



FROM THE OFFICES OF
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**Guidance on Schools' Legal Obligations to
Prevent and Address Hate and Bias Incidents**

The Office of the Attorney General, Executive Office of Education, and Department of Elementary and Secondary Education are concerned about hate incidents¹ arising in elementary and secondary schools in the Commonwealth. Our offices are engaged with concerned school administrators, teachers, staff, parents, students, and community members on these issues.

Student or staff misconduct that involves hate, bias, or prejudice can have a devastating impact on students, families, and communities and significantly disrupt the school environment. State law requires schools to take steps both to prevent this type of misconduct and respond when it occurs, while also protecting students' freedom of speech. This Guidance is designed to assist schools in their efforts to combat hate and foster a safe, supportive, and inclusive educational environment, consistent with their legal obligations.²

Massachusetts Law Prohibits Bias-Related Bullying and Harassment in Schools

The Massachusetts Anti-Bullying Law (G.L. c. 71, § 37O) and Student Anti-Discrimination Act (G.L. c. 76, § 5), along with state regulations,³ require schools to take steps to prevent bias-related bullying and harassment by students and staff and respond effectively when it occurs.⁴ Bullying and harassment are similar, but not identical, types of misconduct. Bullying generally includes repeated, targeted behavior that harms a student or disrupts the school environment. Although not all bullying is bias-related, bullying often stems from or involves bias, prejudice, or hate.

Harassment is conduct that creates, or contributes to the creation of, an intimidating or hostile environment for a student because of their actual or perceived race, color, religion, national origin, sex, gender identity, or sexual orientation. Like bullying, harassment can take many forms, including verbal statements, online or social media activity, graffiti, and violent or threatening physical conduct. Unlike bullying, harassment does not have to be repeated or

¹ The terms "hate incident" or "bias incident" may be used to describe any hostile, aggressive, harmful, or otherwise unwelcome conduct or speech that is motivated by, or demonstrates, hate, bigotry, or bias against an individual or group because of their protected characteristics.

² This guidance also supplements other resources to provide safe, supportive, and inclusive schools. See Memorandum from Jeffrey C. Riley, Commissioner to Massachusetts Board of Elementary and Secondary Education, "[Fostering a Safe Learning Environment for All Students](#)" (Jan. 22, 2024).

³ 603 CMR 26.00 (Access to Equal Educational Opportunity) and 603 CMR 49.00 (Notification of Bullying or Retaliation).

⁴ Federal law also imposes requirements on schools to address bias-related misconduct by students. See, e.g., 42 U.S.C. § 2000d *et seq.* ("Title VI") (covering race, color, and national origin); 20 U.S.C. § 1681 *et seq.* ("Title IX") (covering sex and gender identity); 42 U.S.C. § 12131 *et seq.* (Americans with Disabilities Act) (covering disability). The United States Department of Education's Office for Civil Rights recently issued guidance for schools to ensure they understand and fulfill their obligations under Title VI. See U.S. Dep't of Education, Office for Civil Rights, [Dear Colleague Letter](#) (May 7, 2024); see also U.S. Dep't of Education, Office for Civil Rights, [Fact Sheet](#) (July 2, 2024).

targeted at a particular victim. A single, severe hate incident may create an intimidating or hostile environment—so too may a series or pattern of incidents. Harassment creates an intimidating or hostile school environment when it 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.

Schools should understand that the protections against harassment provided by the Student Anti-Discrimination Act are closely analogous to those provided by Title VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972, though the Student Anti-Discrimination Act provides greater protections based on religion.⁵ While schools’ responsibilities under Massachusetts law are independent of federal law, school officials may use federal guidance applying Title VI and Title IX as a complementary resource that addresses many of their obligations under the Student Anti-Discrimination Act.⁶

Schools Must Respond to Hate and Bias Incidents Involving Students

Schools must take prompt and effective action to address bullying and harassment towards students. When a school receives notice of an alleged instance of bullying or harassment, it has a legal responsibility to investigate and to respond to any bullying or harassment that is found to have occurred. Some hate incidents may involve bullying, harassment, or both. Accordingly, schools must ensure that their response to hate and bias incidents complies with both the Anti-Bullying Law and the Student Anti-Discrimination Act. Moreover, even if a school determines that conduct does not rise to the level of bullying or harassment, it should still address hate or bias motivated behavior that violates its code of conduct or other valid and enforceable rules and policies.

The legal obligations imposed by the Anti-Bullying Law and the Student Anti-Discrimination Act are not limited by the physical boundaries of the school campus. Schools are responsible for addressing incidents that occur at school or school-related events, including activity on school buses to and from school or school-related events.⁷ Schools are also responsible for addressing

⁵ Under the Student Anti-Discrimination Act, students may not be discriminated against, excluded from, or denied the advantages or benefits of school programs because of their protected characteristics. *See* G.L. c. 76, § 5. This broad prohibition requires schools to protect students from harassment that unreasonably interferes with their education—that is, harassment that creates an intimidating or hostile school environment. *See* 603 CMR §§ 26.07(2) and 26.08 (schools must take steps to prevent harassment and respond when it occurs); *see also* United States Department of Education, “[Dear Colleague Letter: Harassment and Bullying](#)” (outlining obligations to address harassment under Title VI, Title IX, and other federal laws) (Oct. 26, 2010); United States Department of Education, “[Dear Colleague Letter: Shared Ancestry](#)” (confirming that Title VI entitles students to a school environment free from discrimination based on race, color, or national origin, including shared ancestry or ethnic characteristics) (Nov. 7, 2023); Exec. Order No. 14021, [86 Fed. Reg. 13803](#) (Mar. 8, 2021) (guaranteeing an educational environment free from discrimination on the basis of sex, including discrimination on the basis of sexual orientation or gender identity, under Title IX and other federal laws); *see also* U.S. Dep’t of Education, Office for Civil Rights, [Fact Sheet](#) (July 2, 2024).

⁶ Courts generally look to interpretations of federal statutes when applying similar state statutes, and protections against harassment and hostile environment discrimination are generally as extensive or more extensive under Massachusetts civil rights law as under federal law. *See, e.g., College-Town, v. Mass. Com’n Against Disc.*, 400 Mass. 156, 163-64 (1987); *see also* “[Dear Colleague Letter: Harassment and Bullying](#)” (acknowledging that state laws may provide “additional civil rights protections” for students).

⁷ An incident that occurs during remote learning, or on a remote learning platform, should generally be treated as occurring in school or at a school-related event. Further, schools must be aware that incidents that involve social media, texting, or other online activity may qualify as in-school incidents even if some of the activity originates outside of school during non-school hours. Because of its pervasive presence in students’ lives, social media activity, in particular, may contribute to in-school bullying or harassment regardless of when or where it originally occurs.

“off-campus” bullying or harassment that has a serious carry-over effect on students or staff at school.⁸ Additionally, schools must investigate as soon as they are on notice of conduct that appears to meet the definition of bullying or harassment. A student does not need to report that they are being bullied or harassed, or identify the conduct by those terms, in order to be protected by the Anti-Bullying Law and the Student Anti-Discrimination Act.

If a school determines that a hate or bias incident involves bullying, it must take steps to stop the bullying behavior, protect affected students and staff, and restore their sense of safety at school. Schools must have specific plans in place to deal with bullying that targets a student based on their actual or perceived race, color, religion, ancestry, national origin, sex, gender identity, sexual orientation, or disability, among other characteristics.⁹ The Department of Elementary and Secondary Education offers [comprehensive information and resources](#) concerning schools’ responsibilities under the Anti-Bullying Law.

Schools must also evaluate whether a hate incident qualifies as *both* bullying *and* harassment, or whether an incident constitutes harassment *only*. For example, even if some misconduct does not qualify as bullying—for example, because it is not repeated—it may still qualify as harassment that creates or contributes to an intimidating or hostile environment under the Student Anti-Discrimination Act. Further, because a school’s responsibilities under the Student Anti-Discrimination Act may differ from its obligations under the Anti-Bullying Law, a school that labels a hate or bias incident as “bullying” and limits its response accordingly, may fail to identify or properly address violations of students’ civil rights. Some instances of bullying or harassment may be serious enough (e.g., a hate crime) to necessitate outreach to law enforcement. It is important to remember that, under state law, schools must not involve law enforcement in traditional school discipline issues, including those related to non-violent disruptive student behavior.¹⁰

When a school receives notice of an incident that may involve harassment, it must conduct a prompt and impartial investigation that is sufficiently thorough to determine whether an intimidating or hostile environment exists.¹¹ A school may receive notice that harassment is occurring in any number of ways. For example, harassing conduct may be reported to an administrator, may be witnessed by a teacher, or may be so open and notorious as to place the school on notice that it is occurring.

If a school determines that harassment has occurred, it must take appropriate remedial action to end the harassment, prevent it from recurring, and eliminate the intimidating or hostile environment. Depending on the severity of the situation, a school may need to undertake systemic changes, including altering relevant policies and procedures and implementing training and educational programs, to effectively respond to an intimidating or hostile environment.

⁸ Specifically, schools must address off-campus bullying and harassment that create or contribute to a hostile environment at school—as well as off-campus bullying that infringes on a target’s rights or causes a substantial disruption at school. *See* G.L. c. 71, § 370(b).

⁹ *See* G.L. c. 71, § 370(d)(3).

¹⁰ *See* G.L. c. 71, § 37P(b). The [Model Memorandum of Understanding for School Resource Officers](#), released by the Model School Resource Officer Memorandum of Understanding (SRO-MOU) Review Commission, offers guidelines for involvement of and information sharing with law enforcement. The SRO-MOU Review Commission consisted of the Office of the Attorney General, the Department of Elementary and Secondary Education, and the Executive Office of Public Safety and Security, among others.

¹¹ A school cannot ignore information it learns as part of an investigation: if an investigation into an initial incident uncovers evidence of additional harassing conduct, the school is responsible for investigating and addressing that conduct as well. *See, e.g.*, 603 CMR § 26.07(2) (schools are responsible for addressing harassment or discrimination “when they have knowledge of its occurrence”).

Schools must take a balanced approach to imposing discipline when responding to hate incidents. On the one hand, an inadequate response may allow misconduct to continue or recur. On the other hand, disciplinary measures must be lawful and appropriate. In particular, except where alternative remedies are unsuitable or where the student’s continued presence in the school would pose documentable concern as set forth in the law, schools must carefully consider alternative measures before suspending students.¹² In addition to state legal requirements, “research has shown that suspending students from school for non-violent offenses, and particularly suspending them repeatedly, has limited effectiveness in improving their behavior[.]”¹³ Evidence-based approaches, such as carefully implemented Restorative Justice practices, may be a more effective way to stop misconduct and remediate an intimidating or hostile environment than removing a student from school. Participation in a restorative process must be entirely voluntary for all parties. Depending on the circumstances, a school may choose to consult with an experienced Restorative Justice practitioner.¹⁴

Hate Speech and Students’ Free Speech Rights in School

Schools can and should take action against hate-related bullying and harassment while upholding students’ rights of freedom of speech and expression in school.

Schools should feel confident in addressing hate speech against a protected group or class of people that negatively affects the school community. When hate speech “cross[es] the line...[into] bullying or harassment,” it interferes with other students’ rights at school, and schools not only can take action under the First Amendment, but they are obligated to do so under our laws.¹⁵ Even if speech does not constitute bullying or harassment, it may be prohibited under some circumstances. For example, the First Circuit recently held that speech can be prohibited if it demeans a core protected characteristic of the personal identity of a student or group of students and could reasonably lead to serious negative psychological impact on those students.¹⁶ In that case, the Court held that a school district could enforce its dress code to prohibit a student from wearing a shirt that said “There Are Only Two Genders” where school

¹² See G.L. c. 71, § 37H¾; 603 CMR § 53.05.

¹³ Department of Elementary and Secondary Education, “[Advisory on Student Discipline under Chapter 222 of the Acts of 2012](#)” (Feb. 28, 2015) (updated and reissued Dec. 23, 2016); see also Department of Elementary and Secondary Education, “[Rethinking Discipline Initiative](#)” (updated Mar. 19, 2024).

¹⁴ July 2, 2024, the U. S Department of Education Office for Civil Rights issued a Fact Sheet that contains fact-based examples of scenarios where, in the federal context, the Office for Civil Rights, would consider opening an investigation into a school’s response to alleged harassment based on race, color, or national origin. U.S. Dep’t of Education, Office for Civil Rights, [Fact Sheet](#) (July 2, 2024).

¹⁵ See *Norris v. Cape Elizabeth High School*, 969 F.3d 12, 29 & n.18 (1st Cir. 2020). The Department of Education has provided further guidance, pursuant to Title VI, concerning how schools can properly distinguish between protected speech commenting on a particular country’s policies and discriminatory harassment based on students’ shared ancestry, ethnic characteristics, or religious identity. See U.S. Dep’t of Education, Office for Civil Rights, “[Dear Colleague Letter: Shared Ancestry or Ethnic Characteristics](#)” (May 7, 2024); see also U.S. Dep’t of Education, Office for Civil Rights, [Fact Sheet](#) (July 2, 2024).

¹⁶ See *L.M. v. Town of Middleborough, Massachusetts*, ___ F.4d ___ (1st Cir. June 9, 2024) (“[S]chool officials may bar passive and silently expressed messages by students at school that target no specific student if: (1) the expression is reasonably interpreted to demean one of those characteristics of personal identity, given the common understanding that such characteristics are unalterable or otherwise deeply rooted and that demeaning them strike[s] a person at the core of his being[] (noting the especially incendiary nature of disparaging comment[s] directed at an individual’s sex, race, or some other personal characteristic); and (2) the demeaning message is reasonably forecasted to poison the educational atmosphere due to its serious negative psychological impact on students with the demeaned characteristic and thereby lead to symptoms of a sick school -- symptoms therefore of substantial disruption[.]”) (quotation marks and internal citations omitted).

officials reasonably concluded that the message would demean the identity of transgender and gender-nonconforming students, and reasonably forecasted that it would materially disrupt the educational environment because of its negative psychological impact on those students.¹⁷

Furthermore, schools may always condemn hate and bias with their own speech; provide support for the target and their community; and conduct outreach, training, and educational programs to address hate and bias.

At the same time, schools must respect the right of students to speak out and state their views, including on challenging and controversial topics, pursuant to the First Amendment to the United States Constitution and Massachusetts law.¹⁸ “[Students] may not be confined to the expression of those sentiments that are officially approved” because “[t]he classroom is peculiarly the ‘marketplace of ideas.’”¹⁹ Schools may not suppress speech based on the “mere desire [of schools] to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint.”²⁰

This includes the right to peaceful protest. If students walk out of school in protest, schools cannot discipline students because of their viewpoint or message. Schools can discipline students for missing class in violation of school attendance policies, but such discipline must be applied in an even-handed manner so as not to support—or create an appearance of supporting—the viewpoint of some protesters over the viewpoint of others. Schools may also prohibit student speech if it “would substantially interfere with the work of the school or impinge upon the rights of other students.”²¹

Schools Must Take Affirmative Steps to Prevent Hate and Bias Incidents

Schools cannot wait until after a hate incident has occurred to take action. State law and Department of Elementary and Secondary Education regulations require schools to take affirmative steps to create a positive school climate where all students feel safe, supported, and respected, and to implement rules, policies, and procedures to combat bullying and harassment. Schools that neglect these obligations risk creating an environment in which hate incidents are more likely to occur and are more difficult to address. To comply with state laws and regulations, schools must fulfill the following affirmative responsibilities:

- Review curriculum to ensure that it promotes respect for the human and civil rights of all individuals and does not perpetuate discriminatory or demeaning stereotypes;²²
- Provide students at all grade levels the “skills, knowledge and strategies” necessary to prevent and respond to bullying and harassment;²³
- Develop and implement plans to support and protect students who are vulnerable to becoming targets of bullying or harassment because of their actual or perceived race, color, religion, national origin, sex, gender identity, sexual orientation, or

¹⁷ *Id.*

¹⁸ *See* G.L. c. 71 § 82.

¹⁹ *Tinker v. Des Moines Ind. Com. School Dist.*, 393 U.S. 503, 511–12 (1969).

²⁰ *Id.* at 509.

²¹ *Id.* at 506, 509.

²² *See* 603 CMR §§ 26.05(1) and (2).

²³ *See* G.L. c. 71, § 37O(d)(3).

disability, among other identifying characteristics;²⁴

- Prohibit students from engaging in bullying or harassment and prescribe disciplinary measures that may be imposed for violations;²⁵
- Implement comprehensive policies and procedures for reporting, investigating, and responding to bullying and harassment;²⁶ and
- Train administrators, teachers, and staff to successfully implement anti-bullying and anti-harassment policies and procedures, including by providing teachers with sufficient professional development opportunities to ensure that they can carry out the educational requirements above.²⁷

Schools Should Adopt Best Practices to Help Them Implement Their Legal Obligations

Schools are encouraged to develop educational programs, prevention initiatives, and remediation measures that both incorporate best practices and meet the particular needs of their local community.

Based on the research and input of national and local experts, and consistent with schools' legal obligations, our offices recommend that all schools in the Commonwealth consider the following best practices, among others:

- *Creating safe and inclusive school communities.* Building a climate of inclusivity where every student—no matter their racial, ethnic, religious, national origin, or other identity—feels safe and valued requires ongoing learning and work by the entire school community, including administrators, teachers, staff, students, and parents. Adults within the school community hold a special responsibility, given their positions of power and authority. If they fail to comprehensively address hate or bias incidents among students, or if they engage in hateful or biased conduct or speech themselves, they may be signaling that such behavior is acceptable. On the other hand, if school administrators and educators limit the expression of ideas through discipline or other means, they may create a climate of division and fear rather than one of open and respectful dialogue. To create a school environment that is safe and inclusive for all students, it is essential that schools encourage open discourse, including on challenging topics, while clearly denouncing, investigating, and responding to bias-related bullying and harassment.
- *Underlying Causes and Difficult Conversations.* In order to prevent, identify, and appropriately address hate, bias and prejudice, the school community should engage with related issues, such as the role of unconscious bias, the histories of marginalized groups, and the continuing impact of racism in our society. School curricula should include educational materials from diverse perspectives, especially those marginalized and minority groups whose voices have historically not often been heard in the classroom. Schools should ensure that the school community receives the appropriate training and education to understand these issues and incorporate a shared understanding into the school culture. In addition, schools should train teachers and others on how to engage in and moderate difficult

²⁴ See *id.*

²⁵ See G.L. c. 71, § 37O; 603 CMR § 26.08(1).

²⁶ See G.L. c. 71, §§ 37O(d)(1)–(3); 603 CMR §§ 26.07(1)–(2), (4) and 26.08(1).

²⁷ See G.L. c. 71, §§ 37O(d)(4) and (e)(2); 603 CMR 26.07(3).

conversations. Districts should also consider offering [guidelines](#) and skills support on the use of hurtful terms in classrooms studying relevant history and literature. This work can often benefit from conversation and engagement with those who have relevant cultural expertise.

- *Transparency.* Hate incidents can have a significant and disruptive impact on the school community and are frequently the subject of broad community interest. Schools should strongly consider issuing a prompt and clear communication to the school community when a hate incident occurs, particularly when dealing with incidents that are serious, public, or likely to be the subject of rumors and gossip. The communication should vigorously condemn hateful or biased conduct, explain the steps that the school is taking to address the incident, and reaffirm the shared values of the school community, such as respect for differences and a commitment to inclusivity, equity, and safety for all students. The communication may also direct readers to resources or provide contact information for students who want to talk or have information to share. Email communications from the [Framingham](#) and [Wellesley](#) school districts provide examples. Any such communication must comply with applicable privacy laws and regulations, including the federal Family Educational Rights and Privacy Act (FERPA).
- *Student Leadership.* Schools should foster and support student leadership groups representing historically marginalized communities (e.g., Black Student Union, Asian American Students Association, Gay-Straight Alliance/Gender Sexuality Alliance). Not only do student leadership groups support students and their allies and help build resilience, they also increase acceptance and understanding among the school community and contribute to a positive school climate.
- *Notification to Parents of LGBTQ+ Students.* Schools should consider the unique concerns present in some instances around notifying parents of LGBTQ+ students about bullying and harassment related to sexual orientation or gender identity/expression. For example, parents may not be aware of their child's sexual orientation or gender identity/expression. For additional information and guidance, consult the Department of Elementary and Secondary Education's [Guidance on Notifying Parents When A Student Has Been Bullied Based on Sexual Orientation or Gender Identity/Expression](#).

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We are committed to securing the civil rights of all students in the Commonwealth. If you have questions about this Guidance, you may contact the Office of the Attorney General [online](#) or at 617-963-2917.

You may also contact the Department of Elementary and Secondary Education's [Office of Student and Family Support](#) at 781-338-3010.