



**Idaho
Coalition**
Against Sexual &
Domestic Violence

January 10, 2017

Superintendent Kenneth William Cox
Minidoka County Joint District
310 10Th Street
Rupert, ID 83350-1421

Dear Superintendent Cox:

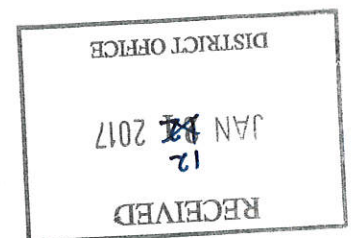
During the last few months, local and national press stories have generated significant public conversation about sexual violence, bullying and harassment in Idaho schools – most recently national press surrounding the plea agreement by a student who assaulted a black high school student with a disability in Dietrich, Idaho – as well as bullying and harassment based on gender, sexual orientation, race, religion, and other identities sparked by the election. This increased attention presents an opportunity for Idaho school districts to review their obligations to maintain a safe school environment and to prevent and protect students against unlawful discrimination including sexual harassment and sexual violence, intimidation, and bullying.

Superintendent Ybarra and the State Department of Education recently released a video PSA, which emphasizes the role that students and adults play in creating safe and supportive school climates. Watch it on [YouTube](#). Additionally, the State Department of Education hosts an annual conference focused on establishing supportive learning environments and preventing risk behaviors called the [Idaho Prevention and Support Conference](#), which will be held on April 13 & 14, 2017. To help schools meet their obligations to prevent discrimination, harassment, intimidation, and bullying, the State Department of Education also provides a model policy entitled: Policy No. 506.50 – [Prohibition Against Harassment, Intimidation, and Bullying](#) (“Model Policy”). The Model Policy defines behavior, sets out reporting requirements, and requires prompt investigation of any allegations of harassment, intimidation, or bullying.

Additionally, under Idaho Code 33-1612, Thorough System of Public Schools; IDAPA 08.02.03.160, Safe Environment and Discipline; and Title IX of the Education Amendments of 1972, requiring secondary schools to have a policy on the prevention and response to adolescent relationship abuse and sexual assault. The Idaho Coalition Against Sexual & Domestic Violence developed a [Model Policy](#) for secondary schools on the prevention and response to adolescent relationship abuse and sexual assault.

School districts, their staff and other agents have obligations under federal law, state law, and district policies to prevent and protect against students, staff, and others from discrimination, bullying, intimidation, and harassment. Under these laws, a district’s indifference to bullying, intimidation, or harassment, particularly based on a protected class (for example, sex, gender, disability, race, or disability), taking place in its schools or among its students can expose the district and its officials and employees to significant liability.

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Some of the most important of these laws include:

- Title VI of the federal Civil Rights Act, which prohibits discrimination on the basis of race, color, or national origin in any program or activity receiving federal financial assistance.
- Title IV of the federal Civil Rights Act of 1964, which prohibits discrimination on the basis of religion or sex, in addition to race, color, or national origin in public elementary and secondary schools.
- Title IX of the federal Education Amendments Act of 1972, which prohibits discrimination on the basis of sex, including on the basis of sex stereotypes, in education programs and activities.
- The Individuals with Disabilities Education Act (IDEA), Americans with Disabilities Act (ADA), and Section 504 of the Rehabilitation Act of 1973, which prohibit discrimination based on disability or perceived disability in public schools and private schools receiving federal funds.
- The Idaho Human Rights Act, at Idaho Code § 67-5909(7), which prohibits discrimination in Idaho schools based on race, color, religion, sex, or national origin.

Under these laws, bullying, intimidation, or harassment, may amount to illegal discrimination. And failing to adequately investigate allegations, or to protect students from, ongoing bullying, intimidation, or harassment when or school staff become aware or should be aware of it may subject the district, students, and employees to lawsuits or complaints filed with the United States Department of Education Office for Civil Rights (“OCR”). Additional guidance from the OCR elaborates on potential violations of the federal laws listed above when bullying, intimidation, or harassment in school is based on race, color, religion, sex, national origin, or disability or perceived disability. This guidance is available online and includes:

- October 21, 2014, Dear Colleague Letter: <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-bullying-201410.pdf>
- August 20, 2013, Dear Colleague Letter and enclosure on “Effective Evidence-Based Practices for Preventing and Addressing Bullying”:
<http://www.ed.gov/policy/speced/guid/idea/memosdcltrs/bullyingdcl-8-20-13.doc>
<http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/bullyingdcl-enclosure-8-20-13.pdf>
- October 26, 2010, Dear Colleague Letter: <http://www.ed.gov/ocr/letters/colleague-201010.pdf>
- July 25, 2000, Dear Colleague Letter: <http://www2.ed.gov/about/offices/list/ocr/docs/disabharassltr.html>

Idaho state law also imposes specific obligations on school boards and districts to maintain rules, policies, and procedures on harassment, intimidation, and bullying, and to maintain a safe environment conducive to learning (Idaho Code §§ 33-512(6) and 33-1631, and Idaho Administrative Code (IDAPA) § 08.02.03.160). Furthermore, recent statutory changes and a new State Department of Education rule now require districts to ensure that each district provide ongoing professional development to build staff members’ skills in preventing, identifying, and responding to harassment, intimidation, and bullying (Idaho Code § 33-1631 and IDAPA § 08.02.02.111).

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Of course, school districts can and must prevent bullying, intimidation, and harassment as well as respect students' First Amendment rights. Schools must respect the free expression rights of their students, even if the student is expressing an unpopular view. In fact, harassment is less likely to occur in schools where ideas can be freely and respectfully exchanged. Additionally, students also have certain limited rights under the Due Process Clause, the Fourth Amendment, and the Fifth Amendment of the United States Constitution when they are subject to school discipline. However, when speech interferes with another student's educational opportunity or rights or encourages unlawful treatment of students, this is not protected speech and must be addressed in accordance with required disciplinary processes providing sufficient due process (primarily notice of charges and opportunity to fully respond).

Another resource that might be helpful to your school district is "[Responding to Hate and Bias](#)" by Teaching Tolerance. Please download and share it with others.

We hope you will use this opportunity to review your district's obligations, policies, and practices around bullying, intimidation, and harassment, and use the resources listed above to reinforce your efforts to maintain a safe and healthy school climate this school year.

Thank you for your continued efforts to address bullying, intimidation, harassment, and violence in our schools.

Sincerely,

Kelly Miller, JD, Executive Director
Idaho Coalition Against Sexual & Domestic Violence

Christine Pisani, M. Spec. Ed.
Executive Director
Idaho Council on Developmental Disabilities

Angela Lindig, Executive Director
Idaho Parents Unlimited

Mel Leviton, Executive Director
Idaho State Independent Living Council

Jim Baugh, JD, Executive Director
DisAbility Rights Idaho

Stephen Graci, Executive Director
Idaho Federation of Families for Children's Mental Health

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