

Legal Notes 4: Bullying, Harassment, SESIR Reporting

One of the most critical ways to support and affirm LGBTQ+ youth, and ensure a positive school experience, is to protect them from bullying and harassment, which are all too common aspects of the school environment for LGBTQ youth in Florida. Bullying and harassment against LGBTQ+ youth has long been underreported, and accurate reporting of such incidents is critical to enhancing our understanding of LGBTQ+ youth's school experiences.

In tandem with Simone Chriss from Southern Legal Counsel (simone.chriss@southernlegal.org), as well as members of our EQFL Florida School Board Attorney Advisory Group, we have created a series of "Legal Notes" to keep handy as you continue to move forward with ensuring the safety and well-being of LGBTQ+ students.

Every Florida School Board is responsible for providing "proper attention to [the] health, safety, and other matters relating to the welfare of students." Fla. Stat. § 1001.42(8)(a). To fulfill this responsibility, schools must treat LGBTQ+ students in an affirming and respectful manner and ensure that the school environment is a safe space for these youth, free from bullying and harassment.

Experiences and Finding of LGBTQ+ Youth

Bullying and harassment (including cyberbullying) impact approximately 60% of all youth in the United States, according to the Pew Research Center. Targets of bullying and harassment are at greater risk for self-harm and suicidal behavior, and are at increased risk for depression, anxiety, sleep difficulty, lower academic achievement, and dropping out.

While bullying cuts across all demographics, youth who identify as or are perceived as LGBTQ+ are often impacted disproportionately (including 77% of transgender youth) and are simultaneously less likely to have their reports of bullying and harassment taken seriously and addressed competently by teachers and staff.

Further exacerbating this issue is the fact that many school districts lack anti-discrimination, bullying, and harassment policies that explicitly protect LGBTQ+ students. Research has demonstrated that specifying particular categories of students in non-discrimination, bullying and harassment policies is critically important (i.e. including sexual orientation, gender identity, and gender expression as protected characteristics).

Studies show that 70% of transgender youth feel unsafe at school. Many LGBTQ+ youth do not report instances of bullying and harassment when they do not feel that the reports will be taken seriously or dealt with respectfully. Research has consistently shown that students experience less bullying and harassment, feel safer overall, and teachers are more likely to intervene to prevent incidents of bullying and harassment in schools with policies that explicitly protect LGBTQ+ individuals.

Students who experience bullying or cyberbullying are 2x more likely to attempt suicide, and this number has doubled since 2008, making suicide the second leading cause of death for individuals 10-34 years of age. According to research from the [Trevor Project](#), transgender youth are already 5x more likely than their cisgender peers to attempt suicide. Studies also demonstrate that this rate rises even higher among youth who were bullied in school. We **all** have a duty to stop these realities by ensuring that every school district is fulfilling their obligation to protect these youth.

Legal Landscape, Youth Rights, & Student Self-Advocacy

LGBTQ+ students in Florida's schools should understand their rights to be free from bullying and harassment and should feel safe reporting instances of anti-LGBTQ+ bullying and harassment. School districts should communicate to all students, staff, parents, and others that LGBTQ+ students are valued and respected and that this type of discrimination will not be tolerated.

The "Jeffrey Johnson Stand Up for All Students Act" prohibits bullying or harassment of any student or employee of a public K-12 educational institution, and defines bullying (which explicitly includes cyberbullying) to mean "systematically and chronically inflicting physical hurt or psychological distress on one or more students, which may involve: teasing, social exclusion, threat, intimidation, stalking, violence, public or private humiliation, and sexual, religious or racial harassment, among others." Fla. Stat. § 1006.147(1)-(3). This statute requires that each Florida school district adopt and review a policy prohibiting bullying and harassment at *least* every 3 years, and mandates that the policy afford **all** students the same protection regardless of their status under the law. *Id.* § 1006.147(4).

Further, schools districts must have clear policies and procedures in place for receiving and investigating reports of bullying and harassment, reporting to the Florida Department of Education (FDOE), and providing instruction on identifying, preventing, and responding to bullying and harassment. *Id.* School districts' receipt of Safe School funding is contingent upon compliance with the requirements of this statute. *Id.* § 1006.147(7).

Further guidance regarding school districts' requirements for reporting bullying and harassment of LGBTQ+ youth to FDOE through School Environmental Safety Incident Reporting (SESIR) appears in Fla. Admin. Code R. 6A-1.0017. Incidents of bullying and harassment against LGBTQ+ youth by another student must be reported in SESIR when they occur on campus or off-campus through electronic means. *Id.* 6A-1.0017(3)(a). This includes cyberbullying, defined as the use of any technology to bully or harass a student (i.e. texting, facebook, instagram, chat rooms, etc.). These incidences of discrimination must be reported regardless of whether the bullying/harassment was carried out by a student, a non-student, or an unknown person. *Id.*

Section (8)(e) explains that SESIR incidents motivated by certain characteristics of the victim, including **sexual orientation**, must be reported as Hate Crime-related. Further, the Event and Discipline Report requires that staff indicate whether the bullying occurred on the basis of **sex (which includes gender identity and expression) and sexual orientation**. The collection of data regarding bullying against LGBTQ+ youth, and the tracking of these incidents as hate crimes, is critical for developing policies and practices to prevent this pattern from continuing.

Schools that promote greater gender equity and do not tolerate sexual or gendered harassment have significantly less bullying, less aggression and victimization, and there is a greater willingness to intervene.
Dorothy Espelage et al. -School Psychology Quarterly

The most effective strategies to stop bullying involve the whole school working together to change the school climate and norms of behavior. Based on research, key strategies include: establishing school wide rules and consequences for bullying, educator training, parent engagement, classroom management, playground supervision, and cooperative group work. Dr. Maria Ttofi and Professor David Farrington -University of Cambridge

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