

MODEL POLICY

FOR IDENTITY-BASED BULLYING & HARASSMENT



← COMMUNITY WIDE →

Model Policy to Address Identity-Based Bullying in Massachusetts Schools

Acknowledgements

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Introduction

Bullying and harassment based on hate, bias, or prejudice can be devastating to victims and severely disrupt the school environment. While the Massachusetts Department of Elementary and Secondary Education (“DESE”) has adopted a model policy addressing harassment and bullying,¹ the policy does not specifically address identity-based bullying.

This Model Policy to Address Identity-Based Bullying (the “Model Policy”) is designed to fill that gap. It provides an overview of the relevant federal and state laws that require school districts to address identity-based bullying; defines identity-based bullying and harassment; and identifies best practices by which schools can investigate, prevent, and respond to such incidents.

This Model Policy is designed for districts that already have a general anti-bullying policy in place, including schools with policies that address procedures for investigations of incidents. It is intended as a supplement that can be adopted specifically to address identity-based bullying, which is uniquely pernicious and requires a targeted focus to address.

All school districts have Lawyers for Civil Rights’ express approval to use, adopt, and implement the Model Policy. We invite schools to utilize and embrace this in whole or in part as they deem appropriate.

The Model Policy is available below; please scroll down.

¹ The Massachusetts Department of Elementary and Secondary Education Model Bullying and Prevention Plan: <https://www.doe.mass.edu/sfs/bullying/>.

MODEL POLICY

To address the harms that flow from identity-based bullying, [SCHOOL X] adopts this amendment to our existing anti-bullying policy. Inspired by our community values, this policy is designed to illuminate what constitutes identity-based bullying, identity-based harassment, and other biased-based incidents, as well as to provide a practical guide to implementing appropriate responses.

I. Relevant Federal and State Laws

Preventing and mitigating identity-based bullying and harassment promote the goal of a safe environment for all students to develop academically and socially. In addition, schools have a legal duty to prevent identity-based bullying. State and federal laws addressing students' rights and schools' corresponding obligations include the following:

- At the federal level, **Title VI of the Civil Rights Act of 1964** requires schools to ensure that their programs and activities are fully accessible to all students, regardless of race, color, or national origin. This requirement includes an obligation for schools to protect students from discrimination or harassment that creates an intimidating or hostile school environment. (42 U.S.C. § 2000d).
- At the state level, the **Massachusetts Student Anti-Discrimination Law** provides protections similar to Title VI, and extends those protections to cover religion, sex, gender identity, and sexual orientation. (G.L. c. 76, § 5).
- The **Massachusetts Anti-Bullying Law** prohibits bullying and retaliation for reporting of bullying, and it requires schools to develop plans for education, professional development, reporting, and discipline related to incidents of bullying. (G.L. c. 71, § 37O).

Under these laws, schools are required to not only respond to incidents of identity-based bullying and harassment, but also take affirmative steps to prevent such incidents.

II. Definitions

- Massachusetts state law generally defines **bullying** as the repeated use of expressive behavior, or physical acts, directed at a victim that: causes harm or damage to the victim; places the victim in reasonable fear of such harm or damage; creates a hostile environment; or substantially disrupts the educational process.²

² The full definition is: "the repeated use by one or more students or by a member of a school staff including, but not limited to, an educator, administrator, school nurse, cafeteria worker, custodian, bus driver, athletic coach, advisor to an extracurricular activity or paraprofessional of a written, verbal or electronic expression or a physical act or gesture or any combination thereof, directed at a victim that: (i) causes physical or emotional harm to the victim or damage to the victim's property; (ii) places the victim in reasonable fear of harm to himself or of damage to his property; (iii) creates a hostile environment at school for the victim; (iv) infringes on the rights of the victim at school; or (v) materially and substantially disrupts the education process or the orderly operation of a school. For the purposes of this section, bullying shall include cyber-bullying." See G.L. c. 71, § 37O.

- The Massachusetts Attorney General has defined **harassment** as conduct that creates “an intimidating or hostile school environment when the conduct is sufficiently severe *or* pervasive to unreasonably interfere with a student’s educational performance or ability to participate in, or benefit from, school programs, activities, and services.”³ The U.S. Department of Education defines harassment in a substantially similar way,⁴ and advises that harassment does “not need to include intent to harm, be directed at a specific target, or involve repeated incidents. ”⁵
- **Identity-based bullying and harassment** is bullying and harassment directed at a student because of some aspect of their identity. Identity-based bullying may be triggered by many factors including, but not limited to: race, national origin, ethnicity, color, religion, immigration status, sex, gender identity, sexual orientation, and disability, or any intersection thereof. Identity-based bullying and harassment can be based on either actual or perceived characteristics of a student’s identities. The perpetrator can also share the same characteristics with the victim. As noted by the U.S. Department of Education, “[t]he label used to describe an incident (e.g., bullying, hazing, teasing) does not determine how a school is obligated to respond. Rather, the nature of the conduct itself must be assessed for civil rights implications. [I]f the abusive behavior is on the basis of race, color, national origin, [. . .] and creates a hostile environment, a school is obligated to respond in accordance with the applicable” state and federal laws and regulations.⁶

Like other forms of bullying and harassment, identity-based bullying and harassment may be a single incident or a recurring course of conduct, and may occur on or off campus, including online. The perpetrator may also be a non-student (e.g., staff or administrator).

III. Responses to Identity-Based Incidents

[SCHOOL X] is committed to appropriately responding to incidents of identity-based bullying and harassment in a way that balances the needs of the victim while educating and, as appropriate, disciplining the perpetrator.

[SCHOOL X] is committed to ensuring a fair, equitable, and unbiased evaluation of all complaints of bullying and harassment. Investigations of identity-based bullying and harassment should follow the investigatory steps outlined [on page X] of our bullying and discipline policy.

[SCHOOL X] is committed to a response that documents instances of identity-based bullying and harassment and focuses on maintaining a safe and supportive environment for the community and for all students.

3 See Attorney General Office’s Guidance on Schools’ Legal Obligations to Prevent and Address Hate and bias Incidents, <https://www.mass.gov/doc/ago-guidance-on-hate-and-bias-incidents-in-schools-12132023/download>.

4 See The U.S. Department Of Education Office For Civil Rights October 26, 2010, Dear Colleague Letter, <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf> (“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.”).

⁵ See *id.*

⁶ *Id.*

[SCHOOL X] will implement a variety of responses in addressing identity-based bullying, including those informed by principles of restorative justice, which may be appropriate for younger students, or, where conduct is not intentionally meant to harm others.

As with other misconduct, [SCHOOL X's] response to identity-based bullying and harassment is progressive in nature, with the degree of response depending on the severity of the conduct involved and a variety of factors, including, but not limited to:

- Age
 - Remedial steps focused on educating the perpetrator may be more appropriate for younger children, who are less likely to understand the harm caused by their actions.
- Disability
 - To the extent a perpetrator's disability interferes with their ability to comprehend the harm of their conduct, that should be factored into the response.
- First-Time or Repeated Offense
 - Repeat conduct may warrant a more far-reaching response.
- LGBTQ Status
 - [SCHOOL X] personnel should consider the possible ramifications of notifying parents/guardians of bullying and harassment based on a student's identity relating to gender identity or sexual orientation (e.g., parents could be unaware of their student's gender identity or sexual orientation).
- Language Differences
 - To the extent a perpetrator's language comprehension interferes with their ability to comprehend the harm of their conduct, that should be factored into the response.
- One or Multiple Perpetrators
 - Conduct perpetrated by a single person versus a group. Current climate and landscape.
- Current events
 - Monitor for current events that may exacerbate identity-based bullying, remaining aware of emerging trends that may necessitate novel responses. Current events may provide opportunities to create educational programming, trainings, and community building for school officials and students.

- Stakeholder Involvement
 - Where possible, [SCHOOL X] will discuss the conduct and possible responses with stakeholders (e.g., teachers, parents) to craft and implement the appropriate response.⁷

Below is a breakout of different categories of conduct, along with accompanying possible responses. This is designed to be a helpful guide and tool, but is not exhaustive or inclusive of all potential conduct and responses.

Category	Conduct	Possible Responses
1	<p>Conduct that demonstrates a lack of awareness of identity-based characteristics (e.g., teasing a student about their lunch with food from another culture); or</p> <p>Conduct that is verbal in nature and is not motivated by an intent to harm.</p>	<p>Education (e.g., conversations with school personnel, readings, and assignments⁸)</p> <p>Addressing the conduct in the moment (e.g., in the classroom, in the hall, etc.)</p> <p>Counselling or meetings</p> <p>Impact statement(s)⁹</p> <p>Apology statement(s)</p> <p>A meeting with a DEI coordinator</p>
2	<p>Conduct that is verbal and demonstrates intent (i.e., the student is aware of the harm of their conduct) (e.g., slurs or identity-based comments like “speak English”; “go back to your country”); or</p> <p>Physical conduct (removing a student’s religious hair piece such as a hijab or yarmulke); or</p> <p>Other manifestations of identity-based bias (e.g., a noose; drawing a swastika on a locker; refusing to use someone’s stated pronouns);</p>	<p><i>In addition to the options above:</i></p> <p>A formal report made to a designated DEI coordinator or staff member</p> <p>Volunteering (specific to the affected community)</p> <p>Preventative action (e.g., separating students by removing the actor)</p> <p>Involving the caretakers of the offending student in the education (e.g., conversations, readings, assignments)</p>

⁷ In doing so, administrators should be mindful of confidentiality concerns.

⁸ Readings and assignments should include culturally responsive educational materials.

⁹ Impact statements are used in a variety of settings to show the effects a perpetrator's conduct had on a victim. In a school context, having the recipient of identity-based bullying, or their guardian, provide an impact statement can be helpful for the victim and also serve as a powerful educational tool to show the perpetrator the impact of his or her actions. It is important to note that impact statements should always be optional – *i.e.*, the victim should not be required to bear the burden of educating the perpetrator.

	Repeated conduct by the same student.	<p>Detention</p> <p>In-school suspension</p> <p>Out-of-school suspension</p>
3	<p>Community-wide / systemic conduct with or without intention. Groups of students acting together may engage in conduct against an individual or a group of students (e.g., groups of white students ask Black students for the “N-word” pass; a sports team singling out players with different gender identities for hazing; a mock slave auction; etc.).</p> <p>Some students in the perpetrating group may be aware of the harm, and some might not be. There is a clear communication to act as a group.</p>	<p><i>In addition to the options above:</i></p> <p>Bystander intervention training</p> <p>Conflict de-escalation training</p> <p>Teacher training / curriculum updates</p> <p>Creation of affinity groups</p> <p>Group counseling</p> <p>School-wide programming (e.g., assemblies, grade-specific programs, etc.)</p> <p>Consistent programming focused on cultural competency and DEI</p> <p>Responses such as detention or suspension may be appropriate for individual students (e.g., those who demonstrate intent to harm, or engage in repeated behavior, or are instigating the behavior).</p> <p>Transparent communication with the school community (e.g., what steps the school has taken and will take to prevent future harm)</p>

When appropriate, [SCHOOL X] will also involve student-based support groups or local non-profits with expertise in education and training on the particular topic. [SCHOOL X] should also consider the role of affinity groups and clubs where a trusted staff member can advocate on behalf of the students.