ED-RED Member Meeting
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Cyberbullying

Jenny, a seventh grader, creates a video with other classmates at her house with images of Heather inserted throughout the video and the words “fat” and “slut” written underneath her photos and the song “I kissed a girl” playing in the background. Later that night, Jenny posts the video on YouTube and sends the link to several classmates, including Heather.
Distinguishing Characteristics

- Race
- Color
- Sex
- Religion
- Sexual Orientation
- National Origin
- Ancestry
- Age
- Marital Status
- Gender-related identity or expression
- Military status or unfavorable discharge from military service
- Physical or mental disability
- "Any other distinguishing characteristic"

Definition of Bullying

- What is bullying?
  - Severe or pervasive conduct
  - Directed toward a student
  - Reasonably predicted to:
    - Place the student in fear of harm;
    - Detrimentally affect physical or mental health;
    - Substantially interfere with academic performance;
    - Or
    - Substantially interfere with participation in or benefit from school.

Bullying prohibited

- Bullying is prohibited
  - In school, on school property, on school buses or other school vehicles;
  - At bus stops waiting for the school bus;
  - At school-sponsored or school-sanctioned events or activities; or
  - From a school computer, network, or other similar electronic school equipment.
- Even though not listed, don’t forget the "nexus"
Investigation Steps

- Staff observation
  - Solicit and document teacher insights
- Review any past incidents involving student
  - Are there related incidents?
  - A pattern of aggression against certain individuals or a category of individuals?
- Consult with special education staff
  (as necessary)

Implement Appropriate Interventions

- Eliminate/minimize contact with bully(ies)
- Provide access to school resources
- Increase staff supervision
- Follow-up with victim and parents
- Communicate with bully’s parents
- Discipline

- Continue to systematically monitor and document student behavior
- Change intervention used if do not see positive response
- School-wide trainings, policies and procedures, and/or other school-wide responses
- Comply with any applicable reporting requirements

Cyberbullying – Common Error

Dismissing cyberbullying complaints occurring off-campus

Case Study
- Racist-based comments, lax and electronic images sent via cell phone
  chat and Facebook and other sites
- District Response: Cannot do anything about Facebook comments made away from school

Case Study
- Parents reported bullying and cyber-bullying, including threats of harm, in response to
  student’s network
- Student became depressed
- District response: “Cannot control or intervene with cyber-bullying”
Discipline: the Basics

- A student may be disciplined if
  - Valid school policy or rules/regulations prohibits behavior
    - Clear policies, rules, and regulations
  - Information about the violation is properly obtained
  - If off campus:
    - nexus
    - unprotected speech or substantial disruption/invasion of rights of others

Obtaining Information About Violation

- Fourth Amendment Concerns – Search and Seizure
  - 105 ILCS 5/10-22.6(e)
  - Searches of personal belongings, such as cell phone, other electronic devices, backpack, purse – "reasonable suspicion"
- Special considerations for social media accounts

Off Campus

- In addition to the factors above, must also show:
  - nexus + unprotected speech or substantial disruption/invasion of rights of others
  - Examples of off campus misconduct:
    - Cyberbullying
    - Online Threats
    - Fight off school grounds
**“Nexus”**

- Factors supporting a “nexus”
  - Access at school
  - “Sending” to other students
  - “Aiming” to the school community
  - Encouraging action by the school community
  - Including false content

- Factors against a “nexus”
  - Third parties notified the school about the content
  - Specific steps to segregate
  - Publishing in a manner unlikely to reach the school (e.g., “private”)

**“Substantial Disruption”**

- The decision to discipline speech must be supported by the existence of specific facts that could reasonably lead school officials to forecast disruption

- No actual disruption is required

- Must have more than an “undifferentiated fear or apprehension of disturbance” or “a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint”

**“Substantial Disruption”**

- Factors supporting a “substantial disruption”
  - There is an actual disruption to teachers, students, or parents such as:
    - Disruptions in the classrooms or hallways
    - Verbal concerns from parents about safety or quality of instruction
    - A need to provide substitute teachers because of impact on enrollments
    - School officials being pulled away from their regular duties to deal with the situation
    - There was a past disruption in similar circumstances
    - The content is a type that would lead to a disruption if not pulled immediately, such as violent or threatening content toward members of the school community or revealing or false information

- Factors against a “substantial disruption”
  - There is merely a “buzz” about the speech
  - Only a few students are pulled out of class
  - One or two students feel hurt or insecure
  - School officials simply dislike or disagree with the speech
Federal Guidance

- Discipline is essential
- Statistics show discipline often falls disproportionately on students in minority groups – leads to harms
- Discrimination by schools based on race, color, and national origin prohibited, and DOE will investigate complaints

Federal Guidance: Example #1

A complaint was filed alleging discrimination after a school imposed different disciplinary sanctions on two students in the sixth grade. The student who was disciplined more harshly was Hispanic. Both students had similar disciplinary histories.

Federal Guidance: Example #2

School officials have discretion to pick between a range of penalties for each category of discipline offenses (Levels 1 to 3). An eighth grade African American boy is referred to the office and receives a one-day in-school suspension for “use of profane language” (Level 1) in class. The student has no previous discipline incidents. A white student with similar discipline history also committed a Level 1 offense” (inappropriate display of affection) on a school bus, but the only discipline was his parents were called.
needed to avoid and de-escalate problems. Targeting student supports also helps students address the underlying causes of misbehavior, such as trauma, substance abuse, and mental health issues.

Second, ensure that clear, appropriate, and consistent expectations and consequences are in place to prevent and address misbehavior. By holding students accountable for their actions in developmentally appropriate ways, students learn responsibility, respect, and the bounds of acceptable behavior in our schools and society. This also means relying on suspension and expulsion only as a last resort and for appropriately serious infractions, and equipping staff with alternative strategies to address problem behaviors while keeping all students engaged in instruction to the greatest extent possible.

Finally, schools must understand their civil rights obligations and strive to ensure fairness and equity for all students by continuously evaluating the impact of their discipline policies and practices on all students using data and analysis.

Another key recommendation is to use law enforcement appropriately. This portion of the DCL and related materials has received significant media attention, including from the ACLU and the Associated Press. As Attorney General Eric Holder explained in a press conference, "A routine school disciplinary infraction should land a student in the principal's office, not a police precinct." The DCL recommends, among other things, ensuring that school officials only utilize law enforcement when there are major threats to school safety or serious-school-based criminal conduct that cannot safely and appropriately be managed by the school's internal discipline policies.

Also key are recommendations that schools monitor the impact of discipline policies before a complaint is filed. The DCL recommends that schools collect and use multiple forms of data, including a discipline incident database, regarding discipline incidents and conducting additional investigation where necessary. Notably, the DCL makes clear that schools are responsible for the following: (i) developing and implementing uniform standards for the content of discipline files, (ii) developing and training staff on uniform standards for entry and maintenance of files, and (iii) keeping data on teacher referrals and discipline to assess whether particular teachers may be referring large numbers of students by race for discipline so that follow up with teachers can be taken as needed.

The guidance package includes, in addition to the DCL and the Guiding Principles document, other resources for schools in implementing fair discipline policies. These include a Directory of Federal School Climate and Discipline Resources and a Compendium of School Discipline Laws and Regulations.