



# Oak Park Elementary School District 97

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**TO: Members, Board of Education  
Dr. Albert Roberts, Superintendent**

**FROM: Chris Jasculca**

**RE: First Reading of Aggressive Behavior, Bullying and Harassment Policy**

**DATE: June 28, 2011**

The Illinois School Code (105 ILCS 5/27-23.7) states that “each school district shall create and maintain a policy on bullying.” In order to ensure that District 97 is in full compliance with the law and is providing a safe environment for its students, the district’s policy committee and administrative discipline committee (comprised of central office administrators, principals and assistant principals) have been working with Hodges Loizzi Eisenhammer Rodick & Kohn LLP (HLERK), the district’s legal counsel, on the development of a bullying policy.

Representatives from both committees reviewed the draft of the policy provided by HLERK and offered recommended revisions. They also asked several questions about the policy, which were directed to HLERK. Those questions and HLERK’s answers are below.

Q. Should we add sexual harassment to the formal title of the policy, which is currently Aggressive Behavior, Bullying and Harassment?

A. The policy features a definition of harassment on page two, and prohibits harassment on the basis of the listed categories, which includes sex. The district also has four anti-harassment policies (1662, 3362, 4362 and 5517). In addition, by calling out sexual harassment in the title, we may convey that we view this type of harassment as more important than others. The recommendation is to leave the title as is, but add a cross reference to the existing anti-harassment policies at the end of the document.

Q. Is there any objection to us revising the format of the policy so all of the definitions (bullying, physical bullying, cyberbullying, etc.) are in the same section?

A. No objection.

Q. In the section at the bottom of page one that starts with "No student shall be subjected...", is there a difference between the first and second bulleted items? Is the first meant to cover incidents that happen on school property during the school day, while the second covers incidents that happen during non-school hours and/or off school property? Do you think we need to provide a clearer distinction between in school and off school property? Or, can we combine the first two bullets to read:

- While in school, on school property, on school buses or other school vehicles, at designated school bus stops waiting for the school bus, or during any school-sponsored or school-sanctioned program, event or activity.

A. We will combine bullets one and two to reflect the suggested text above.

Q. In the third bulleted item in the same section referenced in the previous question, should we include personal electronic devices?

A. The third item speaks to the use of district-owned technology to bully or harass. A student's misuse of a personal electronic device (e.g., cell phone or mobile device) is covered by the second and fourth bullets, as long as use of the device has a nexus to the school or school activities.

Q. Is nexus too broad a term? Does it provide the district with adequate protection from a legal standpoint? Does case law provide a definition of nexus that we can include either in the policies or administrative guidelines?

A. The nexus language comes directly from relevant case law in both federal and state court. To summarize, there is an outer boundary on the district's legal authority to discipline students. A district may discipline a student for conduct that occurs at school, during school activities or on a school bus. The more nebulous area/aspect is when a student engages in conduct that warrants disciplinary action, but occurs during non-school hours and/or off school property. Both federal and state courts have consistently held that a district may discipline a student for misconduct that occurs during non-school hours and/or off school property so long as a nexus exists between the conduct and the district's mission.

Whether a nexus exists between the misconduct and the district will always vary based on the facts of each situation—thus necessitating administrator judgment. In reviewing a district's decision to impose discipline for off-campus misconduct, the court will examine the nexus between the student's conduct and the school environment, specifically the effect the conduct has (or already had) on the school (impact on staff, students, school operations, etc.). The district will need to show that the conduct, while during non-school hours and off school property, created, or threatened to create, a substantial disruption to the school environment.

We have modified the language of the policy to address your concern and further explain the concept of "nexus." In addition, if you look at item 18 on page three of the student discipline policy, the language provides a further definition of "nexus." This item prohibits the following behavior:

Any activity, on or off campus, that interferes with, may reasonably be forecast to disrupt, actually disrupts, or adversely affects the school environment, school operations, or an educational function, including but not limited to, conduct that may reasonably be considered to: (a) be a threat or an attempted intimidation of a student or staff member; or (b) endanger the health or safety of students, staff, or school property; or (c) cause, or may reasonably cause substantial injury or disruption or material interference with school-related activities or the rights of other students or school personnel.

We do need to be careful not to over-define "nexus." Doing so may create a situation where the language is too stringent and the administration is unable to impose discipline for a behavior as a result. The key is for parents/guardians and students to have "fair notice" that harassing or bullying conduct can be subject to discipline even when occurring outside of school.

Q. Is there a reason why discrimination is included in the intervention procedures section at the bottom of page two? Is this meant to provide the district with additional avenues for disciplining students who violate the policy? Is discrimination considered different than harassment, or should it be considered another form of harassment? Do we need to define discrimination in the policy?

A. The policy states that students can and will be disciplined for bullying. Moreover, if the administration determines that the bullying is based on a student's status or protected characteristic (sex, race, sexual orientation, etc.), the student who did the bullying may receive additional/more severe consequences. This is consistent with the recent "Dear Colleague" letter issued by the Office for Civil Rights.

Harassment can be a form of discrimination – e.g., sexual harassment is a form of discrimination on the basis of an individual’s sex. However, a practice/act/incident does not necessarily need to constitute harassment to be potentially discriminatory – e.g., providing favorable treatment to students based on their race. There is an overlap between the two terms, and we want to ensure that we cover both in the policy.

Q. Is there a reason why we use may instead of will in the last sentence of the cyberbullying section? Does the phrase "nexus to school activity" cover what may happen on the weekends off school property?

A. The nexus language does cover what may happen on the weekends off school property. However, in order to discipline a student for a cyberbullying incident that took place during non-school hours and/or off school property, the district will need to show that the student’s conduct created, or threatened to create, a substantial disruption to the school environment.

Q. If the school/district refers a student to a community agency for support services (e.g., counseling), does the district incur any cost associated with those services?

A. No. However, short of an expulsion, the district cannot deny the student access to school if the student refuses to follow through with an agency to receive support services.

The draft of the Aggressive Behavior, Bullying and Harassment policy was made available for review by the general public via the policies page (<http://www.op97.k12.il.us/boe/policies.html>) on the district’s Web site, and is being presented to the board tonight for a first reading.

A second reading and adoption of the policy is scheduled for the board meeting on July 26, 2011.

Attachments:

- Draft of the Aggressive Behavior, Bullying and Harassment policy