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## **BULLYING AND NEW REQUIREMENTS UNDER THE SAFE AND SUPPORTIVE SCHOOLS ACT**

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#### **I. WHAT CONDUCT DOES THIS LAW PROHIBIT?**

##### **A. Bullying**

The Act prohibits “bullying.” In order to qualify as “bullying” the conduct must: (1) be student-to-student; (2) occur in a location identified by the statute; (3) consist of “intimidating, threatening, abuse, or harming” conduct; (4) be “objectively reasonable;” and (5) meet either the “imbalance of power” or “material disruption” standard.

1. The Act **only** applies to student-to-student conduct
2. The Act applies to student conduct occurring:

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- a. on school premises, at school functions or activities, and on school transportation;
  - b. by use of technology and communications on school premises, during school functions or activities, or on the school computers, networks, forums, and mailing lists; and
  - c. by use of technology off of school premises, **if** such use substantially and materially disrupts student learning or the school environment.
3. The Act Prohibits “intimidating, threatening, abuse, or harming” conduct. This includes, but is not limited to, conduct that:
- a. causes physical harm to a student or a student’s property or causes a student to be in reasonable fear of harm to person or property;”
  - b. under Minnesota common law, violates a student’s reasonable expectation of privacy, defames a student, or constitutes intentional infliction of emotional distress against a student; or
  - c. is directed at any student or students, including those based on a person’s actual or perceived race, ethnicity, color, creed, religion, national origin, immigration status, sex, marital status, familial status, socioeconomic status, physical appearance, sexual orientation, including gender identity and expression, academic status related to student performance, disability, or status with regard to public assistance, age, or any additional characteristic defined in chapter 363A.
4. The Act only prohibits conduct that is “**objectively offensive.**”
5. The Act only prohibits conduct when:
- a. There must be “an actual or perceived imbalance of power between the student engaging in prohibited conduct and the target of the behavior and the conduct is repeated or forms a pattern;” **Or**
  - b. “The conduct must “materially and substantially interfere with a student’s educational opportunities or performance or ability to participate in school functions or activities or receive school benefits, services, or privileges.”

## B. Cyberbullying

The Act defines cyberbullying as “bullying using technology or other electronic communication, including, but not limited to, a transfer of a sign, signal, writing, image, sound, or data, including a post on a social network Internet Web site or forum, transmitted through a computer, cell phone, or other electronic device.”

1. Because cyberbullying is a form of “bullying,” the conduct **must still** meet the definition of “bullying,” as discussed above.
2. The prohibition on general “bullying” only includes electronic technology or communication occurring:
  - a. On the school premises, during the school functions or activities, on the school transportation, or on the school computers, networks, forums, and mailing lists; or
  - b. Off the school premises to the extent such use substantially and materially disrupts student learning or the school environment.”

## C. Other Prohibited Conduct

1. **Retaliation for asserting, alleging, reporting, or providing information about prohibited conduct.** The Act does not define the term “retaliation.” Nor does it limit retaliation to acts by the alleged wrongdoer. Any student who takes an adverse action against a student who asserted, alleged, reported, or provided information about bullying, potentially engaged in prohibited retaliation.
2. **Knowingly making a false report about bullying.** “Knowing” is a high standard. It requires that the student actually knew that he or she was providing false information at the time of the report. It is not a violation of the Act to file a report that is unsubstantiated, or make a mistake in that report. Only deliberate falsehood is prohibited.

## II. WHAT PROCEDURES MUST ALL STAFF FOLLOW?

### A. Review Your School’s Policy

The law requires districts and charter schools to “adopt, implement, and, on a cycle consistent with other district policies, review, and revise where appropriate, a written policy to prevent and prohibit student bullying.” The law requires districts and charter schools to distribute that policy to their staff. All staff

members should take the time to review their school's policy and understand their role in implementing that policy.

**B. Report Bullying**

1. Each school building must have a designated staff member to serve as the primary contact person to receive reports of prohibited conduct. That person will be responsible for investigating the alleged bullying and for the recordkeeping associated with that investigation.
2. All staff members should report observed or suspected bullying behavior to the designated staff person.

**C. Address Prohibited Conduct**

Each district or charter school's policies must require its employees "who witness prohibited conduct or possess reliable information that would lead a reasonable person to suspect that a student is a target of prohibited conduct to make reasonable efforts to address and resolve the prohibited conduct."

1. Intervene to protect safety, if appropriate.
  - a. The district or charter school's policy must identify how staff members will "immediately interven[e] to protect the target of the prohibited conduct."
  - b. Not all bullying is physical contact. An immediate intervention may be as simple as separating the students involved, taking the students to the principal's office, or verbally directing the aggressor to stop.
2. Identify students involved in the bullying incident.
3. Report situation to designated staff member and cooperate with investigation.
4. Take additional action, as appropriate.

**III. CONSEQUENCES FOR FAILING TO REPORT OR ADEQUATELY ADDRESS BULLYING BEHAVIOR**

**A. The Act May be a Basis for Litigation Against the School or District.**

1. The Act does not create any private cause of action.
2. The Act does not limit existing legal remedies.
3. The Act may create a standard of care for negligence actions.

**B. Policies Implementing the Act Impose Discipline for Failing to Follow Their Provisions.**

**C. Failing to Report Known Bullying or Taking Other Steps Identified in the Anti-Bullying Policy Might be Unethical.** The Code of Ethics for Minnesota Teachers provides that a “teacher shall make reasonable effort to protect the student from conditions harmful to health and safety.” Minn. R. § 8700.7500, sub. 2(B).

**IV. MANDATORY REPORTING OF MALTREATMENT OF MINORS  
(Minn. Stat. § 626.556)**

**A. Public Policy Considerations**

1. The legislature has imposed an obligation upon educators to be on the watch for and to report incidences of child abuse.

**B. Who is a Mandated Reporter?**

1. A professional or professional’s delegate who is engaged in the practice of healing arts, social services, hospital administration, psychological or psychiatric treatment, child care, **education**, correctional supervision, or law enforcement is required to make such a report. This includes teachers, psychologists, social workers, paraprofessionals, teaching assistants and coaches.
2. A report must be made if the person “knows or has reason to believe a child is being neglected or physically or sexually abused or has been neglected or physically or sexually abused within the preceding three years.”

**C. Definitions of Abuse and Neglect**

1. **Sexual abuse** is the subjection of a child to criminal sexual conduct by
  - a. Person responsible for child’s care; or

- b. Person who has a significant relationship to the child; or
- c. By a person in a position of authority over the child.

2. **Neglect** is defined to include any of the following:

- a. Failure by a person responsible for a child's care to supply a child with necessary food, clothing, shelter, health, medical, or other care required for the child's physical or mental health when reasonably able to do so;
- b. Failure to protect the child from conditions that seriously endanger the child's physical or mental health when reasonably able to do so;
- c. Failure to provide for necessary supervision and child care arrangements;
- d. Failure to ensure that the child is educated in accordance with compulsory attendance law;
- e. Medical neglect;
- f. Prenatal exposure to a controlled substance used by the mother for a nonmedical purpose;
- g. Chronic and severe use of alcohol or drugs by the parent or person responsible for care of the child that adversely affects the child's basic needs and safety; or
- h. Emotional harm from a pattern of behavior which contributes to impaired emotional functioning.

3. **Physical abuse** is:

- a. Physical injury;
- b. Mental injury (includes emotional abuse); or
- c. Threatened injury, which is inflicted by person responsible for the child's care, which is not accidental. Abuse does not include reasonable and moderate physical discipline of a child which does not result in an injury.

- d. Physical abuse does not include the use of reasonable force by a teacher, principal or school employee when necessary under the circumstances to correct or restrain a student or prevent bodily harm or death to anyone. Minn. Stat. § 656.556, subd. 2(d); Minn. Stat. § 121A.582.

Note that none of the following are considered reasonable or moderate physical discipline: throwing, kicking, burning, biting, cutting, punching, etc.

- e. Physical abuse does include injuries to students caused by the unauthorized use of aversive or deprivation procedures or regulated interventions. Minn. Stat. § 626.556, subd. 2(d).

#### **D. How do I Make a Report?**

1. The report must be made to a local welfare agency, police department or county sheriff. If the maltreatment occurred at school, the report may be made to the Minnesota Department of Education, or the agencies previously listed. Minn. Stat. § 626.556, subd. 3(a), (b).
2. An oral report must be made immediately. The term “immediate” is defined to mean within 24 hours.
3. A written report must be submitted within 72 hours of the oral report, exclusive of holidays and weekends, and must include the following information: (Minn. Stat. § 626.556, subd. 7).
  - a. The child’s identity;
  - b. The identity of the person believed to be responsible for the abuse or neglect, if the person is known;
  - c. A description of the nature and extent of the abuse or neglect; and
  - d. The name and address of the reporter.

#### **E. Data Practices Status of the Report**

1. The report you make is classified by law as confidential. (Minn. Stat. § 626.556, subd. 7). You may not show it to discuss it with the student, the student's parent or any representative of the family.
2. Your name, as a reporter, remains confidential even after the investigation into the report is completed. The subject of the complaint may not find out who made the report without a court order. Such a court order will be made only on a showing that the report was not only false but was made in bad faith. (Minn. Stat. § 626.556, subd. 11).

**F. The Failure to Make a Mandated Report Exposes a Mandated Reporter to Risk of Conviction of a Misdemeanor.**

**G. Immunity from Liability.**

1. A teacher who makes a mandated or required report in **good faith** is immune from civil or criminal liability even if it turns out that the report is groundless or erroneous. The fact that the county determines that abuse did not occur does not remove this immunity.
2. Similarly, any person who in good faith voluntarily makes a report which is not mandated receives immunity. An example of a voluntary report would be one involving an act which occurred more than three years previously.
3. School personnel who assist the county or law enforcement agency in the resulting investigation are also entitled to immunity.

**H. Malicious and Reckless Reports.**

If, however, a person knowingly or recklessly makes a false report, that is, intentionally accuses a person of child abuse knowing that the allegation is untruthful, can be sued for actual damages, punitive damages, costs and reasonable attorneys' fees. Moreover, a finding that a report was both false and filed in bad faith is the basis for revealing the reporter's name to the subject of the report. (Minn. Stat. § 626.556, subd. 11).

**I. Duty of Educators Versus Duty of Investigation Agency**

Teachers should remember that their obligation is to report and not to investigate. It is the county's obligation to investigate. Thus, delaying reporting in order to gather additional facts is inappropriate.

**J. Informing Your Building Administrator**

You do not discharge your responsibility under the statute by passing your concerns on to a fellow staff member or to a building principal. On the other hand, you are not prohibited from discussing the matter with your building administrator or a school social worker. Ultimately, however, the decision to report, and the responsibility to report, is yours alone.