



Robbins Schwartz
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Notice Requirements and Best Practices in Addressing Bullying Complaints

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Introduction



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Agenda

- New Reporting Requirements
- Bullying Response
- Best Practices In Addressing Bullying



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Although the information contained herein is considered accurate, it is not, nor should it be construed to be legal advice. If you have an individual problem or incident that involves a topic covered in this document, please seek a legal opinion that is based upon the facts of your particular case.

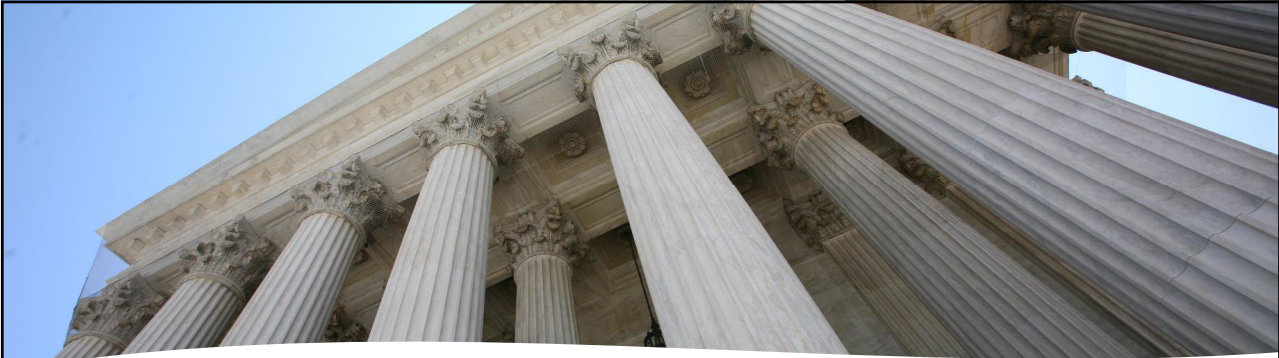


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Legislative Update

- HB 3425 signed into law on 6/9/2023 as Public Act 103-0047
- Effective Immediately
- Amends School Code provision 105 ILCS 5/27-23.7 Bullying Prevention
- Adds new categories to the definition of bullying
- New notice requirement for informing parents
 - Notice must include instances/potential instances of self-harm
- Collect data and report to ISBE

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Legislative Update | ISBE Template

- State board is required to create a template for a model bullying prevention policy and districts are required to implement the policy based on the ISBE template. Such must be posted by January 1, 2024.

- ISBE and IASB collaboration on the template and model policy.
- ISBE shall adopt rules regarding notification of districts that fail to comply.
- Each school district may provide evidence based professional development and youth programming on bullying prevention that is consistent with this section.

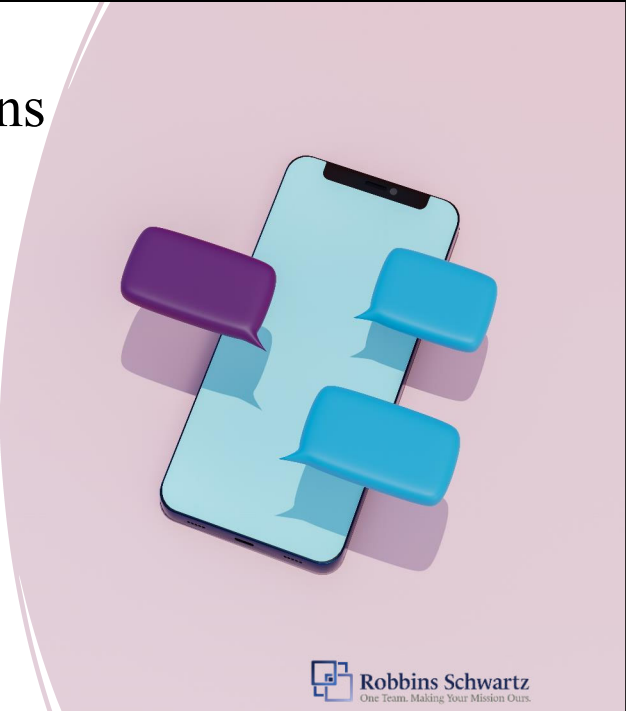


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Notification to Guardians

 New Requirement: 

- The school must make diligent efforts to notify a parent/guardian of all students involved in an alleged incident of bullying by utilizing all contact information the school has available or that can be reasonably obtained by the school **within 24-hours** of the **administration** being made aware of the alleged incident of bullying.
- Also requires that all threats, suggestions, or instances of self-harm **determined to be the result of bullying** be reported to parents/guardians within the 24-hour period.



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Notification to Guardians

- Parents/guardians of students who are parties to the investigation shall:
 - Be provided with information regarding the investigation.
 - ✓ Be careful of other students' privacy rights when providing information regarding the investigation.
 - Have an opportunity to meet with school administration or designee to discuss the investigation, findings and steps taken to address the incident.
 - ✓ Do not release information related to the discipline of other students.
 - Be provided with information regarding the availability of social work services, counseling, school psychological services, and other interventions and restorative measures, as appropriate.



New Protected Categories

- In addition to the categories already specifically protected in the bullying statute, the following categories were added to the definition of bullying:

- Physical appearance
- Socioeconomic status
- Academic status
- Pregnancy
- Parenting status
- Homelessness

- Note: The current 'PRESS' policy does not include physical appearance, socioeconomic status, or academic status.



Data Tracking

- **What:** Data regarding verified allegations of bullying within the school district
- **How:** Track (I) each verified allegation of bullying and action taken; and (II) whether the instance of bullying was based on actual or perceived characteristics identified and, if so, list the relevant characteristics.
- **When to Report:** Submit data in an annual report to ISBE no later than August 15 of each year starting with the 2024-2025 school year



Recognizing Bullying

Differentiating the legal definition of bullying from misconduct



Identifying Bullying

- Bullying, including *cyber-bullying*, is defined as any severe or pervasive physical or verbal act or conduct, including communications made in writing or electronically, directed toward a student(s) that has or reasonably can be predicted to have the effect of one or more of the following:
 - Placing the student(s) in reasonable fear of harm to his/her person or property;
 - Causing a substantially detrimental effect on the student's or students' physical or mental health;
 - Substantially interfering with the student's or students' academic performance; or
 - Substantially interfering with the student's or students' ability to participate in or benefit from the services, activities or privileges provided by the District.
- It includes conduct such as: harassment, threats, intimidation, stalking, physical violence, sexual harassment, theft, public humiliation, destruction of property, or retaliation for asserting or alleging an act of bullying.



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No student shall be subjected to bullying:

- During any school-sponsored education program or activity;
 - While in school, on school property, on school buses or other school vehicles, at designated school bus stops waiting for the school bus, or at school-sponsored or school-sanctioned events or activities;
 - Through the transmission of information from a school computer, a school computer network, or other similar electronic school equipment; or
 - Through the transmission of information from a computer that is accessed at a non-school related location, activity, function or program or from the use of technology or an electronic device that is not owned, leased, or used by a school district or school if the bullying causes a substantial disruption to the educational process or orderly operation of a school.
- ✓ Note: This item applies only in cases in which a school administrator or teacher receives a report that bullying through this means has occurred and does not require a district to monitor any non-school-related activity, function or program.



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School Code Section and Policy 7:180 → Bullying Prevention

I. Assess

- Consider forming a bullying prevention committee;
- Consider administering an anonymous questionnaire to students to assess the nature, frequency and location of bullying;
- Meet with staff members to determine how they perceive the school climate and what strategies or interventions staff is currently utilizing to prevent or address bullying;
- Solicit parent feedback (e.g. through surveys or meetings); and
- Review data regarding incidents of past misconduct.

II. Train

- Provide in-service training to staff so they can learn the definition and signs of bullying, what to do when they see bullying, and how they can help students who are bullied.



School Code Section and Policy 7:180 → Bullying Prevention

III. Teach

- Teach students not only to specifically prevent/respond to bullying but also how to generally treat each other with respect through the implementation of programs such as:
 - ✓ Positive Behavioral Interventions and Supports (PBIS).
 - ✓ Instruction in social/emotional learning.
 - ✓ “Lunch buddies” or similar coordinated peer interaction groups.

IV. Coordinate

- Coordinate with school resource officers and staff to ensure they monitor areas where bullying may be more prevalent (such as the cafeteria, hallways, bathrooms, locker rooms).



Scenarios

I. Student A and Student B are best friends. They get into an argument and Student A now claims Student C is her best friend. Student B is hurt.

II. One morning the results of who made the soccer team are posted. At lunch, a group of girls who made the squad walk by a girl who did not make it. One of the girls says, "See you in soccer practice today." They all start laughing and walk off. Later that day, they repeat the unkind behavior at choir and in French class. The target goes to the counselor's office in tears.



Scenarios

III. Student M, a boy in first grade was approached by another boy, Student G, to play cards during free-time. Student M told Student G that he did not want to play with him. Since that time, G has continued to approach M every day during free-time to join in an activity. G has few friends and seems desperate to make friends with M. Student M is beginning to feel harassed by Student G.

IV. Student H intentionally lightly bumps Student K whenever they pass in the hallway and encourages other students to laugh.





Reporting Bullying

Who can/should report?

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Student Reporting

- Students are encouraged to immediately report bullying.
- A report may be made orally or in writing to the District's Complaint Manager or any staff member with whom the student is comfortable speaking.
- A student will not be punished for reporting or supplying information.

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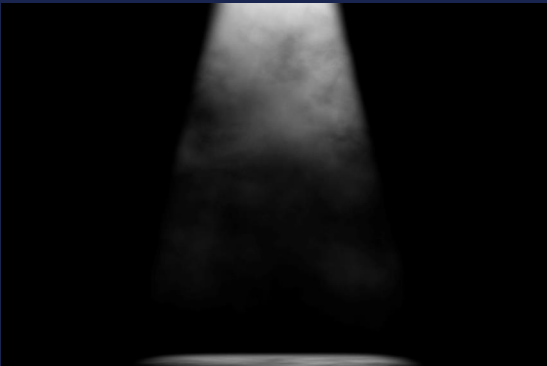


Parent/Guardian Reporting

- Anyone, including staff members and parents/guardians, who has/have information about actual or threatened bullying is encouraged to report it to the District Complaint Manager or any staff member.
- Affirmative duty to watch out for bullying, not just report when it is brought to your attention.
- More than just a societal duty.



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Anonymous Reporting

Anonymous reports are also acceptable.



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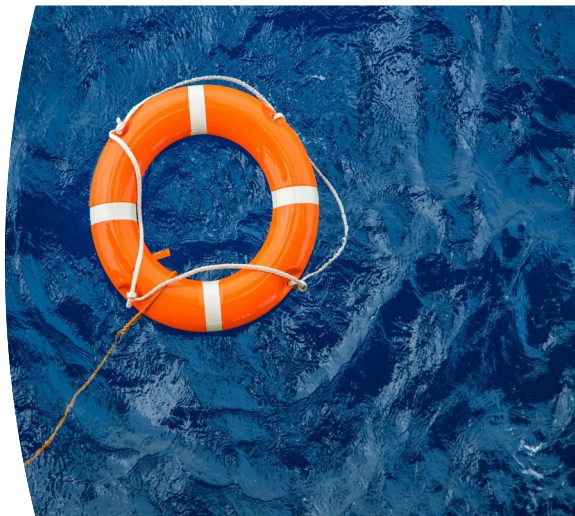
Responding to Bullying



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Interventions

- Interventions should be considered for both the alleged victim and the alleged perpetrator.
- Interventions can be put in place both during the pendency of an investigation and/or as a result of the investigation.
- Possible interventions and responses to incidents of bullying can include:
 - Social work services
 - Restorative measures
 - Social emotional skill building
 - Counseling
 - Implementing a safety plan
 - Behavior intervention plan
 - Staff training
 - Check in Check out
 - Separation
 - Increased supervision



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FAQs | Notice Requirement

1. If a parent emails stating their child has been bullied by Student A, can the district wait and investigate, to determine whether Student A's parents need to be contacted, or do they need to contact Student A's parents within 24 hours without looking into the situation based on the other parent report?
2. If a student comes to the district claiming Student B has been bullying them and Student B is absent, does the district need to call Student B's family stating they were reported as bullying a peer, or can the district investigate the claim to see if there is merit? What if the family is on vacation for longer than a day?
3. Does an email work when contacting a parent regarding the 24-hour rule, or does contact need to be made via phone?
4. If the district receives information on Saturday morning via email saying Student C has been bullying Student D (either from a parent, teacher, or student), is the district required to contact families within 24 hours (on Saturday or Sunday) before talking to anyone involved to gather more information? How does this work over a holiday break?



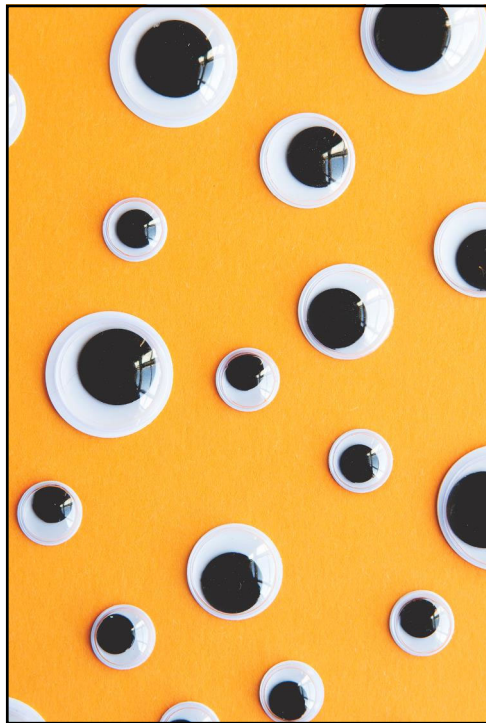
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Investigation Procedures

- Investigations of bullying shall be consistent with District procedures for investigating student misconduct generally, pursuant to Board policy (but be careful!).
- When a bullying allegation suggests a potential discriminatory basis for the bullying, the District Coordinator for Nondiscrimination shall be notified and may participate or lead the investigation.
- Reasonable efforts will be made to complete the investigation within ten (10) school days after the date the report of bullying was received.
 - Is it a report of cyber-bullying? If so, first determine whether it is within the scope of the school's jurisdiction? If the cyber-bullying caused a substantial disruption to the education process or orderly operation of a school or there is a nexus to the school, then it is within the scope of the District's jurisdiction to investigate. Was it on a District device or network?

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Investigation Process

- When disciplining students for bullying, ensure all students are provided with due process.
- When bullying occurs, investigate and document what happened as promptly as possible. Doing so enables the responsible administrators to:
 - Give students who may be charged with violating school rules, and who may face immediate suspension from school, a preliminary opportunity to explain their version of the incident or events in question.
 - Provide accurate and timely written notice of misconduct charges and pending/proposed disciplinary consequences to the student.
- When disciplining students for bullying, consider alternatives or supplements to traditional discipline (e.g. social probation, restorative measures).



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Tips for Investigating Bullying

- A bullying investigation should include, at a minimum:
 - Interviews with involved students
 - Interviews with staff members who have knowledge of the allegations
 - Review of student(s) academic record (including attendance, grades, discipline, etc.)
 - Review of student(s) social history
 - Review of student(s) health history



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Notification of Investigation Outcome

- Provide parents/guardians with a brief letter detailing the findings of the investigation.
- Make sure you keep a copy of the letter in the student's file.



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Disability-Based Bullying

- Section 504 and Title II require a school with notice of possible disability-based harassment to take prompt effective steps to determine what occurred and to end any harassment, eliminate a hostile environment if created, and prevent harassment from recurring.
- OCR would find a disability-based harassment violation when (*Davis* standard):
 - A student is bullied based on disability;
 - The bullying is sufficiently serious to create a hostile environment;
 - School officials know or should know about the bullying; and
 - The school does not respond appropriately.



Whether the district violated Section 504 will frequently turn on the investigation including a timely response and implementing preventative measures.

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Special Education Implications

- The United States Department of Education’s Office of Special Education and Rehabilitative Services (“OSERS”) and the Office of Civil Rights (“OCR”) have provided comprehensive guidance regarding a district’s obligations with respect to addressing bullying of students with disabilities:
 - “Bullying (on any basis) of a student with a disability who is receiving IDEA FAPE services or Section 504 FAPE services can result in denial of FAPE that must be remedied.”
 - Moreover, “even when situations do not rise to a level that constitutes a denial of FAPE, bullying can undermine a student’s ability to achieve his or her full academic potential.”
 - Bullying of a student who has not previously been identified as eligible for special education and related services under Section 504 or IDEA may also trigger the school’s child find obligations.
 - In addition, a student’s bullying behavior could also trigger a child find obligation.

Special Education Implications

- Schools have an obligation to ensure that a qualified student with a disability who receives IDEA FAPE services or Section 504 FAPE services and who is the target of bullying continues to receive FAPE – an obligation exists regardless of why the student is being bullied.
- If it is determined that a student with a disability was involved in an incident of bullying, convene the IEP team or the Section 504 team to determine whether, and to what extent:
 1. The student’s educational needs have changed;
 2. The bullying impacted the student’s receipt of IDEA FAPE services or Section 504 FAPE services; and
 3. Explore additional or different services, if any are needed, to ensure any needed changes are made promptly.

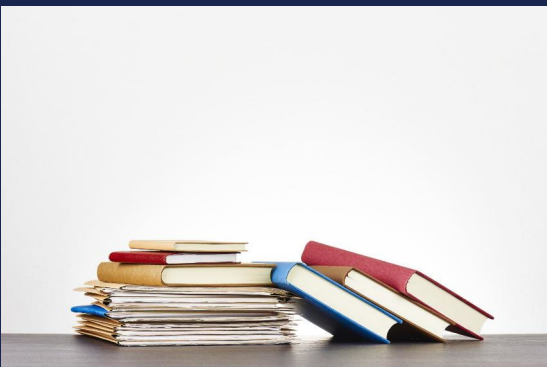


Look out for: a sudden decline in grades, onset of emotional outbursts, increase in the frequency of behavioral disruptions or a rise in missed classes as evidence of academic or behavioral changes.

Special Education Implications

- If the student who engaged in the bullying behavior is a student with a disability, the IEP team should review the student's IEP to determine if additional supports and services are needed to address the inappropriate behavior.
- In addition, the IEP team and other school personnel should consider examining the environment to determine if changes to the environment are warranted.
- OSERS cautions that, if the IEP team is considering a change in placement due to bullying, it do so carefully, bearing in mind IDEA's least restrictive environment ("LRE") mandate and ensuring parental participation.

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Summary

- ISBE Template in Q4 2023 or Q1 2024
- **24 HOUR NOTICE REQUIREMENT**
- Expansion of definition for protected categories
- Investigation tips and notice of outcome
- Special Education implications

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Laura Sinars focuses on special education and students' rights law. She counsels and represents public school districts at IEP meetings, due process hearings and mediation. She also represents districts at student expulsion and residency hearings. Laura has defended district decisions regarding evaluations, services, and placement of special education students in due process hearings. She has successfully prevailed in hearings to defend against parents' unilateral private placements. In the area of student rights, Laura has assisted clients with routine student issues related to records, discipline, health and 504 questions. She has also assisted clients with building strong residency and discipline cases which proceed to hearing and has successfully defended districts' decisions in state and federal courts. Laura has represented districts before federal and state agencies including the Illinois State Board of Education, the Illinois Guardianship and Advocacy Commission and the Office for Civil Rights.

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Illinois Super Lawyers, 2005-2018

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Prior to joining Robbins Schwartz, Zaria worked for the Chicago Public School District, where she represented the district as a special education attorney in due process matters and special education disputes.

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