

2015 UPDATE ON IMPLEMENTATION BY DELAWARE PUBLIC SCHOOLS OF THE STATE'S 2012 ANTI-BULLYING LAWS

Issued by Delaware Attorney General Matthew Denn

This is the second annual report that has been issued analyzing the implementation by the Department of Education, school districts, and charter schools of significant changes that were made to the state's bullying statutes in 2012.

Last year's report focused on the need for school districts and charter schools to comply more strictly with provisions of the new laws regarding disclosure of bullying incidents to parents. This year's report concludes that school districts and charter schools have begun to more consistently communicate with parents regarding bullying incidents, and that incidents of bullying throughout the state appear to have dropped during the 2013-2014 school year. However, this year's report also identifies shortcomings that have become apparent in the way that the state monitors and enforces the 2012 statutory changes, and recommends changes to improve monitoring and enforcement.

DELAWARE'S 2012 REVISIONS TO ITS BULLYING STATUTES

In 2012, the General Assembly passed two new laws related to bullying in the state's public schools. The bills were drafted by then-Lieutenant Governor Matt Denn and then-Attorney General Beau Biden, after a series of public hearings on the subject of school bullying.

Senate Bill 193 required the Delaware Department of Education to promulgate a uniform cyberbullying policy, based on a model prepared by the Delaware Department of Justice and after an opportunity for public comment. The state's public school districts and charter schools were required by SB 193 to adopt the state's uniform cyberbullying policy within 90 days after its implementation. After months of public comment and revision, the Department of Education formally promulgated this policy on March 1, 2013 as Department of Education Regulation 624. The regulation provided a detailed definition of cyberbullying, made clear that schools could punish cyberbullying that originated outside school property, and provided a list of social media sites where posts would be considered cyberbullying if they otherwise met the regulation's definition. The regulation required schools to notify students and parents/guardians at the beginning of the 2013-2014 school year of the cyberbullying policy itself and of social media sites where posts would be considered to have been publicly posted.

House Bill 268 made a number of changes to the state's bullying law to remedy deficiencies that were noted during the public hearing process. First, it required that schools report all reported incidents of bullying to the state Department of Education – both substantiated and unsubstantiated – and required the Department of Education to randomly audit schools each year to ensure that reports required to be made to the state and to parents were being made. Second, it required more prominent placement of contact information for the Attorney General's ombudsman, who assists parents and

students unsatisfied with their school's resolution of bullying issues, including posting of the ombudsman's phone number on each charter school and school district web site. Third, it required schools to report to the state if a bullying incident was the result of a student being targeted for a particular identifiable reason, including but not limited to race, religion, and sexual orientation. The purpose of this change was to help the state determine if particular groups of students were disproportionately subject to bullying, so that steps could be taken to intervene.

SUMMARY OF CONCLUSIONS

- The total number of substantiated bullying incidents reported by Delaware public schools was down in 2013-2014 by 11% from the number reported in the prior school year. However, unusually large reductions in substantiated incidents reported by some school districts raises some question as to whether this represents a real drop of 11%.
- Far more dramatic changes in reports of alleged (as opposed to substantiated) bullying incidents raise questions about whether some districts have made systemic changes in the recording or reporting of alleged bullying.
- Compliance by both public school districts and charter schools with the law's requirement that contact information for the state's bullying ombudsman be posted on the district or charter web site is inconsistent.
- The annual audit performed by the Department of Education indicates that schools have become more consistent and diligent in making reports to parents of victims and perpetrators in bullying incidents.
- The state's system for tabulating "reported" and "substantiated" bullying incidents has resulted in some cases being recorded as "substantiated" without ever being recorded as "reported," frustrating the intent of the statute to monitor whether schools were substantiating bullying reports in a relatively uniform way.
- "Physical appearance" continues to be cited far more often than any other identifiable reason as the reason that particular students are targeted for bullying. It is difficult to draw conclusions from this fact, given that "physical appearance" can include other identifiable categories such as disability, race, and gender identity.
- Going forward, the Attorney General's office recommends:
 - (a) That the state revise its system for tabulating reported and substantiated bullying incidents so that data the legislature intended to gather can be accurately tabulated, and more uniformly educate and monitor the reporting practices of districts and charter schools so that incidents and data are properly reported on a consistent basis.
 - (b) That school districts and charter schools ensure that contact information for the state's bullying ombudsman is prominently displayed on their web sites, and that the Delaware Code be revised to provide specific enforcement provisions for this statutory requirement.
 - (c) That the Department of Education continue to emphasize reporting of bullying incidents to parents of both victims and perpetrators.

REPORTED BULLYING INCIDENTS

The good news is that substantiated incidents of bullying in Delaware public schools decreased by 11% in the 2013-2014 school year, as compared to the 2012-2013 school year. However, a closer look at the statistics causes the Department of Justice to recommend that both the Department of Education revise its system for tabulating reported and substantiated bullying incidents so that data the legislature intended to gather can be accurately tabulated, and more uniformly educate and monitor the reporting practices of districts and charter schools so that incidents and data are properly reported on a consistent basis.

Delaware schools reported a significant drop in alleged bullying incidents during the 2013-2014 school year – indeed, the drop was so significant (almost 39%) that it suggests that the change was due at least in part to either classification or reporting practices, rather than a reduction of that amount in allegations¹. Some districts reported drops in reported bullying incidents that ranged from over 60% to, in one case, 100% (i.e. a drop from 90 reported incidents in 2012-2013 to zero in 2013-2014). Follow-up communications with district staff suggest that inconsistent application of the state’s system for reporting bullying incidents, both substantiated and unsubstantiated, was the cause of this dramatic shift in some districts.

Delaware schools also reported a drop in substantiated bullying incidents. The drop in reported substantiated bullying incidents was more modest (11%) than the drop in total reported incidents, and raises fewer concerns about wholesale changes in data collection or reporting. Nevertheless, some school districts did report dramatic changes in substantiated bullying incidents as well, including drops ranging from 42% in one of the state’s largest districts to 67% in one of its smaller districts. Again, a decrease in substantiated bullying incidents is, on its face, good news, but follow-up contacts with some districts reporting high drop-offs also suggest that reporting inconsistencies account for at least some of the 11% reduction.

Finally, the manner in which the Department of Education records statistics under the state’s bullying statute has resulted in a higher number of “substantiated” incidents as compared to total incidents than was intended by the legislature when the state began requiring tabulation of all reported incidents in 2012. Prior to 2012, the state only required school districts and charter schools to report “substantiated” incidents of bullying to the Department of Education. The state made a conscious decision when revising the statute in 2012 to have districts and charter schools report both substantiated and unsubstantiated bullying incidents, so the Department of Education and Department of Justice could determine if certain schools or districts were substantiating disproportionately low percentages of complaints. In the 2013-2014 school year, the Department of Education reported a number of schools and districts as having more

¹ The statistics in this report presume that the data reported by the Department of Education has been correctly aggregated from that reported by school districts and charter schools.

substantiated incidents of bullying than reported incidents. When asked to explain these statistics, the Department of Education noted that when a bullying incident is reported as the result of a discipline referral by a teacher or administrator, it is reported as a substantiated incident but not as an alleged incident, because it had not started as a parent or student allegation. Although recording statistics in this fashion is a good faith effort by the Department of Education to comply with the statute, it frustrates the intent of the statute by making it impossible to use the collected data for one of the primary intended purposes of the data.

Cumulatively, all of the above-noted (i) anomalies in the manner in which the Department of Education collects bullying information and (ii) inconsistencies in the way in which school districts and charter schools report bullying information have made the aggregate information collected by the state of very limited utility. There is no reliable way to know what percentage of the 39% drop in reported incidents or of the 11% drop in substantiated incidents is real, nor is there any way to determine whether particular districts or schools are being more or less vigilant about substantiating reports of bullying. For that reason, the Department of Justice strongly recommends that the Department of Education (a) conduct a formal training for school districts and charter schools in the proper classification and reporting of alleged and substantiated bullying incidents, (b) conduct periodic audits of school district and charter schools to ensure compliance with state standards and requirements, and (c) require that each substantiated incident of bullying also be tabulated as a reported incident, so that districts and schools can accurately be monitored for their vigilance in investigating reported incidents of bullying.

INFORMING STUDENTS AND PARENTS OF THE AVAILABILITY OF HELP FROM A STATE OMBUDSMAN

An important provision of House Bill 268 was its requirement that “The telephone number of the Department of Justice School Ombudsman shall be provided in writing to parents, students, faculty and staff; and shall be on the website of each school and school district.” The reason for this addition to the law was the frequently-heard complaint during public hearings that parents and students frustrated with school or district inaction regarding bullying complaints needed to know where they could turn.

Notwithstanding this legal requirement, a number of districts and charter schools remain either out of compliance with the law, or at a minimum in compliance in a fashion that frustrates the law’s intent. For example, a number of the school districts that reported dramatic drops in bullying incidents and schools that reported no bullying incidents whatsoever do not offer the ombudsman’s contact information on their web sites.

The provision of the ombudsman’s contact information to parents and/or students who might be concerned about bullying is an important part of the state’s enforcement regimen. The vast majority of parents and students would have no idea that such a person exists to assist them in what can be extremely trying circumstances. Because

there appears to be inconsistent compliance with this important provision of the Code, the Department of Justice will recommend to the General Assembly that specific enforcement provisions be written into the Code to ensure district and charter school compliance.

REPORTING OF BULLYING INCIDENTS TO PARENTS

Another important component of the 2012 amendments to the state's bullying statute was heightened monitoring of school district and charter school compliance with their obligation to tell parents of both perpetrators and victims in bullying incidents what had occurred. The logic behind the heightened monitoring was that parents and guardians needed, in the case of bullies, to control their own children's behavior, and in the case of victims, to be able to advocate for their children. But neither could occur if parents were not informed of the incidents themselves.

Although the sample size was small (ten schools), the results of the 2013-2014 audit of schools for parental notification of bullying showed significant improvement over the 2012-2013 audit. In the 2012-2013 school year, only 73% of randomly selected parents had been notified of bullying incidents in the manner required by Delaware statute. In the 2013-2014 school year, that number improved to 93.8%. The only audited school that had a reporting rate of less than 90% was Reach Academy, which had a reporting rate of 75% -- a rate that would have put it squarely at the state's average just a year ago.

The state's practice of randomly auditing schools for compliance with this important statutory requirement, and identifying those schools that fall short, appears to be working. The state should continue to emphasize to schools the possibility that they will be audited, and should continue to be vigilant in conducting said audits.

IDENTIFICATION OF VULNERABLE STUDENT POPULATIONS

Another important provision of House Bill 268 was its requirement that schools districts and charter schools include within their bullying investigations "a determination of whether the target of the bullying was targeted or reports being targeted wholly or in part due to the target's race, age, marital status, creed, religion, color, sex, disability, sexual orientation, gender identity or expression, or national origin," or other "reasons or criteria why a person is a target of bullying" which were not included in that list. The purpose of requiring this information to be reported was to allow the state to determine whether particular groups of students were being victimized by bullying and potentially in need of greater protection. In last year's report, the state noted that physical appearance, disability, and gender identity were the three most frequently identified specific reasons that students were targeted (though "other" or "no reason" were cited in over half of the incidents).

Once again in the 2013-2014 report, non-descript categories ("other," "no reason," and the newly added "peer attention") were used by school districts and charter

schools for over half of the reported incidents. And once again, with respect to identifiable categories, the “physical appearance” category was cited far more often than any other category – this year, it was the cited reason in 48% of the cases for which an identifiable reason was cited. The next most often cited reasons were “race/color” and the newly-added “socio-economic status,” which were each cited in 11% of the cases where an identifiable reason was cited. “Disability,” which was cited in just under 10% of identified cases in 2012-2013, was cited in approximately 6% of identifiable cases in 2013-2014, and “gender identity” which was cited in 8% of the 2012-2013 incidents was cited in 4% in 2013-2014. As was noted last year, “physical appearance” can encompass several of the other categorizations, including disability, gender expression, and race/color.