



TENNESSEE DEPARTMENT OF

EDUCATION

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Bullying and Harassment

An Educator's Guide for Addressing Bullying and
Harassment Complaints in Tennessee

Revised October 2012

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Introduction

This manual was developed to inform local education agencies (LEAs) of their obligations under state and federal laws regarding bullying and harassment. It may serve as a guide to school administrators and staff for implementing a comprehensive bullying and harassment policy that includes conducting thorough investigations of complaints and conducting follow-ups. Properly addressing complaints of bullying and harassment in schools will provide a better educational experience and increased student achievement for all students.

LEAs are required to comply with state bullying and harassment laws at Tenn. Code Ann. §§ 49-6-1014 – 1019. Additionally, adherence to civil rights laws is mandated by the U.S. Department of Education for receipt of federal financial assistance.

Please be advised this manual only provides general guidance and does not represent specific legal advice or a mandated set of policies of the Tennessee Department of Education. LEAs may contact the department's assistant general counsel for civil rights or the office of safe and supportive schools for technical assistance at (615) 741-2921.

It is a policy of the State Board of Education and a priority of the Tennessee Department of Education that there will be no discrimination or harassment on the grounds of race, color, sex, marital status, religion, national origin, age, disability, or any other category protected under state and/or federal law in any educational program, activities, or employment.

This manual was provided by the Tennessee Department of Education's Office of Safe & Supportive Schools and Office of General Counsel. All or any part of the manual may be photocopied for educational purposes without permission from the Tennessee Department of Education.

Frequently Used Terms

Cyber-bullying: Bullying undertaken through the use of electronic devices.

Gender-based harassment: Discrimination based on student's failure to conform to stereotyped notions of masculinity and femininity.

Harassment, intimidation, or bullying: Any act that substantially interferes with a student's educational benefits, opportunities or performance and:

- (A) If the act takes place on school grounds, at any school-sponsored activity, on school-provided equipment or transportation, or at any official school bus stop, the act has the effect of:
 - (i) Physically harming a student or damaging a student's property;
 - (ii) Knowingly placing a student or students in reasonable fear of physical harm to the student or damage to the student's property;
 - (iii) Causing emotional distress to a student or students; or
 - (iv) Creating a hostile educational environment; or
- (B) If the act takes place off school property or outside of a school-sponsored activity, it is directed specifically at a student or students and has the effect of creating a hostile environment or otherwise creating a substantial disruption to the educational environment or learning process.

Hostile environment: Unwelcome conduct that is sufficiently severe, pervasive, or persistent so as to interfere with or limit a student's ability to participate in a program or activity.

Local Education Agency: Referred to as LEA. Shall be any pre-K – 12 school, or a school system located within the state of Tennessee. References to LEA shall include State Schools.

Office for Civil Rights: Refers to the U.S. Department of Education Office for Civil Rights. Also referred to as OCR. OCR has the specific authority to investigate and enforce Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and Section 504 of the Rehabilitation Act of 1973.

Retaliation: Adverse action taken against someone for exercising their rights, such as filing a complaint or assisting in an investigation.

Sexual harassment: Unwelcome conduct of a sexual nature that can deny or limit, on the basis of sex, a student's ability to participate in or to receive benefits, services, or opportunities in the school's program.

Overview

Pursuant to Tenn. Code Ann. § 49-6-1014, a safe and civil environment is necessary for students to learn and achieve high academic standards. Harassment, intimidation, bullying, and cyber-bullying is conduct that disrupts a student's ability to learn and a school's ability to educate its students in a safe environment.

What is Bullying?

Bullying fosters a climate of fear and disrespect that can seriously impair the physical and psychological health of its victims and create conditions that negatively affect learning. Bullying involves unwanted, aggressive behavior that results in an imbalance of power. The behavior may be repeated, or has the potential to be repeated, over time. The imbalance of power involves the use of physical strength, or popularity to access to embarrassing information to control or harm others. Bullying can occur during or after school hours and can happen in places like on the playground or on the bus.

The three types of bullying include, verbal bullying, social bullying, and physical bullying. Verbal bullying involves saying or writing mean things. It includes teasing, name-calling, inappropriate sexual comments, taunting, or threatening to cause harm. Social bullying, which is sometimes referred to as relational bullying, involves hurting someone's reputation or relationships. Social bullying involves telling other children not to be friends with someone, leaving someone out on purpose, spreading rumors about someone, or embarrassing someone in public. Physical bullying involves hurting a person's body or possessions. It includes hitting/kicking/pinching, spitting, tripping or pushing, taking or breaking someone's things, and making mean or rude hand gestures.

Consider the following questions for determining whether bullying has occurred:

- What is the history between the individuals involved? Have there been past conflicts?
- Is there an imbalance of power? (Power imbalance is not limited to physical strength.)
- Has this or a similar incident happened before? Is the individual worried that it may happen again?
- Have the individuals dated? (This may not be considered bullying.)
- Are any of the individuals involved with a gang? (This may result in interventions different from bullying.)

What is not considered bullying?

There are many types of aggressive behavior that do not fit the definition of bullying. While these types of behaviors are still very serious and require immediate attention, they require different prevention and response strategies.

Peer Conflict

It is not considered bullying when individuals with no perceived imbalance of power have an argument, disagreement or fight. Examples may include, not liking someone, isolated expressions of unpleasant thoughts or feelings regarding others, single act of telling a joke about someone, accidentally bumping into someone, or incidents of exclusion.

Teasing

Teasing usually involves two or more friends who act together in a way that seems fun to all the people involved. Often individuals will tease each other equally, but it never involves physical or emotional abuse.

Hazing

Hazing is the use of embarrassing and often dangerous or illegal activities by a group to initiate new members. Pursuant to Tenn. Code Ann. § 49-2-120, hazing means,

any intentional or reckless act in this state, on or off LEA property, by one (1) student acting alone or with others, that is directed against any other student that endangers the mental or physical health or safety of that student or that induces or coerces a student to endanger that student's mental or physical health or safety.

Hazing does not include customary athletic events or competitions and is limited to those situations created in connection with initiation into or affiliation with an organization. In Tennessee, each LEA is required to adopt a written policy prohibiting hazing and the policy should be distributed or made available to each student at the beginning of each school year. LEAs are also required to set aside time during the first month of school each year to specifically discuss the policy and its ramifications as a criminal offense and penalties imposed by the LEA.

What is Harassment?

Harassment is any unwelcome conduct based on a protected class under the federal civil rights laws that is severe, pervasive, or persistent and creates a hostile environment. Because public schools receive federal financial assistance from the U.S. Department of Education, they are required to adhere to the civil rights laws. The laws that OCR enforces are:

- Title VI of the Civil Rights Act of 1964 (Title VI), which prohibits race, color, or national origin discrimination. Title VI can involve discrimination based on religion if the harassment is based on a student's actual or perceived ancestry or ethnic characteristics.
- Title IX of the Education Amendments of 1972 (Title IX), which prohibits sex discrimination. Title IX covers sexual harassment, gender-based harassment, pregnancy or marital discrimination.
- Section 504 of the Rehabilitation Act of 1973 (Section 504), which prohibits disability discrimination.

Harassing conduct can take on many forms, including verbal acts, name calling, graphic or written statements (may also include use of cell phones or the internet), or other conduct that may be physically threatening, harmful, or humiliating. Harassment does not have to include an intent to harm, be directed at a specific target or involve repeated incidents. Harassment creates a hostile environment when the conduct is sufficiently severe, pervasive, or persistent so as to interfere with or limit a student's ability to participate in or benefit from the services, activities, or opportunities offered by a school.

What is Cyber-bullying?

Cyber-bullying is bullying that takes place using electronic technology. Electronic technology includes devices and equipment such as cell phones, computers, and tablets, as well as communication tools including social media sites, text messages, chat, and websites. Examples may include mean text messages or emails, rumors sent by email or posted on social networking sites, and embarrassing pictures, videos, websites, or fake profiles.

Difference between bullying and harassment

Bullying and harassment both involve behavior which harms, intimidates, threatens, victimizes, offends, degrades, or humiliates someone. Although bullying and harassment sometimes overlap, not all bullying is harassment and not all harassment is bullying. Bullying is considered a relationship issue that involves an abuse of power, while harassment is a human rights issue. Harassment takes place when someone discriminates against another on the basis of a protected class, such as age, sex, race, color, religion, national origin, or disability.

Procedures for addressing complaints

Pursuant to Tenn. Code Ann. § 49-6-1015, a school is responsible for addressing any act that “takes place on school grounds, at any school-sponsored activity, on school-provided equipment or transportation or at any official school bus stop.” If the act takes place off school property or outside of a school-sponsored activity, a school is responsible for taking action if the act “has the effect of creating a hostile educational environment or otherwise creating a substantial disruption to the educational environment or learning process.” According to guidance issued by OCR, a school is responsible for addressing incidents about which it knows or reasonably should have known. Therefore, school officials must investigate all incidents of bullying and/or harassment for which they have knowledge and cannot merely wait until a complaint has been filed. School officials should also inform all staff of their obligations to report incidents of possible bullying and/or harassment when they become aware of them.

While LEAs may not require that a student file a complaint in writing before the complaint can be addressed, all LEAs must make students aware of how to seek help if they are being bullied and/or harassed. Once a school has notice of bullying or harassing incidents, it must take immediate and appropriate action to determine what occurred. The specific steps will vary depending upon the nature of the allegations, the source of the complaint, and the age of the student(s) involved. In all cases, however, the inquiry should be prompt, thorough, and impartial.

If the investigation determines that bullying or harassment has occurred, the school must take prompt and effective steps to end the bullying/harassment, eliminate the hostile environment, and prevent the incidents from recurring. A school is required to take such action regardless of whether the student complained or asked the school to take action.

Appropriate action for resolving complaints

Appropriate action will depend on the facts of each case. However, appropriate action may include separating the student who has alleged bullying/harassment (complainant) and the alleged bully/harasser (accused), providing school counseling to one or both students, or taking

disciplinary action against the alleged accused. The school should ensure the steps do not penalize the complainant.

A school may also need to provide training or other intervention strategies to the accused or the larger school community to ensure that all students, parents, and staff can recognize bullying and harassment if it recurs and know how to respond. The determination of training and intervention strategies should be made on a case-by-case basis according to the circumstances of the particular situation.

An effective response may also include issuance of new policies and procedures for reporting allegations for bullying and harassment.

Investigation procedures

Regardless of how an incident of bullying and/or harassment is brought to the school's attention, school officials must ensure that all complaints of bullying or harassing behavior are promptly and thoroughly investigated. Pursuant to Tenn. Code Ann. § 49-6-1016(d)(1),

The principal of a middle school, junior high school, or high school, or the principal's designee, shall investigate harassment, intimidation, bullying or cyber-bullying when a student reports to any principal, teacher or guidance counselor that physical harm or a threat of physical harm to such student's person or property has occurred.¹

Before conducting an investigation, appoint an investigator who is organized, discreet, open-minded, non-judgmental and sensitive. Best practice includes having a back up investigator available to ensure no conflicts of interest exist that would preclude a neutral investigation of the facts. The investigator is responsible for overseeing the entire process as described in the following sections.

Tips for investigators

Investigation Planning

- Review all necessary bullying and/or harassment policies, grievance procedures and the LEA/school discipline codes.
- Request the complaint be reduced to writing.
 - An investigation is required regardless of whether the complaint is in writing.
- Create an investigation plan that outlines the process for handling the complaint.
- Determine whether the allegations should be referred to another agency.
- Determine who should be interviewed, what questions are relevant, whether to record the interview and whether an interim action plan is needed pending the outcome of the investigation.
- Determine if it is necessary to contact the LEA's school board attorney before taking any action.

¹ Although state law requires an investigation of harassment, intimidation, bullying, or cyber-bullying complaints for middle, junior high, and high school, school officials should ensure such complaints are also thoroughly investigated within pre-K and elementary schools.

What if the complainant wants to remain anonymous?

The complainant has the right to remain anonymous, however; remind the complainant and parent that this could limit the school's ability to handle the complaint, such as affecting any disciplinary action or remediation of the accused. Make the complainant and parent aware that while you cannot promise complete confidentiality, the information regarding the complaint will only be given on a need-to-know basis. Even though a complainant may choose to remain anonymous, the school still has an obligation to investigate the complaint to determine what happened and remedy any necessary effects.

Accommodations based on limited English proficiency, disability, age

If the complainant/parent is unable to write the complaint due to limited English proficiency, disability or age, accommodations must be made. For limited English proficient individuals, the school is responsible for providing a translator, who can read each question to the person in their language and can transcribe the answers. Remember the individual is not required to provide their own translator or bear any cost for this accommodation. The translator must ask the questions exactly as they are written and write the responses word for word. For individuals with disabilities or very young children, the investigator should fill out the form and ensure that they write what the individual says, word for word.

Referral to other agencies

In some instances, depending on the allegations, a complaint should be referred to another agency such as local law enforcement or the department of children services. Local school board attorneys should be contacted if an investigation turns up evidence indicating the possible commission of a crime. If the determination is made to refer to another agency, due to the allegations or a prior memorandum of understanding (MOU) with another agency, the LEA may have to delay its investigation during the fact-gathering phase of the other agency. But remember that there is still an obligation to conduct an investigation to determine what happened and remedy any effects.

Determining who to interview

When determining who to interview, it is best practice to always interview the complainant and the accused separately. Check with the complainant and accused of possible witnesses to the incidents but only interview witnesses that have pertinent information.

Determining whether to record the interview

A determination on whether to record interviews should be based on local board policy and advice from the local school board attorney. If a determination is made to record an interview, steps should be taken to obtain permission from all persons being interviewed. Use caution when using audio recordings only, as they do not denote demeanor and facial expressions. Additionally, be cautious of the questioning/investigative techniques used, as the recording could be used as evidence in a legal proceeding. An alternative to recording is to ask witnesses, the complainant, and the accused to provide written statements or use video recording.

Interim Action Plans

Pending the outcome of an investigation, an interim action plan may be needed to separate the complainant and accused or to take other actions. In creating interim action plans, the school should ensure that the complainant is not penalized nor is there the appearance that the complaint is penalized.

Gathering Evidence

It is imperative that evidence be immediately preserved upon receiving notice of an allegation. During the fact-gathering phase conduct the necessary interviews and obtain all relevant evidence from the complainant, accused, and any witnesses. The complainant and accused must be interviewed separately. Be mindful of each student's class schedule, this helps to ensure the investigation is impartial and confidential.

Parents/guardians/advocates

Parents, guardians, and/or advocates may be allowed to attend the interview. The investigator has the right to set ground rules, discuss these rules before the interview takes place, let all parties know the interview will be stopped if the rules are not followed, and inform all parties that the investigation process is to gather information from the student only. It is best practice to not allow the parent/guardian/advocate to sit in the direct line of eye contact with the student.

Conducting the interview

A witness must be present during all interviews. When conducting the interviews, avoid leading, or "close-ended" questions, which are questions that will elicit only a yes or no response. Make sure the questions are age appropriate, be aware of tone and avoid accusatory language. Be cognizant of the interviewee's body language, by maintaining eye contact and observing the person's demeanor, tone, etc.

During the interview, gather evidence that will assist in the investigation, such as web pages, pictures, cell phone records, etc.

At the end of the interview, remind all individuals that attended to avoid discussing the context of the interview with others, provide each a copy of the grievance process, and remind them of retaliation and how to report it.

After the interview

Once the interviews have been conducted and the necessary evidence gathered, review the information to determine any corroboration, inconsistencies, and impossibilities and determine whether to re-interview either of the parties.

Preparing an investigation report

The investigative report is the investigator's narrative of what happened, the determination of any policies have been violated and recommendations for action. The report should be thorough and objective, and conclusions or recommendations must be based on the evidence presented.

Pursuant to Tenn. Code Ann. § 49-6-1016(d)(2),

Following any investigation...the principal or such principal's designee shall report the findings, along with any disciplinary action taken, to the director of schools and the chair of the board of education.

Inform board members and other school staff of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, which provides that student information is considered confidential. Provide student information to only those school officials with a legitimate educational interest.

After the investigation

Notify the parents of the complainant and accused of the outcome. It is best practice to provide the notification in writing. When providing the parties with the investigation outcome, remember student confidentiality. Pursuant to FERPA, student records, including disciplinary records are considered confidential. Therefore, while the outcome notice may discuss whether a policy has been violated, what action, if any, was taken against the accused cannot be disclosed. Notice may be given, however, regarding any "stay away" provisions. Provide a reminder on retaliation and how to report it. Continue to monitor the situation to ensure no further bullying or harassment occurs by checking in periodically with the complainant.

If there is an interim action plan, determine whether it should stay in place, if it's necessary for the parties to continue to be separated, or whether a safety plan should be created for the complainant or a behavior plan for the accused. Determine if additional training or counseling for either of the parties is needed, and whether staff or the larger community of students requires training. These determinations are made on a case-by-case basis.

Retention of investigation records

The retention period of investigation records vary based on the allegations of each matter. LEAs should work with their local board attorney regarding retention of its investigation files and the methods for storing, such as electronic mediums or paper copies.

Appendix

Tennessee Bullying, Harassment, Cyber-bullying Laws

Title 49 Education Chapter 6 Elementary and Secondary Education Part 10 Curriculum Generally

To access Tennessee laws regarding harassment, intimidation, bullying, or cyber-bullying, please visit: <http://www.lexisnexis.com/hottopics/tncode/>. Follow the links to **Title 49 (Education), Chapter 6 (Elementary and Secondary Education), Part 10 (Curriculum Generally)**.

49-6-1014. Legislative findings -- Safety and civility.

The general assembly finds and declares that:

- (1) A safe and civil environment is necessary for students to learn and achieve high academic standards;
- (2) Harassment, intimidation, bullying or cyber-bullying, like other disruptive or violent behavior, is conduct that disrupts a student's ability to learn and a school's ability to educate its students in a safe environment;
- (3) Students learn by example. School administrators, faculty, staff and volunteers who demonstrate appropriate behavior, treating others with civility and respect and refusing to tolerate harassment, intimidation, bullying or cyber-bullying, encourage others to do so as well; and
- (4) The use of telephones, cellular phones or other wireless telecommunication devices, personal digital assistants (PDAs), computers, electronic mail, instant messaging, text messaging, and web sites by students in a manner that is safe and secure is essential to a safe and civil learning environment and is necessary for students to successfully use technology.

49-6-1015. Definitions for §§ 49-6-1014 -- 49-6-1019.

(a) As used in § 49-6-1014, this section and §§ 49-6-1016 -- 49-6-1019:

- (1) "Cyber-bullying" means bullying undertaken through the use of electronic devices;
- (2) "Electronic devices" include, but are not limited to, telephones, cellular phones or other wireless telecommunication devices, personal digital assistants (PDAs), computers, electronic mail, instant messaging, text messaging, and web sites;
- (3) "Harassment, intimidation or bullying" means any act that substantially interferes with a student's educational benefits, opportunities or performance; and:

(A) If the act takes place on school grounds, at any school-sponsored activity, on school-provided equipment or transportation or at any official school bus stop, the act has the effect of:

- (i)** Physically harming a student or damaging a student's property;
- (ii)** Knowingly placing a student or students in reasonable fear of physical harm to the student or damage to the student's property;
- (iii)** Causing emotional distress to a student or students; or
- (iv)** Creating a hostile educational environment; or

(B) If the act takes place off school property or outside of a school-sponsored activity, it is directed specifically at a student or students and has the effect of creating a hostile educational environment or otherwise creating a substantial disruption to the education environment or learning process.

49-6-1016. Development of policy regarding harassment, intimidation, bullying or cyber-bullying.

(a) Each school district shall adopt a policy prohibiting harassment, intimidation, bullying or cyber-bullying. School districts are encouraged to develop the policy after consultation with parents and guardians, school employees, volunteers, students, administrators and community representatives.

(b) School districts shall include in the policies:

- (1)** A statement prohibiting harassment, intimidation, bullying or cyber-bullying;
- (2)** A definition of harassment, intimidation, bullying or cyber-bullying;
- (3)** A description of the type of behavior expected from each student;
- (4)** A statement of the consequences and appropriate remedial action for a person who commits an act of harassment, intimidation, bullying or cyber-bullying;
- (5)** A procedure for reporting an act of harassment, intimidation, bullying or cyber-bullying, including a provision that permits a person to report an act of harassment, intimidation, bullying or cyber-bullying anonymously. Nothing in this section may be construed to permit formal disciplinary action solely on the basis of an anonymous report;
- (6)** A procedure for prompt investigation of a report of an act of harassment, intimidation, bullying or cyber-bullying;

(7) A statement of the manner in which a school district shall respond after an act of harassment, intimidation, bullying or cyber-bullying is reported, investigated and confirmed;

(8) A statement of the consequences and appropriate remedial action for a person found to have committed an act of harassment, intimidation, bullying or cyber-bullying;

(9) A statement prohibiting reprisal or retaliation against any person who reports an act of harassment, intimidation, bullying or cyber-bullying and stating the consequences and appropriate remedial action for a person who engages in such reprisal or retaliation;

(10) A statement of the consequences and appropriate remedial action for a person found to have falsely accused another of having committed an act of harassment, intimidation, bullying or cyber-bullying as a means of reprisal or retaliation or as a means of harassment, intimidation, bullying or cyber-bullying;

(11) A statement of how the policy is to be publicized within the district, including a notice that the policy applies to behavior at school-sponsored activities;

(12) The identification by job title of school officials responsible for ensuring that the policy is implemented; and

(13) A procedure for discouraging and reporting conduct aimed at defaming a student in a sexual manner or conduct impugning the character of a student based on allegations of sexual promiscuity.

(c) (1) Each LEA shall, at the beginning of each school year, provide teachers and school counselors a copy of the policy along with information on the policy's implementation, bullying prevention and strategies to address bullying and harassment when it happens. In addition, each LEA shall provide training to teachers and counselors regarding the policy and appropriate procedures relative to implementation of the policy. The department of education shall provide guidelines for such training and provide recommendations of appropriate, available and free bullying and harassment prevention resources.

(2) Each LEA shall also:

(A) At the beginning of the school year, make available to students and parents information relative to bullying prevention programs to promote awareness of the harmful effects of bullying and to permit discussion with respect to prevention policies and strategies;

(B) Beginning August 1, 2013, and annually thereafter, prepare and provide to the department of education a report concerning the number of bullying cases brought to the attention of school officials during the preceding year and the manner in which they were resolved or the reason they are still pending.

(3) The department shall annually submit a report to the education committees of the house of the representatives and the senate updating membership on the number of bullying cases reported statewide, the number of LEAs implementing the provisions of this law and any other information relating to the subject of bullying and harassment as will be helpful to the committee in establishing policy in this area.

(d) (1) The principal of a middle school, junior high school, or high school, or the principal's designee, shall investigate harassment, intimidation, bullying or cyber-bullying when a student reports to any principal, teacher or guidance counselor that physical harm or a threat of physical harm to such student's person or property has occurred.

(2) Following any investigation required by this part, the principal or such principal's designee shall report the findings, along with any disciplinary action taken, to the director of schools and the chair of the local board of education.

49-6-1017. Adoption of policy -- Transmission of copy of policy to the commissioner of education.

Each LEA shall adopt a policy prohibiting harassment, intimidation, bullying or cyber-bullying and transmit a copy of the policy to the commissioner of education by January 1, 2006.

49-6-1018. Reprisal or retaliation prohibited -- Reporting harassment, intimidation, bullying or cyber-bullying -- Immunity from damages.

(a) A school employee, student or volunteer may not engage in reprisal or retaliation against a victim of, witness to, or person with reliable information about an act of harassment, intimidation, bullying or cyber-bullying.

(b) A school employee, student or volunteer who witnesses or has reliable information that a student has been subjected to an act of harassment, intimidation, bullying or cyber-bullying is encouraged to report the act to the appropriate school official designated by the school district's policy.

(c) A school employee who promptly reports an act of harassment, intimidation, bullying or cyber-bullying to the appropriate school official in compliance with the procedures set forth in the school district's policy is immune from a cause of action for damages arising from any failure to remedy the reported act.

49-6-1019. Task forces, programs or other initiatives.

School districts are encouraged to form harassment, intimidation, bullying or cyber-bullying prevention task forces, programs and other initiatives involving school employees, students, administrators, volunteers, parents, guardians, law enforcement and community representatives.

Bully and Harassment Policy and Procedure Check list

Policies should include:

- A statement prohibiting harassment, intimidation, bullying or cyber-bullying.
- A definition of harassment, intimidation, bullying, or cyber-bullying.
- A description of the type of behavior expected from each student.
- A statement of consequences and appropriate remedial action for a person who commits an act of harassment, intimidation, bullying, or cyber-bullying.
- A procedure for reporting an act of harassment, intimidation, bullying, or cyber-bullying, including a provision that permits a person to report such acts anonymously. However, nothing may be construed to permit formal disciplinary action solely on the basis of an anonymous report.
- A procedure for a prompt investigation.
- A statement of the manner in which a LEA shall respond after an act has been reported, investigated, and confirmed.
- A statement of consequences and appropriate remedial action for a person found to have committed an act of harassment, intimidation, bullying, or cyber-bullying.
- A statement prohibiting reprisal or retaliation against any person who reports an act of harassment, intimidation, bullying, or cyber-bullying, and stating the consequences and appropriate remedial action for such actions.
- A statement of the consequences and appropriate remedial action for a person found to have falsely accused another of having committed an act of harassment, intimidation, bullying, or cyber-bullying.
- A statement of how the policy is to be publicized within the district, including a notice that the policy applies to behavior at school-sponsored activities.
- The identification by job title of school officials responsible for ensuring that the policy is implemented.
- A procedure for discouraging and reporting conduct aimed at defining a student in a sexual manner or conduct impugning the character of a student based on allegations of sexual promiscuity.

Action Checklist:

- At the beginning of each year, each LEA shall,
 - Provide teachers and school counselors a copy of the policy along with information on the policy's implementation, bullying and prevention, and strategies to address bullying and harassment when it happens.
 - Provide training to teachers and counselors regarding the policy and appropriate procedures relative to implementation of the policy,
 - Make available to students and parents information relative to bullying prevention programs to promote awareness to the harmful effects of bullying and to permit discussions with respect to prevention policies and strategies.
- Beginning, August 1, 2013, and annually thereafter, prepare and provide to the department of education a report concerning
 - The number of bullying cases brought to the attention of school officials during the preceding year; and
 - The manner in which they were resolved or the reason they are still pending.
- The principal, or principal's designee shall investigate harassment, intimidation, bullying, or cyber-bullying when a student reports to any principal, teacher, or guidance counselor that physical harm or a threat of physical harm to such student's person or property has

- occurred.
- Following any investigation, the principal or principal's designee shall report the findings, along with any disciplinary action taken, to the director of schools and the chair of the local board of education.

LEA Annual Bullying Report Form

Pursuant to Tenn. Code Ann. § 49-6-1016(c)(2)(B), beginning August 1, 2013, and annually thereafter, each LEA will have to prepare and provide to the Tennessee Department of Education a report concerning the number of bullying cases and the manner in which they were resolved or still pending. For specific guidance on what constitutes bullying, please refer to Tenn. Code Ann. § 49-6-1015. This is only a sample document regarding the reporting requirement. The final report will be included in the annual civil rights compliance report.

District	
Name/Title of person completing report	
Contact Number	
Email	

Please indicate the number of reported bullying cases within your LEA for the 2012-13 school year: _____. Of the reported cases, how many indicated bullying occurred? _____

Were any of the cases based on the following protected classes?

Race, Color, National Origin: Yes No. If yes, please indicate the number of reports: _____

Sex (including but not limited to sexual harassment, gender-based discrimination, pregnancy discrimination, etc.): Yes No. If yes, please indicate the number of reports: _____

Disability: Yes No. If yes, please indicate the number of reports: _____

Please indicate the number of bullying/harassment cases that involved the use of electronic technology: _____

Based on the bullying/harassment reports listed, how many are still pending? _____

For incidents that are still pending, please provide the reasons such incidents are still pending? Please include in your response, the school, type of bullying/harassment incident, and date reported.

How many bullying reports were resolved with suspension of 1 or more students? _____

How many bullying reports were resolved with expulsion of 1 or more students? _____

How many bullying reports were resolved with parent conferences? _____

Are you training staff on bullying? Yes No

If so, what type of trainings did you provide and when did they occur during the 2012-2013 school year?

Are you training students on bullying? Yes No

If so, what type of trainings did you provide and when did they occur during the 2012-2013 school year?

Resources for Bullying and Harassment Prevention

U.S. Department of Health & Human Services - <http://www.stopbullying.gov/>

U.S. Department of Education Office for Civil Rights –

- Dear Colleague Letter (October 26, 2010) re: Bullying and Harassment - <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.html>
- Sexual Harassment Resources - <http://www2.ed.gov/about/offices/list/ocr/sexharassresources.html>
- Racial Harassment Resources - <http://www2.ed.gov/about/offices/list/ocr/raceharassresources.html>

Tennessee Department of Education Bullying and Harassment-
http://www.tn.gov/education/safe_schls/safety_cntr/bullying_schools.shtml

Pacer Center's Kids Against Bullying - <http://www.pacerkidsagainstbullying.org/>

Operation Respect - <http://www.operationrespect.org/>

National Crime Prevention Council - <http://www.ncpc.org/newsroom/current-campaigns/bullying-prevention/>

Violence Prevention Works! Safer Schools, Safer Communities (Olweus) -
<http://www.violencepreventionworks.org/public/index.page>

Teaching Tolerance (A project of the Southern Poverty Law Center) - <http://www.tolerance.org/>

Safe and Supportive Schools, Training and Technical Assistance -
<http://safesupportiveschools.ed.gov/index.php?id=1480>

Sample Bullying and Harassment Policy

This policy is intended only to be a sample and does not represent legal advice. Local board attorneys should review all policies prior to adoption.

General Statements and Definitions

The (LEA name) Board of Education has determined that a safe, civil, and supportive environment in school is necessary for students to learn and achieve high academic standards. In order to maintain that environment, the (LEA name) Board of Education prohibits acts of harassment, bullying, cyber-bullying, intimidation, or any other victimization of students, based on any actual or perceived traits or characteristics. To that end, the (LEA name) Board of Education has in place processes and procedures to address incidents of bullying and harassment.

This policy will be annually disseminated to all school staff, students, and parents and may be publicized in student handbooks and district/school web sites. This policy is in effect while students are on school property, at any school-sponsored activity, on school-provided equipment or transportation, or at any official school bus stop. If the act takes place off school property or outside of a school-sponsored activity, this policy is in effect if the conduct is directed specifically at a student or students and has the effect of creating a hostile educational environment or otherwise creating a substantial disruption to the education environment or learning process.

Pursuant to Tenn. Code Ann. § 49-6-1015, “Harassment, intimidation, or bullying” means an act that substantially interferes with a student’s educational benefits, opportunities, or performance and the act has the effect of:

- Physically harming a student or damaging a student’s property;
- Knowingly placing a student or students in reasonable fear of physical harm to the student or damage to the student’s property;
- Causing emotional distress to a student or students; or
- Creating a hostile educational environment.

Tenn. Code Ann. § 49-6-15, defines “Cyber-bullying” as bullying undertaken through the use of electronic devices. Electronic devices include, but are not limited to, telephones, cellular phone or other wireless telecommunication devices, text messaging, emails, social networking sites, instant messaging, videos, web sites or fake profiles.

The U.S. Department of Education Office for Civil Rights further clarifies “harassment” as conduct that meets the following criteria:

- Unwelcome conduct based on a protected class (race, national, origin, color, gender, age, disability, religion) that is severe, pervasive, or persistent and creates a hostile environment.

- “Sexual Harassment” includes unwelcome conduct of a sexual nature, which can include unwelcome sexual advances, requests for sexual favors, or other verbal, nonverbal, or physical conduct of a sexual nature.

Other acts of violent behavior may include:

“Hazing” which involves any intentional or reckless act, on or off LEA property, by one student acting alone or with others that is directed against any other student, that endanger the mental or physical health or safety of that student or that induces or coerces a student to endanger that student’s mental or physical health or safety. See Tenn. Code Ann. § 49-2-120.

“Hazing” does not include customary athletic events or similar contest or competitions and is limited to those actions taken and situations created in connection with initiation into or affiliation with any organization.

When looking at the totality of the circumstances, harassment, bullying, cyber-bullying, or any other disruptive or violent behavior includes conduct such as gestures, written, verbal, graphic, or written acts, including electronically transmitted acts, toward a student which is based on any actual or perceived trait or characteristic of the student and creates an educational environment that meets one or more of the following conditions:

- Places the student in reasonable fear or harm to the student’s person or property;
- Has substantially detrimental effect on the student’s physical or mental health;
- Has the effect of substantially interfering with the student’s academic performance; or
- Has the effect of substantially interfering with the student’s ability to participate in or benefit from the services, activities, or privileges provided by a school.

Reporting and Investigations

The (LEA name) Board of Education requires the principal and/or principal’s designee, at each school to be responsible for investigating and resolving complaints alleging violations of this policy. The principal and/or principal’s designee is responsible for determining whether an alleged act constitutes a violation of this policy. In doing so, the principal and/or principal’s designee, shall conduct a prompt, thorough, and complete investigation of each alleged incident. Within the parameters of the federal Family Educational Rights and Privacy Act (FERPA) at 20 U.S.C. § 1232g, a written report on the investigation will be delivered to the parents of the complainant and accused students and to the Director of Schools.

All school employees are required to report alleged violations of this policy to the principal and/or principal’s designee. All other members of the school community, including students, parents, volunteers, and visitors, are encouraged to report any act that may be a violation of this policy. Reports may be made anonymously; however, such complaints may affect the school’s ability to issue formal disciplinary action.

LEA Prevention and Intervention Response

Consequences and appropriate remedial actions for anyone who commits one or more acts of harassment, bullying, or other acts of violent behavior may range from positive behavioral interventions up to and including suspension or expulsion, as set forth in the Board of Education's approved code of conduct.

School administrators shall consider the nature and circumstances of the incident, the age and maturity of the student, the degree of harm, previous incidences or patterns of behavior, or any other factors, as appropriate to properly respond to each situation. Consequences for a student who commits an act of harassment, bullying, or other act of violent behavior shall be unique to the individual incident and will vary in method and severity according to the nature of the behavior, the developmental age of the student, and the student's history of problem behaviors and performance, and must be consistent with the Board of Education's approved code of student conduct.

Remedial measures shall be designed to:

- Correct the problem behavior;
- Prevent other occurrences of the behavior; and
- Protect the complainant of the act.

Effective discipline should employ a school-wide approach to adopt a procedure of handling harassment or bullying offenses and the associated consequences. This procedure should reflect appropriate potential consequences in accordance with discipline policies. The Director of Schools shall be responsible for the development and enforcement of this requirement.

Reprisal, Retaliation, and False Accusations

The (LEA name) Board of Education prohibits reprisal or retaliation against any person who reports or assists in any investigation of an act alleged in this policy. The consequences of appropriate remedial action for a person who engages in reprisal or retaliation shall be determined by the administrator after consideration of the nature, severity, and circumstances of the act.

The (LEA name) Board of Education prohibits any person from falsely accusing another of having committed an act of harassment or bullying as means of reprisal or retaliation or of harassment or bullying. The consequences and appropriate remedial action for a person found to have falsely accused another as a means of reprisal or retaliation or harassment or bullying may range from positive behavioral interventions up to and including suspension and expulsion.

Sample Complaint Form

LEA _____ School _____

1. Complainant information

Name _____

Telephone Number _____

Grade _____ Sex _____

2. Name of person(s) involved in the incident against you;

_____ Grade _____ Sex _____

_____ Grade _____ Sex _____

_____ Grade _____ Sex _____

3. When/Where did the incident take place: _____

4. Describe the incident (attach additional pages if necessary): _____

Sample Complaint Form

5. List all witnesses with knowledge of the incident:

_____ Grade _____ Sex _____

_____ Grade _____ Sex _____

_____ Grade _____ Sex _____

6. What outcome would you like to see as a result of this complaint? _____

I agree that all information on this form is accurate and true to the best of my knowledge.

Signature of Complainant

Date

Person receiving Complaint Form:

Date

****Be sure to attach any supporting documentation/evidence****

Sample Bullying/Harassment Report Form

This form is used to identify a possible incident of bullying or harassment. The staff person who observes the conduct or receives the complaint should complete this form, not the complaining student or staff. Copies of this form should be forwarded to the Central Office complaint manager for follow up.

Date of report: _____ Date and Time of Incident: _____

School: _____ LEA: _____

Teacher/Staff: _____ Position: _____

Name(s) of targets(s):	Name(s) of accused student(s) :	Name(s) of witnesses/bystanders:

Information about the Target:									
Grade	Gender			Race					
	Male		Female	African American	Asian/Pacific Islander		Hispanic	Native American	White

Information about the Accused Student:									
Grade	Gender			Race					
	Male		Female	African American	Asian/Pacific Islander		Hispanic	Native American	White

Check the Behaviors that Apply:									
Verbal: involves saying or writing mean things.									
	Teasing		Name-calling		Taunting		Threatening to harm		
	Defacing or falsifying schoolwork		Insulting/degrading graffiti		Cyber-bullying		Other: _____		
Social/Relational: involves hurting someone's reputation or relationships.									
	Leaving someone out on purpose		Telling others not to be friends with someone		Spreading rumors about someone		Embarrassing someone in public		
	Threatening another to secure silence		Ignoring someone to punish or coerce		Playing mean tricks		Other: _____		
Physical: involves hurting someone or harming their possessions.									
	Starting a fight		Cornering or blocking movement		Pushing/Shoving		Pinching		
	Scratching		Hair pulling		Spitting		Slapping		
	Kicking		Tripping		Biting		Hitting		
	Destroying or defacing property		Theft		Assault		Assault with a weapon		
	Sexual Assault		Rape		Using negative body language or facial expressions		Other: _____		

Sample Investigation Checklist

This sample investigation checklist is not intended to be specific legal advice. Please contact your local board attorney regarding specific advice for handling investigations.

Preliminary Matters

- There are no “informal” complaints. All complaints should be investigated.
- Take the complaint seriously.
- Remain neutral.
- Use two investigators if possible.
- Consult with board attorney, if necessary.
- Review relevant policies and procedures.
- Draft an investigation plan.
- Keep thorough notes of the interview and course of the investigation.
- Handle immediately and appropriately.
- Conduct interviews separately and privately.
- Discuss complaint and investigation only with those on a “need to know” basis and remind those who need to know that they, too, must use discretion in further discussion of the complaint.

Interview the Complainant

- Explain the district's investigation procedures and policy.
- Give complainant a copy of your LEA's policy/grievance procedure.
- Explain the problems with anonymity, if applicable.
- Inform the complainant that you will be taking notes.
- Make sure your notes contact the date, time, and place of the interview, as well as persons present.
- Inform complainant about retaliation and how to report it.
- Find out what happened: GET SPECIFICS.
- Find out names of witnesses, if any.
- Ask complainant if s/he knows of anyone else who has been subjected to same conduct by the accused.
- Ask the complainant what affect the conduct had on him/her.
- Ask the complainant what outcome s/he is seeking, but remind him/her you cannot promise a particular outcome.
- Request that complainant refrain from discussing the matter with anyone.
- Obtain any document or evidence that complainant may have.
- Request that complainant contact you if s/he has any additional questions or concerns.

Interview the Accused

- Inform the accused of the allegations.
- Explain the purpose of the interview, but state that no decision has been made on the truthfulness of the allegations.
- Explain the LEA's investigation procedures and policy.
- Give accused a copy of your LEA's policy/grievance procedure.
- Inform the accused that you will be taking notes.
- Make sure your notes contact the date, time, and place of the interview, as well as persons present.
- Inform the accused that retaliation will not be tolerated and could be the basis for disciplinary action.

- Find out what happened: GET SPECIFIC RESPONSES TO SPECIFIC ALLEGATIONS.
- Find out names of witnesses, if any.
- Request that accused refrain from discussing the matter with anyone.
- Obtain any document or evidence the accused may have.
- Request that accused contact you if s/he has any additional questions or concerns.

Interview Witnesses

- Explain that a complaint has been received and that s/he has been identified as a potential witness.
- Inform the witness that you will be taking notes.
- Make sure your notes contain the date, time, and place of the interview, as well as persons present.
- Inform the witness about retaliation and how to report it. Also inform witness that retaliation will not be tolerated and could be the basis for disciplinary action.
- Find out what s/he knows: GET SPECIFICS.
- Distinguish between firsthand and secondhand information/knowledge.
- Request that the witness refrain from discussing the investigation with anyone else.
- Collect any relevant documents/evidence from the witness.

The Investigative Memorandum

- Before drafting a memorandum, review all notes, documents and other evidence.
- Analyze the information for corroboration, contradiction and credibility.
- Draft a thorough, impartial report. Describe the facts objectively and chronologically.
- Describe when first learned of the complaint.
- Identify the source of the facts.
- For all witnesses, distinguish between firsthand knowledge and rumor.
- If based on local policy, draw conclusions and make a recommendation.

Sample Format for Investigative Findings Report

1. Description of complaint
 - General nature of events giving rise to complaint. Include dates of alleged incidents.
 - Date complaint received, date investigation began, and if applicable, reason for any delay.
 - Person(s) involved in conducting investigation.
2. Statements and evidence gathered in the investigation
 - Complainant
 - Specific allegation(s).
 - Witnesses named by complainant.
 - Resolution desired by complainant.
 - Person(s) accused of inappropriate behavior. If more than one, list each separately.
 - Specific responses to each allegation.
 - Witnesses named by accused.
 - Witnesses interviewed. If more than one, list each separately.
 - Evidence about specific allegations (note firsthand v. secondhand knowledge)
 - Additional witnesses, if any.
3. Summary of Evidence
 - Corroboration of specific allegations
 - Non-corroboration of specific allegations
 - Other pertinent information
4. Recommendations
 - Safety, intervention, or behavior plan
 - Also, note whether additional training is necessary
5. Conclusions concerning violations of any policy.

Sample Findings Letter to Parents

(date)

Dear (parent):

On (date complaint received) the (LEA/school) received notification of (describe allegations). An investigation was initiated and has since been concluded.

Based on the investigation of the matter, the (LEA/school) found (provide investigative findings [remember FERPA]). (For accused, please include any disciplinary action).

Please remember that (LEA/school) will not tolerate any form of retaliation against anyone who has participated in the investigation. Any allegations of retaliation should be reported to (name, contact information).

If you have further questions or concerns, please do not hesitate to contact me.

Sincerely,

(sign)

Bullying Prevention Checklist

1. Annually, ensure that all staff receives a copy of the bullying/harassment policy, along with information on the policy's implementation, bullying prevention, and strategies to address bullying when it happens.
2. Annually, train staff regarding the policy and appropriate measures relative to implementation of the policy. Conduct in-depth training with new hires.
3. Describe the steps that will be taken by staff when they receive a report or witness a child being bullied or harassed.
4. Annually, make available to students and parents the bullying/harassment policy.
5. Periodically make available to students and parents information relative to bullying prevention programs to promote awareness of the harmful effects of bullying and to permit discussion with respect to prevention policies and strategies.
6. Provide explicit instructions to students on how to report bullying and harassing offenses and where and to whom to report them.
7. Create a bullying/harassment prevention team consisting of parents, students, and staff to assist in bullying/harassment awareness programs.
8. Display anti-bullying posters throughout the school in high profile/traffic areas.
9. Conduct surveys with students regarding the school environment. Allow students the opportunity to report incidents experienced/witnessed anonymously via drop boxes. Ensure boxes are monitored frequently.
10. Document all complaints received and monitor the situations to ensure bullying or harassment does not continue.