilities like Jane can be especially vulnerable. Although few studies exist concerning children with disabilities and bullying in the United States, the studies available indicate an increased risk for children with special needs.

Like other children, a child with disabilities who is bullied may grow angry, resentful, frightened, or apathetic at school, and is at risk for low self-esteem, school avoidance, depression, lower grades, and increased violence.

Parents can help protect their children with disabilities from bullying and its devastating effects if they promote effective strategies such as PACER's Peer Advocacy Program, use the Individualized Education Program (IEP) as a tool, work with the school, and know their child's rights under the law.

Promote Peer Advocacy

Before Julie Hertzog became the director of PACER's National Bullying Prevention Center, she was a concerned parent. Because her son David

was born with Down syndrome, was nonverbal, and had a Pacemaker and a feeding tube, she was worried that he would be vulnerable to bullying.

As she advocated for her son with school staff, she realized how much student interaction happens outside the view of adults. Recognizing that David's classmates could be powerful allies for her son in bullying situations, Hertzog worked with the school to create a unique support for him while he was in sixth grade.

A group of his classmates received training on how to prevent bullying and speak out on David's behalf. They called these students peer advocates. If they see bullying they intervene, ask the bully to stop, or report the situation to an adult.

The idea worked for David. Now what started with four children in sixth grade has evolved to a schoolwide project. More than 40 students volunteer to become peer advocates so they can help David and other students who are different. It's a strategy that any parent can explore and discuss with school staff.

For more information about the peer advocacy program or how to start one, visit PACER.org/bullying/resources/peer-advocacy.asp.

Use the IEP

Students with disabilities who are eligible for special education under the Individuals with Disabilities Education Act (IDEA) will have an IEP. The IEP can be a helpful tool in a bullying prevention plan. Every child receiving special education is entitled to a free, appropriate public education (FAPE), and bullying can sometimes become an obstacle to receiving that education

The IEP team, which includes the parent, can identify strategies that can be written into the IEP to help stop the bullying. It may be helpful to involve the child, when appropriate, in the decision-making process. Such strategies include:

- Identifying an adult in the school whom the child can report to or go to for assistance.
- Determining how school staff will document and report incidents.
- Allowing the child to leave class early to avoid hallway incidents.
- Holding separate in-services for school staff and classroom peers to help them understand a child's disability.
- Educating peers about school district policies on bullying behavior.
- Reassurance from the school staff to the student that he or she has a "right to be safe" and that the bullying is not his or her fault.
- Shadowing by school staff of the student who has been bullied. Shadowing could be done in hallways, classrooms, and playgrounds.
- Holding separate in-services for school staff and classroom peers to

Protect your child with disabilities from bullying

help them understand the child's disability.

Work with the School

It's important for parents to believe their child if he or she tells them about a bullying situation. Parents should communicate support to their child, explain that being bullied is not his or her fault, and that no one deserves to be treated this way.

Once parents have reassured their child in this way, they can meet with the principal and share what they know, explain how the situation is affecting their child, and ask the principal what the school can do to keep their child safe at school and on the bus. It's also a good idea to ask if the school has a written policy on bullying and harassment. If it does, request a written copy. Keep a written record of what happened at this meeting, including names and dates.

If a bullying situation is not resolved after meeting with the principal, parents should send a brief, factual letter or e-mail to the district superintendent requesting a meeting to discuss the situation. Copies of this letter can also be sent to the principal, special education director, and chair of the school board. Parents should make sure to keep a copy. A sample letter pertaining to children with disabilities is available at PACER.org/bullying.

Families may also wish to contact a parent center or advocacy organization for assistance. To find a local one, visit ParentCenterNetwork.org or call 888-248-0822.

"Remember, you are your child's best advocate," says Julie Hertzog, Director of PACER's National Bullying Prevention Center. "If your child does not



feel safe, you may decide to change schools. Your child's safety and well-being are of the utmost importance."

Know the Law

If bullying is based on a child's disability, it may violate that child's federal legal rights under Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act, and the Individuals with Disabilities Education Act.

In a Letter to Colleagues issued on October 26, 2010, the U.S. Department of Education's Office for Civil Rights (OCR) informed all U.S. public schools that bullying and harassment, including harassment of one student by another, can be a form of prohibited discrimination.

Federal law prohibits discrimination, including harassment, in education programs and activities on the basis of race, color, national origin, sex, gender, or disability. Read the OCR

letter at PACER.org/link/ocr-letter-oct-2010.asp.

According to the OCR and Department of Justice, however, not all bullying constitutes "harassment," and the specific conduct must be examined to determine if civil rights were violated. Read the definition of "disability harassment" as stated by the OCR and the Office of Special Education and Rehabilitative Services at: PACER.org/link/ocr-letter-july-2010.asp.

Although children with disabilities face a higher risk of being bullied, parents can take proactive steps to ensure their child's safety. Promoting innovative ideas such as PACER's Peer Advocacy Program, using the IEP as a bullying prevention tool, working with the school, and knowing the law can help parents protect children with disabilities from bullying. Learn more at PACER.org/bullying.

AG Biden calls for unified plan to fight, report online bullying

By **DOUG DENISON**
The News Journal

Citing growing concerns about bullying that takes place in the digital realm, Delaware Attorney General Beau Biden is calling on the state's school districts to work toward a unified plan to address the problem.

At a public forum in Dover Thursday evening, Biden said current state law requires schools to report verified incidents of bullying, including cyber-bullying, to the state Department of Education, but that data is currently lacking.

One unnamed high school in New Castle County, Biden said, reported zero bullying incidents last school year.

"That's not the reality," he said. "We have to find a better way to

make sure the information is pushed up."

Biden said he believes part of the problem are the unique bullying policies established by school districts. Though they may be good policies on their own, differing rules make it hard for the Department of Justice to pursue cases that may warrant Family Court action.

"I would love there to be a unified approach in our state to dealing with bullying," he said. "Nineteen school districts all run their own show."

Biden's office already has begun meeting regularly with school superintendents and he said the discussion is evolving.

"When there's bad news to report, it's sometimes institutional nature to push things down," he said. "It has to be a collaborative

effort."

A better policy is necessary, Biden said, because the nature of bullying has changed with technology. In-school bullying is now supplemented by bullying on Facebook, Twitter and other digital outlets.

"For bullies, at the core there's a bit of cowardice," he said. "The Internet has made it easier to bully because of anonymity."

Lynn Widdowson, student services supervisor in the Capital School District, said there is a need for more cooperation.

Parents, she said, also need to be more aware of cyber-bullying.

"Much, much more needs to be done," she said. "Every parent should be looking at what their child is looking at on the Internet."

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12-16-11

NJ

OPINION

The NewsJournal ...

Howard L. Griffin,
President and Publisher
David F. Ledford,
Executive Editor
John Sweeney,
Editorial Page Editor

QUOTE OF THE DAY

"It's my father! Should I answer? I'm just afraid of getting in trouble." — ONE OF SIX STUDENTS reacting to a cellphone call while stranded on the Christina River with five other students caught playing hooky from classes at George Read Middle School.

MONDAY, MARCH 5, 2012

A8

OUR VIEW

Next step in reining in school bullies

This week, a bill requiring every bullying incident — substantiated or not — be reported to the Department of Education by a school district or charter school is scheduled to be introduced in the General Assembly.

REPORTING REQUIREMENT

It deserves immediate and studied attention by every state legislator who claims to value the best education environment for his or her young constituents.

Four years ago, the same body, by a wide margin, passed the state's signature anti-bully law, requiring districts and charter schools to establish bully-

ing-prevention policies.

However, Lt. Gov. Matthew Denn, Attorney General Beau Biden, and a lot of residents have good reason to believe that bullying incidents are going unreported to parents — those most able to end a school-related cycle of physical and mental intimidation.

Both men met with DOE officials and the 19 school superintendents to express their concerns and alert them of the consequences for reporting failures.

Included in the new reporting mandate is an order to better publicize the Attorney General Office's bullying

hotline (1-800-220-5414) on each school district's website and in a "conspicuous" place in each school.

"We're not talking about the old-fashioned 'kids will be kids' instances — these are serious situations that are putting kids at risk," said Rep. Terry Schooley, the lead House sponsor of the legislation, said in summing up the consequences of lax reporting.

It's also helpful that this proposed update acknowledges that most bullies come from good families.

While they may be conscientious enough to straighten their kids out, these parents miss those opportunities

if they don't know their child is a menace during the school day.

Requiring DOE to audit districts' bullying statistics annually is a necessary level of accountability to keep these and other parents from being in the dark about their child's behavior.

Most important, the publication of these numbers potentially could factor into where parents choose to send their children to school, putting more pressure on the state's popular choice program.

That alone is the best incentive for school districts to effectively tackle bullying.

CYBERBULLYING NEW DETAILS

Officials seek public input

Uniform state policy goal following legal challenges

By AARON NATHANS
The News Journal

The question among school administrators isn't whether cyberbullying is a problem. It's how to craft a policy to combat it that can stand up in court.

Lt. Gov. Matt Denn said individual school districts in other states have set up policies to penalize students for harassing their peers online, but some of those districts have seen their rules face legal challenges.

So Denn and Attorney General

Beau Biden are seeking input to help craft legislation that would define the practice of cyberbullying, and put in place a uniform policy for public and charter schools in Delaware.

A series of public hearings are under way to help inform what will be in the legislation.

Denn said he and Biden are looking for real-life examples of cyberbullying, to see how a possible law would apply.

There is no such thing as a schoolyard bully anymore, in the age of constant online communi-

cation and social networking, Biden said.

"For schools to be the safe places that children deserve, they must be able to effectively fight bullying that may originate off school grounds, but follows its victims 24 hours a day," Biden said.

The proposed law will be crafted with some recent case law in mind, which basically says the bullying must impact classroom performance to be covered under the law, Denn said.

See CYBERBULLYING, Page B3

HEARINGS

PUBLIC HEARINGS ARE SCHEDULED FOR:

Sussex County
5 to 7 p.m. April 24
Sussex County
Administrative
Building
2 The Circle
Georgetown

Kent County
11:30 a.m. to 1:30
p.m., April 25
Kent County Levy
Court Chamber
555 Bay Road
Dover

Cyberbullying: Hearings set in Kent, Sussex

Continued from Page B1

The public feedback will help them "write a policy that's focused on the off-campus speech that's having a classroom impact," Denn said.

Sen. David Sokola and Rep. Terry Schooley, both D-Newark, introduced a bill last week that would require the Departments of Education and Justice to collaborate to develop a statewide cyberbullying policy.

They are each chairman of their respective chamber's education committee.

"A lot of the kinds of controls that have worked in other media haven't been as effective in the online world because of instantaneous and permanent nature, but we know some things have worked," Sokola said.

About 35 people, all representatives of schools or school districts, attended the first hearing

on Tuesday in Wilmington, sharing their stories. Numerous speakers that night asked state officials to craft a specific definition of cyberbullying. The remaining public hearings will take place April 24 in Sussex County and April 25 in Kent County.

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