

**Missouri Association of School Administrators  
2014 Spring Conference**  
Presented by:  
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Mickes Goldman O'Toole, LLC

"Best Education Law Firm in Missouri"



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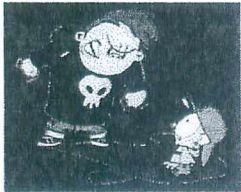
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**Rising Tide in Bullying Lawsuits:  
Protecting Students and Minimizing  
Liability**



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**Statutory Requirements**

- Bullying Policy
- Discipline Code with consequences for bullying
- Training
- Monitoring of District's Internet
  - Filters
  - Monitoring use

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## Situations that Commonly Give Rise to Bullying Complaints

- Investigations related to student misconduct.
- A student receives a disciplinary consequence for misconduct.
- Parent raises concerns about staff members or handling of matters related to student.




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	<p><b>STUDENTS</b></p> <p><b>Discipline</b></p> <p><b>Bullying</b></p>	<p>Policy 2455</p>
<p>The District is committed to maintaining a learning and working environment free of any form of bullying or harassment by students toward District personnel or students on school grounds, on school time, at a school sponsored activity or in a school related context. Bullying or harassment occurs by an individual or group of individuals in which physical, emotional or mental suffering or another individual or group of individuals.</p> <p>Bullying occurs when a student:</p> <ul style="list-style-type: none"> <li>• Communicates with another by any means including electronic, written, verbalizing, or via electronic communication, electronic transmission, or other physical, emotional, or mental harm without legitimate purpose, or</li> <li>• Physically contacts another person with the intent to intimidate or to inflict physical, emotional, or mental harm without legitimate purpose. Physical contact does not require physical touching although touching can be included.</li> </ul> <p>Students who are found to have violated this policy will be subject to the following consequences depending on factors such as age of student(s), degree of harm, severity of behavior, number of incidents, etc. Consequences: Loss of privilege, classroom detention, conference with teacher, parent/caregiver conference with principal, student suspension, individualized support plan, suspension and/or exclusion from school.</p> <p>District employees are required to report any instance of bullying of which the employee has firsthand knowledge. Moreover, the District will provide training for employees related to enforcement of the policy.</p>		

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## Public Accommodations Law

213.065. 1. All persons . . . shall be entitled to the full and equal use and enjoyment . . . of any place of public accommodation . . . without discrimination or segregation on the grounds of race, color, religion, national origin, sex, ancestry, or disability.

2. It is an unlawful discriminatory practice for any person, directly or indirectly, to refuse, withhold from or deny any other person, or to attempt to refuse, withhold from or deny any other person, any of the accommodations, advantages, facilities, services, or privileges made available in any place of public accommodation . . . on the grounds of race, color, religion, national origin, sex, ancestry, or disability.

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## Standard of Liability

- As set forth by the Missouri Court of Appeals in *Doe v. Kansas City School District*, a school district's failure to take prompt and effective remedial action to address harassing behavior has potential to deny a student the full and equal use and enjoyment of the public school.
- **School can be held liable if it knew or should have known of the harassment and failed to take prompt and effective remedial action.**

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## "Knew or Should Have Known"

- How do you disprove a parent or student's claim that they had complained of bullying to their principal?
- Without taking affirmative preventative steps, the jury will decide who to believe.
- The answer to that question will determine the jury's verdict and potentially, the damages, actual and punitive, assessed against you.

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## Minimizing Liability –Steps to Consider

- **Establish a No Bullying committee**
  - Consider getting participation or input from students and parents
- **Establish Protocols for Bullying Investigations**
  - Establish a requirement that complaint form be utilized
    - Develop
    - Mandate
    - Publicize & Distribute
- **Develop multiple ways to report bullying or harassment**
  - School Reach Bully Text Message System – anonymous student texts get sent to an administrator
  - State Hotline

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### Minimizing Liability Cont.- Training

- Provide Annual Staff Training Specific to Position/Building
  - Annually train every staff member on:
    - recognizing bullying and harassment,
    - duty to report all allegations/incidents,
    - reporting protocols,
    - documenting incidents/allegations, and
    - appropriate remedial actions
  - Every building administrator should also be trained on:
    - Investigation protocols for bullying and harassment
      - Including documentation and follow-up
    - Conducting a thorough investigation

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### Minimizing Liability Cont.- Training

Train/educate students about bullying and its effects at all ages

Keep evidence of training/programs provided (sign in sheets, materials, etc...)

- Have administrators keep file of all trainings attend and share material with designated central office administrator

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### Minimizing Liability Cont.- Tracking

- Consider an annual report for the Board and the Community.
  - Consider how incidents will be tracked:
    - Add a SIS discipline category?
- Be consistent across grade and building levels
- Include documentation in both bully and victim file

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### Minimizing Liability Cont.

- Calendar meeting for every building at least every year to review number of bullying allegations, number resulting in discipline, review documentation, discuss any ongoing situations, etc.
- Emphasize and hold staff accountable for assigned supervisory duties
- Emphasize and hold staff accountable for reporting requirements
- Place cameras in areas where teachers or administrators are unlikely to be (e.g., stairwells)

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### Remember

Anything drafted could become part of a record if it is relevant to future litigation

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### Inconclusive Results

- Consider supplementary training, follow-up and further monitoring
- Tell the complainant that you want to be informed of any future problems and that another investigation will be undertaken immediately in such circumstances.

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MILWAUKEE INCIDENT REPORT FORM

If you have been the target of bullying in your workplace, the University of Wisconsin System, or a District, you should contact the Office of the Executive Vice President for Human Resources. Complaints should be filed with the Office of the Executive Vice President for Human Resources as soon as possible. Reports of bullying will be investigated and disciplinary action will be taken as warranted.

Name of Reporter: \_\_\_\_\_  
Name of Person(s) Being Reported: \_\_\_\_\_  
Department: \_\_\_\_\_  
Campus/Division: \_\_\_\_\_  
Title of Reporter: \_\_\_\_\_  
Date of Report: \_\_\_\_\_  
Title of Person(s) Being Reported: \_\_\_\_\_  
Department: \_\_\_\_\_  
Campus/Division: \_\_\_\_\_  
Date of Incident: \_\_\_\_\_  
Location of Incident: \_\_\_\_\_  
Description of Incident: \_\_\_\_\_  
Witnesses: \_\_\_\_\_  
Action Taken: \_\_\_\_\_  
Comments: \_\_\_\_\_  
Signature of Reporter: \_\_\_\_\_  
Signature of Person(s) Being Reported: \_\_\_\_\_

Mickes Goldman O'Toole, LLC

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## STUDENTS

## Policy 2655

### Discipline

### Bullying

The District is committed to maintaining a learning and working environment free of any form of bullying or intimidation by students toward District personnel or students on school grounds, or school time, at a school sponsored activity or in a school related context. Bullying is the intentional action by an individual or group of individuals to inflict physical, emotional or mental suffering on another individual or group of individuals.

Bullying occurs when a student:

- Communicates with another by any means including telephone, writing, cyberbullying, or via electronic communications, intention to intimidate, or inflict physical, emotional, or mental harm without legitimate purpose, or
- Physically contacts another person with the intent to intimidate or to inflict physical, emotional, or mental harm without legitimate purpose. Physical contact does not require physical touching, although touching may be included.

Students who are found to have violated this policy will be subject to the following consequences depending on factors such as: age of student(s), degree of harm, severity of behavior, number of incidences, etc. Consequences: Loss of privileges, classroom detention, Conference with Teacher, parents contacted, conference with Principal, in-school suspension, out-of-school suspension, expulsion and law enforcement contacted.

District employees are required to report any instance of bullying of which the employee has first-hand knowledge. Moreover, the District will provide training for employees relative to enforcement of this policy.

## BULLYING INCIDENT REPORT FORM

If you have been the target of bullying or have witnessed the bullying of a District student, complete this form and submit to the building principal. Complaints against building principals should be submitted to the Superintendent. Complaints against the Superintendent should be submitted to the Board of Education. Reports of bullying will be investigated and disciplinary action will be taken as warranted.

Date Filed: \_\_\_\_\_ Your Name\*: \_\_\_\_\_

Phone Number(s): \_\_\_\_\_

Indicate the appropriate response to the following with a check mark(s):

- You are a:  Student  Parent  Employee  Volunteer

Date(s) of alleged bullying: \_\_\_\_\_

Name of student(s) subjected to bullying: \_\_\_\_\_

Person(s) alleged to have committed the bullying or harassment: \_\_\_\_\_

Summarize the incident(s) or occurrence(s) of bullying as accurately as possible. Attach additional sheets or use back side of the form, if necessary.

Names of Witnesses: \_\_\_\_\_

Have you reported this to anyone else:  Yes  No. If so, who? \_\_\_\_\_

\*Signature of Complainant \_\_\_\_\_

**\*Students have the right to complete this form anonymously. However, it will be easier for the District to investigate this matter if as much information as possible is provided. Submission of a good faith complaint or report of bullying or harassment will not affect the complainant or reporter's future employment, grades, learning, or working environment. A complainant that falsely accuses someone will be subject to disciplinary action.**

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*This Section is for use of District Administration*

Date Received by Principal: \_\_\_\_\_

Investigative Action taken: \_\_\_\_\_

Result of Investigation/Action taken: \_\_\_\_\_

Signature of Principal: \_\_\_\_\_