

Bullying and Harassment of GLBT Students in Colleges and Schools Summary of Applicable State and Federal Laws

Current Virginia Laws, Regulations and Statewide Standards

Bullying

Code [22.1-279.6](#) (2008) requires the Board of Education to establish guidelines and develop model policies for codes of student conduct to aid local school boards in the implementation of such policies. The guidelines and model policies must include standards for school board policies on self-defense and bullying. School boards are required to adopt and revise regulations that are consistent with, but may be more stringent than, the guidelines of the Board. Each school board must include in its code of conduct prohibitions against bullying, hazing and profane or obscene language or conduct.

Cyber Bullying

Code [22.1-279.6](#) was amended in 2009 to require the Board of Education to update guidelines and model policies for codes of student conduct to include standards for school board policies on the use of “electronic means for the purposes of bullying, harassment and intimidation.”

Hazing

Code [22.1-279.6](#) (2008) requires the Board of Education to establish guidelines and develop model policies for codes of student conduct to aid local school boards in the implementation of such policies. The guidelines and model policies must include standards for school board policies on hazing, and policies must cite Code [18.2-56](#), which defines and prohibits hazing and imposes a Class 1 misdemeanor for violations.

Protection for people who report bullying

Code [8.01-220.1:2](#) (2005) provides immunity from liability for school employees and volunteers from civil damages arising from reporting alleged acts of bullying or crimes against others, if the person in good faith promptly reports such acts or crimes to the appropriate school official in compliance with specified procedures.

Character Education

Code [22.1-208.01](#) requires each school board to develop a character education program that addresses “the inappropriateness of bullying, as defined in the Student Conduct Policy Guidelines adopted by the Board of Education pursuant to § [22.1-279.6](#).”

Virginia Board of Education Guidelines on Student Conduct Policies (updated in 2009 and applicable to public schools)

http://www.doe.virginia.gov/boe/guidance/safety/student_conduct.pdf

The Guidelines include the following on bullying (at page 21):

According to the National Center for Education Statistics, [Indicators of School Crime and Safety, 2002 (July 2004)], bullying can contribute to a climate of fear and intimidation in schools. Bullying is not specifically defined in Virginia law. Patterns of behavior associated with bullying that is criminal offenses are as follows: Assault, Extortion, Hazing, Larceny, Theft, Harassment, Batter, False Imprisonment, Sexual Harassment, Robbery, Threats

Non-criminal behavior associated with bullying includes intimidation, taunting, name-calling, and insults. The definition developed for the Virginia Department of Education Annual Discipline, Crime, and Violence Report is "repeated negative behaviors intended to frighten or cause harm" that may include, but are not limited to, verbal or written threats or physical harm. Another form of bullying occurs through the use of electronic means and is referred to as cyber bullying. Typically, cyber bullying is defined as using information and communication technologies, such as cell phone text messages and pictures and internet e-mail, social networking Web sites, defamatory personal Web sites, and defamatory online personal polling Web sites, to support deliberate, hostile, behavior intended to harm others.

Section 22.1-208.01 requires each school board to establish, within existing programs, a character education program; these programs are required to address the inappropriateness of bullying.

The sample conduct standard set out in the Guidelines is:

Students, either individually or as part of a group, shall not harass or bully others. The following conduct is illustrative of bullying:

1. Physical intimidation, taunting, name calling, and insults
2. Comments regarding the race, gender, religion, physical abilities or characteristics of associates of the targeted person
3. Falsifying statements about other persons
4. Use of technology such as e-mail, text messages, or Web sites to defame or harm others.

There is additional guidance provided on threats and intimidation, extortion, hazing, stalking that also would apply to certain incidents of bullying. Finally, there is a catchall provision at page 29 of the guidelines that would apply to any harassment or discrimination in violation of federal law:

A school board may consider including an "other conduct" category that addresses conduct not specifically listed elsewhere. The "other conduct"

should be confined to that which disrupts the educational environment or is a violation of federal, state, or local law.

The Virginia Code requires each school division to adopt student conduct codes consistent with the Board of Education guidelines but specifically allows local policies to be more “stringent.”

Virginia Board of Education Reporting Requirements

School personnel and school superintendents are required to collect and report information regarding certain incidents related to school safety. This information is required to be submitted to the Virginia State Board of Education by state law (§22.1-279.3:1) and department regulations. <http://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+8VAC20-560-10>.

Statistics on individual schools and school divisions compiled from these reports can be found online as a part of the Safe Schools Information Resource, <https://p1pe.doe.virginia.gov/pti/home.do> While bullying is not one of the incidents on which school personnel are required to report by statute, bullying is included in the information reported in the Safe Schools Information Resource. Reports of bullying are, however, consolidated with other “offenses against persons” in the school and school division Report Cards so it is not possible to determine from the Report Card how many incidents of bullying have happened in a particular school.

Federal Laws and Regulations

Title IX of the Education Amendments of 1972 (applies to any school or college that is a recipient of federal funding, including student aid)

<http://www.ed.gov/news/press-releases/guidance-targeting-harassment-outlines-local-and-federal-responsibility>

The U.S. Department of Education issued guidance on October 26, 2010 to educators (K-12 and colleges and universities) on when bullying and harassment may violate federal civil rights laws, including Title IX of the Education Amendments of 1972 which prohibits sex discrimination in federally funded schools and colleges.

The Dear Colleague letter sent to all schools and colleges specifically states that harassment based on perceived gender identity or failure to conform to gender stereotypes can constitute sex discrimination in violation of Title IX of the Education Amendments of 1972:

Title IX prohibits harassment of both male and female students regardless of the sex of

the harasser—i.e., even if the harasser and target are members of the same sex. It also prohibits gender-based harassment, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping. Thus, it can be sex discrimination if students are harassed either for exhibiting what is perceived as a stereotypical characteristic for their sex, or for failing to conform to stereotypical notions of masculinity and femininity. Title IX also prohibits sexual harassment and gender-based harassment of all students, regardless of the actual or perceived sexual orientation or gender identity of the harasser or target.

Although Title IX does not prohibit discrimination based solely on sexual orientation, Title IX does protect all students, including lesbian, gay, bisexual, and transgender (LGBT) students, from sex discrimination. When students are subjected to harassment on the basis of their LGBT status, they may also, as this example illustrates, be subjected to forms of sex discrimination prohibited under Title IX. The fact that the harassment includes anti-LGBT comments or is partly based on the target's actual or perceived sexual orientation does not relieve a school of its obligation under Title IX to investigate and remedy overlapping sexual harassment or gender-based harassment. In this example, the harassing conduct was based in part on the student's failure to act as some of his peers believed a boy should act. The harassment created a hostile environment that limited the student's ability to participate in the school's education program (e.g., access to the drama club).

Finally, even though the student did not identify the harassment as sex discrimination, the school should have recognized that the student had been subjected to gender-based harassment covered by Title IX.

In this example, the school had an obligation to take immediate and effective action to eliminate the hostile environment. By responding to individual incidents of misconduct on an ad hoc basis only, the school failed to confront and prevent a hostile environment from continuing. Had the school recognized the conduct as a form of sex discrimination, it could have employed the full range of sanctions (including progressive discipline) and remedies designed to eliminate the hostile environment. For example, this approach would have included a more comprehensive response to the situation that involved notice to the student's teachers so that they could ensure the student was not subjected to any further harassment, more aggressive monitoring by staff of the places where harassment occurred, increased training on the scope of the school's harassment and discrimination policies, notice to the target and harassers of available counseling services and resources, and educating the entire school community on civil rights and expectations of tolerance, specifically as they apply to gender stereotypes. The school also should have taken steps to clearly communicate the message that the school does not tolerate harassment and will be responsive to any information about such conduct.

The Department's Dear Colleague letter makes clear that schools and colleges have an affirmative duty to act affirmatively to respond to and prevent hostile behavior and harassment directed at GLBT students based on gender stereotypes.

The Virginia State Board of Education sent a Superintendent's Memo (#283-10) to all Virginia school divisions on November 19, 2010 that underscores for Virginia school administrators the import of the application of civil rights laws to bullying issues:

while current laws enforced by the OCR do not protect against harassment based on religion or sexual orientation, they do include protection against harassment of members of religious groups based on shared ethnic characteristics as well as gender and sexual harassment of gay, lesbian, bi-sexual, and transgender individuals. Therefore, some student misconduct that falls under a school's anti-bullying policy may also trigger responsibilities under one or more of the federal antidiscrimination laws enforced by the OCR. By limiting its response to a specific application of its anti-bullying disciplinary policy, a school may fail to properly consider whether a student's misconduct also results in discriminatory harassment.

The Superintendent's Memo may be found online at http://www.doe.virginia.gov/administrators/superintendents_memos/2010/283-10.shtml

Equal Protection Clause of the 14th Amendment (applies to public schools and colleges)

All students have a federal constitutional right to equal protection under the law. This means that schools have a duty to protect GLBT students from harassment on an equal basis with all other students. If school officials failed to take action against anti-GLBT harassment because they believed that the student should have expected to be harassed, or because they believed that the student brought the harassment upon him or herself simply by being openly GLBT, or because the school was uneducated about GLBT issues or was uncomfortable addressing the situation, then the school has failed to provide equal protection to the student.

1st Amendment, Equal Protection and Due Process Clauses (applies to public schools and colleges)

A transgender student(s) right to dress in accordance with his or her gender identity may be protected under the First Amendment and the Equal Protection and Due Process Clauses of the U.S. Constitution. The First Amendment limits the rights of school officials to censor a student(s) speech or expression. Students also have a protected liberty interest (under the Due Process Clause) in their personal appearance. In addition, a transgender student also has the right under the Equal Protection Clause to be treated similarly to other students of the same gender identity. If the school treats the student differently than it would treat other students of the same gender identity (i.e. if it imposes a dress code on a male-to-female transsexual that is different than the dress code that is applied to biological females), then the rules are being applied in a sexually discriminatory way (i.e., it is applying the code differently based on the student(s) biological sex.)