Guidance on Bullying and Cyberbullying

Provided by the New York State Education Department

The US Department of Health and Human Services' National Bullying Prevention Campaign "Take a Stand. Lend a Hand. Stop Bullying Now!" defines bullying as "aggressive behavior that is intentional and involves an imbalance of power or strength. Usually, it is repeated over time. Traditionally, bullying has involved actions such as: hitting or punching (physical bullying), teasing or name-calling (verbal bullying), or intimidation through gestures or social exclusion. In recent years, technology has given children and youth a new means of bullying each other. Cyberbullying, which is sometimes referred to as online social cruelty or electronic bullying, can involve: sending mean, vulgar, or threatening messages or images; posting sensitive, private information about another person; pretending to be someone else in order to make that person look bad; (or) intentionally excluding someone from an online group" (http://stopbullyingnow.hrsa.gov/adults/cyber-bullying.aspx). The New York State Education Department (NYSED) has taken the position that one incident of bullying is too many. Bullying in general and cyberbullying in particular are becoming increasingly important concerns to educators, students, and parents and have created new challenges for school administrators in their efforts to create and maintain safe and secure learning environments. Students need to feel safe in order to maximize their academic and social potential. The threats of cyberbullying and its 24/7 exposure to students makes this a particularly important topic for all school building administrators, teachers, and support staff to address. The fact that cyberbullying has no geographic boundaries adds another level of complexity to the issue. Thus, students require clear and unambiguous guidance so they do not become overwhelmed or feel as though they have to manage the threat alone if confronted by a cyberbullying or bullying threat.

This guidance provides educators with policy, program, and legal considerations that need to be addressed when dealing with the issues of bullying, cyberbullying, and general internet safety. It is also designed to assist school districts and their respective schools, BOCES, and County Vocational Education and Extension Boards (CVEEBs) in developing a comprehensive approach for dealing with these issues, which, if left unaddressed, can lead to the creation of unsafe school environments. The Safe Schools Against Violence in Education Act of 2000 (SAVE) requires a focus on all acts of violence including, but not limited to, the impact of acts of bullying, threats, harassment or intimidation, disruptive behavior in class, carrying of weapons, fighting, physical assaults, and other behaviors that impede learning. Educators are encouraged to consult with the attorney in their school district, BOCES, or CVEEB during the development of their bullying, cyberbullying, and internet safety policies.

School and District Practice and Policies

Tools available to create a comprehensive response to bullying and cyberbullying include policies and programs that address School Climate; Code of Conduct; Children's Internet Protection Act; Internet Safety Policies; and analysis of Violent and Disruptive Incidents Reports (VADIR).

- School climate: This may be the single most important factor in preventing, limiting, and/or dealing with bullying and cyberbullying incidents. Educators need to work diligently to create school environments that value and teach respect for all. The most positive school climates are culturally sensitive and model positive behavioral interactions that clearly show that no tolerance exists for certain types of behaviors, including, but not limited to, bullying. The prevailing attitude at some schools is that there is no such thing as an innocent bystander as it relates to certain incidents. NYSED, in concert with the NYS Office of Mental Health, has developed Guidelines and Resources for Social and Emotional Development and Learning (SEDL) in New York State. This document and other SEDL resources to assist schools in

developing positive school climates can be found at the following web address: www.emsc.nysed.gov/sss/sedl/

- <u>Code of Conduct</u>: All school districts, BOCES, and CVEEBs must adopt and enforce a code of conduct (COC) for the maintenance of order on school property and at school functions. The COC governs the conduct of students, teachers, other school personnel and visitors (<u>see</u>, Education Law §2801[2] and 8 NYCRR §100.2[l][2][i]). A summary of the COC must be provided to students and all persons in parental relation to students at the beginning of each school year. This also provides an opportunity for school personnel to both review the COC with students and parents and identify possible gaps in policy, practices, and procedures. The COC is an ideal document to use to establish expectations and consequences for student and staff conduct regarding internet safety and the use of technology while on school grounds and/or at school functions. In addition, the COC is the framework by which school administrators can implement and equitably enforce a safe school climate. School personnel must be provided with a copy of the COC and copies of the COC must also be made available for review by students, persons in parental relation to students, and other community members (<u>see</u>, Education Law §2801[4] and 8 NYCRR §100.2[l][2][iii][b]). COCs are often posted on the districts', BOCES' and CVEEBs' websites.

  NYS law requires that all COCs be reviewed annually and updated if necessary (<u>see</u>, Education Law §2801[5] and 8 NYCRR §100.2[l][2][iii][a]). As stated above, this annual review provides an opportunity to assess whether the COC needs to be revised to address, among other things, the use of new forms of technology on school grounds and/or at school functions by students, teachers, other school personnel and visitors. A district may establish a committee to facilitate the review of its COC and the district's response to COC violations. The review team/committee should include students, teachers, administrators, parent organizations, school safety team, school staff, concerned community members, and law enforcement officials. It is also recommended that individuals with strong technology skills and a thorough understanding of how students, teachers, and staff are using technology be recruited to assist in the review of the COC. This will help ensure that the COC reflects current and anticipated challenges that have been created or are anticipated through the evolution of technology.

  The COC should address such internet and electronic device safety issues as cyberbullying and sexting. The NYSED VADIR Glossary of Terms defines Intimidation, Harassment, Menacing, and Bullying (IHMB) as "[t]hreatening, stalking or seeking to coerce or compel a person to do something; intentionally placing or attempting to place another person in fear of imminent physical injury; or engaging in verbal or physical conduct that threatens another with harm, including intimidation through the use of epithets or slurs involving race, ethnicity, national origin, religion, religious practices, gender, sexual orientation, age or disability that substantially disrupts the educational process" (8 NYCRR §120.2[gg][1][vi][j]). Since the descriptions of cyberbullying and sexting are not in statute, regulation, and/or case law, the following definitions from the NYS Department of Criminal Justice Services (NYSDCJS) may be used as a guide to develop the policies and practices in these areas. Cyberbullying is "the repeated use of information technology, including e-mail, instant message, blogs, chat rooms, pagers, cell phones, and gaming systems, to deliberately harass, threaten or intimidate others." Cyberbullying, unlike physical bullying, does not provide an option for its victims to walk away (http://criminaljustice.state.ny.us/missing/i_safety/cyberbullying.htm). NYSDCJS defines sexting as "sending, receiving or forwarding sexually suggestive nude or nearly nude photos through text message or email" (http://criminaljustice.state.ny.us/missing/i_safety/i_intro.htm).

The COC should include statements that make it abundantly clear that cyberbullying is a form of electronic aggression and that both it and sexting are inappropriate and will not be tolerated on school grounds or at school-sponsored events or functions, using either school or personal information technology equipment. Sexting incidents should be reported on the VADIR in either IHMB (category 10) or other disruptive incidents (category 20), provided these reporting thresholds are met: the incident is violent/disruptive; it occurred on school property/ school sponsored events; and it meets/exceeds the disciplinary actions. Disciplinary or referral actions include the following:

- Referral to counseling;
- Teacher removal (formal 3214 hearing);
- Suspension from class or activities; in-school equivalent of one full day; Activities or transportation for five (5) consecutive school days;
- Out of school suspension: equivalent of one full day;
- Transfer to alternative setting; or
- Transfer to law enforcement.

(http://www.emsc.nysed.gov/ssae/schoolsafety/vadir/glossary08aaug.html)

Incidents in the IHMB category that come to the attention of the principal or school administrator, but do not rise to the disciplinary threshold, are logged by the school and are reported in Item 2 on page 3 of the VADIR Summary each year. Please refer to the Glossary of Terms used in reporting Violent and Disruptive Incidents for a description of the incident categories at http://www.emsc.nysed.gov/ssae/schoolsafety/vadir/glossary08aaug.html. For further clarification on reporting, refer to the VADIR Questions & Answers at http://www.emsc.nysed.gov/ssae/schoolsafety/vadir/VADIRQA1008final.html.

Perhaps the greatest challenge for school administrators related to cyberbullying and sexting is how to legally and effectively deal with behavior and/or incidents that take place off campus that may endanger the health or safety of pupils within the educational system or adversely affect the educative process. It should be noted that prior Commissioner's decisions have upheld the suspension of students for off-campus conduct (Appeal of K.S., 43 Ed Dept Rep 492, Decision No. 15,063; Appeal of Ravick, 40 id. 262, Decision No. 14,477; Appeal of Orman, 39 id. 811, Decision No. 14,389). Case law has also recognized that students may be disciplined for conduct that occurred outside of the school that may endanger the health or safety of pupils within the educational system or adversely affect the educative process (Matter of Coghlan v. Bd. of Educ. of Liverpool Cent. School Dist., 262 AD2d 949, citing Pollnow v. Glennon, 594 F.Supp. 220, 224, affd 757 F.2d 496). However, since regulation of bullying, particularly cyberbullying and sexting, may involve free speech and expression, there are constitutional limitations on the ability of a school district, BOCES, or CVEEB to restrict these forms of speech and expression and to discipline students for engaging in them pursuant to Tinker v. Des Moines Indep. Community Sch. Dist., 393 US 503 (1969) and subsequent cases. We recommend that school districts, BOCES, and CVEEBs consult with their school attorneys in developing policies on bullying, cyberbullying, and sexting to determine whether the proposed policy is consistent with the decisions of the Commissioner relating to discipline for off-campus conduct and whether the proposed policy is constitutional under the Tinker standard as it has been applied by the courts. Because of national concerns over bullying, including cyberbullying and sexting, this is a rapidly evolving area of constitutional law, so we further recommend that districts, BOCES, and CVEEBs periodically review their policies with their school attorneys to make sure that they reflect current developments in the law.

- **The Children's Internet Protection Act (CIPA)**: This is the primary federal law concerning access to offensive content over the internet on school and library computers (http://fcc.gov/cgb/consumerfacts/cipa.html). Requirements of this law include:

  - Schools and libraries subject to CIPA may not receive the discounts offered by the E-rate program unless they certify that they have an internet safety policy that includes technology protection measures. The protection measures must block or filter internet access to pictures that are: (a) obscene; (b) child pornography; or (c) harmful to minors (for computers that are accessed by minors). Before adopting such an internet safety policy, schools and libraries must provide reasonable notice and hold at least one public hearing or meeting to address the proposal.

  - Schools subject to CIPA are required to adopt and enforce a policy to monitor online activities of minors.

  - Schools and libraries subject to CIPA are required to adopt and implement an internet safety policy addressing: (a) access by minors to inappropriate matter on the internet; (b) the safety and security of minors when using electronic mail, chat rooms, and other forms of direct electronic communications; (c) unauthorized access, including so-called "hacking," and other unlawful activities by minors online; (d) unauthorized disclosure, use, and dissemination of personal information regarding minors; and (e) measures restricting minors' access to materials harmful to them.

- **Internet Safety Policies**: In light of these requirements, a school district, BOCES, or CVEEB should revisit its policy regarding the use of social networking web sites and Instant Messaging Centers. A decision needs to be made as to whether the school district, BOCES, or CVEEB supports the use of these sites to encourage communication between staff, students, and persons in parental relation to students. If it encourages the use of these sites for such communications, it is wise to establish some proprietary parameters to ensure that staff, students, and persons in parental relation to students are not placed at risk.

- **Analysis of anti-bullying legislation and reporting requirements**: Since 2006, approximately 20 states have enacted cyberbullying legislation. A review of this enacted legislation shows a focus on expanding the definition of bullying and/or harassment to include the use of information technology equipment, including, but not limited to, e-mail, instant messaging, blogs, chat rooms, pagers, cell phones, and gaming systems, to carry out the acts. Many states require school districts to implement anti-bullying policies in all of their schools and to report violations of these policies within their schools. In New York State, bullying incidents are documented and reported through the Violent and Disruptive Incident Reporting (VADIR) System. Within this system, the Intimidation, Harassment, Menacing, and Bullying incident category definition is broad enough to include cyberbullying incidents, thereby allowing the state to capture the frequency, geographic area, and specific school in which both the highest and lowest levels of incidents occur.

Reporting and Preventing Incidents

As noted, the reporting of bullying incidents can be accommodated by the VADIR system. The analysis of the VADIR data might also provide clues for what should be included in procedures for investigating and preventing bullying and cyberbullying. Of course, a strong school culture that does not tolerate such behavior, as well as good prevention policies and sound, research-based programs will minimize the need for investigation. There are a number of programs that are supported by scientifically-based research that have components dealing with bullying and cyberbullying. Please visit the Safe Schools and Alternative Education web site at http://www.emsc.nysed.gov/ssae/, and the New York State Center for School Safety web site http://nyscenterforschoolsafety.org, for information regarding such programs. Good intervention efforts will help establish a culture and climate within the school that supports civility and respect and recognizes there are no innocent bystanders as it relates to bullying issues.

Resources

- The monitoring of student behaviors and supports is an often overlooked aspect of a comprehensive policy for dealing with issues of bullying and cyberbullying. As a consequence, students who are victimized often become alienated because they are unsure of the appropriate steps to take. To ensure that these situations do not occur, schools are encouraged to investigate and provide support for these students through guidance, social work, and/or psychological services in the district. Districts are encouraged to include local municipality social services if possible.
- Additionally, advice is provided by the United States Department of Health and Human Services (HHS) in its Stop Bullying Now! Campaign. Visit http://stopbullyingnow.hrsa.gov/adults/default.aspx

Among other ideas, the HHS indicates that schools should:
- Educate students, teachers, and other staff members about cyberbullying
- Be sure that the school's anti-bullying rules and policies address cyberbullying
- Closely monitor students' use of computers at school
- Use filtering and tracking software, but don't rely solely on this software, to screen out cyberbullying and other problematic online behavior
- Investigate reports of bullying and cyberbullying immediately
    - Notify parents of all children involved
    - Closely monitor the behavior of affected students
    - Investigate to see if the victim could use some support

- Two programs that have been recognized to improve school climate and address bullying issues are the Olweus Bullying Prevention Program and the Promoting Alternative Thinking strategies (PATHS) program.

- For additional resources for schools, visit the Safe Schools and Alternative Education website: http://www.emsc.nysed.gov/ssae/schoolsafety/sdfsca/.

- School personnel will also find useful guidance in a Fact Sheet entitled "*What is Cyberbullying?*" Developed by the New York Center for School Safety, this Fact Sheet includes a number of recommendations that schools, parents and teachers can follow to address this issue. Please go to http://nyscenterforschoolsafety.org.

- The Department will continue to expand its curricular guidance in internet safety. For more information, please visit http://www.emsc.nysed.gov/technology/internet_safety/.

Funding Availability

- Local educational agencies will not receive new Title IVA allocations in the 2010-2011 school year, but they are encouraged to either utilize all funds or carry over the allowable 25 percent to the 2010-2011 school year to assist in the development of policy, programs, and training on these issues. A memorandum dated January 8, 2010 was shared with the field regarding the loss of NCLB Title IV, Part A of Safe and Drug Free Schools Communities Act (SDFSCA) Funding for 2010-2011.

Additional Assistance

This guidance is meant to provide you with ideas to address the issue of cyberbullying. You are invited to contact the Office of Student Support Services at (518) 486-6090 or the Office of Educational Design and Technology at (518) 474-5283 if you require additional assistance.