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**RAISING THE BAR TOWARDS A FUTURE OF EXCELLENCE:  
TECHNOLOGY AND INTERACTION WITH STUDENTS**

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**I. USING TECHNOLOGY TO INTERACT WITH STUDENTS:  
WHY ARE WE TALKING ABOUT THIS?**

- A. New Communications:** The current state of the Internet and related technologies has made possible personal communication with a wider audience than ever before. As these technologies evolve, we expect that even more opportunities will exist for social networking and worldwide communication through the next generation of blogs, chat rooms, texts, online posting forums, or other similar forums.
- B. New Opportunities for Learning:** These technologies provide significant new instructional opportunities and allow collaboration among students and staff that previously could only take place in the classroom.
1. Furthermore, students will be better prepared to compete for jobs and succeed in their careers when they have a greater understanding of the Internet and its related technologies.
- C. Potential Downsides:** the Internet and other forms of instant communication come with questions regarding proper use.
1. More specifically, questions have arisen regarding how these technologies should be used with respect to staff communicating with District students, and vice versa.
  2. Issues may also arise because the emerging technologies allow anyone to post, and view, a wealth of personal information on the Internet. Because these technologies have the ability to impact the District, its staff, and its students, thoughtful reflection must precede their use.

**II. A REVIEW OF THE BASICS**

- A.** Use of the District's computers, email, network or other equipment is subject to the District's acceptable use policy. Staff members have no expectation of privacy when using the District's resources to engage in online activity.
1. Review the acceptable use policy ("AUP") and know it.
  2. Why? Because violations can result in discipline.
  3. The Board Policy is 6:235, Access to Electronic Networks and it references the acknowledgment you have signed regarding compliance.



**B. Location or Ownership of the Equipment or Network Is Not Determinative:**

The fact that the District's computers and/or network were not used for an online activity is not the end of the inquiry into whether the District can regulate the activity.

1. The question is whether the online activity has a nexus to the educational program, the District, students, and/or the teacher's ability to perform his or her job functions.
2. Unlike private sector employees, public sector employees can be role models for students.

**C. Otherwise private activity may be regulated by the District if the proper nexus develops. Examples:**

- a. Teacher posts nude photo of himself on adult dating website. Picture is "discovered" by mother of one of his elementary students. Mother intends to distribute photo within community and confront Board of Education. Teacher resigns prior to distribution.
- b. Teacher sent racy videos and pictures to 13-year-old male student and corresponded with him through MySpace, all on her home computer. Teacher fired for this and for having sexual contact with student.
- c. **Employers At Risk As Well:** school administrators potentially liable after inadequate response to teacher aide's derogatory remarks regarding special education students. Aide was disciplined, but allowed to remain in special education classroom, where aide sexually abused special education student.

**D. The expectation of maintaining professional relationships with District students applies at all times, on or off campus, in person or in cyberspace.**

**III. CURRICULAR USES OF SOCIAL NETWORKING TECHNOLOGIES**

**A. Teacher web pages, blogs, wiki pages, etc., that are designed to interact with or inform students and/or parents regarding school-related matters should be created and maintained on the District's computer and network system.**

1. This applies to any curriculum-related use of the Internet or any use related to the teacher's professional duties.



2. Procedures should be in place such that prior to creation of any web page, blog, wiki page, or other similar Internet site intended to promote or result in communication by the staff member to or with parents and/or students, the staff member has submitted the proposal for review and received prior written approval.
  - a. This is for the protection of the staff member as much as it is for the District.
- B. Use of third party websites or Internet services for curriculum related projects involving District students should receive prior administrative approval and should be run exclusively through the District computer and network system. This allows monitoring, sharing of successful ideas among the staff, and safeguards student record confidentiality.
  1. **Student Records**: “Any writing or other recorded information concerning a student and by which a student may be individually identified, **maintained by a school or at its direction or by an employee of a school, regardless of how or where the information is stored...**” See, *Illinois School Student Records Act*.
  2. State law (and *FERPA*, the federal counterpart) requires that student records be kept confidential unless permission to disclose is received from the parent (or student if 18), or unless a statutory exception applies.
- C. Therefore, measures must be implemented by the staff member to ensure that the identity of any students participating in the project is not revealed to any third party through the student’s participation in the project, unless express prior written consent is obtained from the student’s parent or guardian.
- D. It is best not to email or communicate with a student one-on-one. Always copy in the student’s parent(s) and/or a supervisor to ensure transparency in the communications.

#### IV. NON-CURRICULAR USE OF SOCIAL NETWORKING TECHNOLOGIES

- A. **First Amendment**: The First Amendment restricts a public employer from regulating the private speech of employees outside of their employment. However, as noted above, otherwise private activity can be addressed by an employer if a sufficient connection to, and impact on, the employer’s operations is established. The following guidance is given for your benefit and is intended to minimize the possibility that inappropriate communications will occur through new technologies, as well as to minimize the chances that a teacher may be falsely accused of inappropriate communications with students.



**B. Guidance for Communicating with Students Through Social Networking**

1. Do not engage in non-school related discussions with current students, or former students under the age of 18, on social networking sites, through blogs, wiki pages, text messaging, or other forms of online communication. Any school-related communication you choose to engage in should take place through the District's network, and any non-school related communication should wait until the student is an adult.
  - a. Keep in mind that current students who are 18 or older are still District students and you will still be considered a role model because of your position.
2. Do not post school or student-related information on social networking sites, blogs, wiki pages, etc. You cannot know who may ultimately end up reading the information.
3. Do not discuss students online. Even if you do not use a student's name, you may violate student record confidentiality if the student can be identified from the information you provide.
4. Safeguard all personal information that you would not want viewed by students, their parents, or the community at large. Take advantage of any opportunities to restrict such information to those persons to whom you specifically grant access.
  - a. Keep in mind that once you share information, or allow someone to take it from your site, you have lost control of where that information goes next.
5. Take all available steps to prevent students from viewing private information that you choose to post to the Internet.
6. Do not post to the Internet any information about yourself, including photographs, that you would not want seen by our students, their parents, your supervisors, the Board of Directors, or the community at large.

**V. SEARCHING STUDENT PHONES AND COMPUTERS: PRIVACY RIGHTS UNDER THE FOURTH AMENDMENT**

**A. Reasonable, Individualized Suspicion Necessary for Student Searches**

1. Because of the relationship between the student and the school, and the school's legitimate interest in maintaining discipline, a student's Fourth



Amendment Rights are somewhat limited. Administrators may conduct a search so long as the administrator has “**reasonable suspicion**” that the individual student has violated school policy or the law. *New Jersey v. TLO*, 105 S.Ct. 733 (1985).

The reasonableness of the search is measured at the time the search is initiated. The simple fact that inappropriate content was discovered will not justify the search in and of itself.

Likewise, if the search was reasonable from the outset, failure to find contraband will not render the search unconstitutional.

2. Search must be reasonable in *scope* – i.e., conducted in a way that is reasonably related to the objectives of the search and is not excessively intrusive in light of the student’s age, gender, and nature of the infraction.
3. Accordingly, administrators cannot search cell phones/personal computers to discover inappropriate content if the infraction is simply possessing/using the equipment during unauthorized times. Seizure is permitted for such an infraction, but a search is permissible only if the administrator has reasonable suspicion to believe the student has violated a particular rule or policy. E.g.: transmission of clearly inappropriate images.

#### IV. **SEXTING**

##### A. **What is it?**

1. Sexting is the act of sending sexually explicit messages or photos electronically, typically via cell phone texts or email.

##### B. **Who is sexting?**

1. Sexting is widespread amongst American teens.
  - a. One report claims that 20% of 1,200 Colorado teenagers polled reported having sent sexually explicit photos of themselves via text message or email.
  - b. A nationwide survey taken by the National Campaign to Support Teen and Unplanned Pregnancy reveals that about 20% of teens have participated in sexting.
  - c. Perhaps surprisingly, the nude images appear to be primarily of females.



2. Beyond exchanges between teenagers, sexting is prevalent amongst sexual abusers and the students they target.

**C. What's the Problem?** Sexting presents a perfect case of unintended consequences on several levels.

1. Thanks to widespread use of cell phones and social networking, material can be very easily and widely promulgated – with virtually no control from the originator. So while typically the originator intends that only the intended recipient receive the message, mistakes in transmission and trust often result in pictures/videos spreading like wildfire, resulting in a public (and likely permanent) record of the image.
2. The production, delivery or possession of nude photos of individuals under age 17 is a crime (child pornography) under state and federal criminal codes. Currently, there is no exception for “sexting.” Convicted individuals must register as sex offenders.
  - a. Teens – both boys and girls – are being charged with various sex crimes, including child pornography, sexual abuse and obscenity charges, for creating, possessing and transmitting “sexts.”
  - b. In one case, a northeastern Pennsylvania county prosecutor threatened to file criminal charges against three teenage girls – who snapped photos of each other at a slumber party where all three were wearing bras and underwear – if the three refused to attend an educational program on sexting. The girls filed for an injunction against the prosecutor to prohibit charges from being filed.
3. One teenager in Cincinnati committed suicide after her sexts were forwarded to nearly the entire high school and she was thereafter labeled a “slut”, “whore,” etc.

**D. How Should You Handle A Sexting Matter?**

1. Students are not the only individuals facing criminal charges related to sexting. At least one school official has been criminally charged related to sexting.

Ting-Yi Oei, an assistant principal in Loudon County, Virginia, interviewed a student who he thought might be participating in a sexting exchange. The student showed Oei a picture of a partially nude girl and texted the picture to Oei's cell phone and computer. Later, the sheriff's office investigated Oei concerning the sexting issue. On the first day of the 2008-2009 school year, Oei was



charged with possession of child pornography. After being placed on administrative leave, charges against Oei were dismissed.

2. The manufacture, possession or dissemination of child pornography is a reportable offense under the *Abused and Neglected Child Reporting Act*. If you have reasonable suspicion that a student has manufactured, possessed or disseminated a “sext” which includes a nude minor, report the offense immediately to your attorney, DCFS and local law enforcement.
3. **Limit the distribution of evidence**
  - a. If during your investigation you encounter a sext, confiscate the phone/computer and store it in a secure location; if you receive the image electronically (e.g., a student or parent forwards the image to your email), save the image to a single, secure location off of the school’s server (i.e., an external disk/drive) and limit its dissemination/display to the most essential personnel and contact local law enforcement immediately.
  - b. Never receive/send the images to a personal phone/computer.
4. **Report Out, Not Up**
  - a. Every school employee is a mandatory reporter and is required to report suspected abuse to DCFS. It is not a defense that an employee reported the suspected abuse up within the school district.
5. Student handbooks should include notice that the taking, disseminating or possession of lewd and/or indecent photographs, whether digital or hard copy, is a violation of school policy and may be a crime under Illinois and/or federal law. Students should be notified that administrators may notify law enforcement of any violations related to this rule, and that a violation may result in arrest, conviction and school discipline.

**E. What Does The Future Hold?**

1. States are responding by de-criminalizing the act of sexting, or at least reducing the penalty.
  - a. Vermont legislators proposed a bill in April 2009 that would make the consensual exchange of sexts between people 13 to 18 years old legal, but promulgating the images to others would remain illegal.



- b. Utah has made sexting a misdemeanor for anyone under the age of 18.

Ohio lawmakers have proposed reducing sexting from a felony to a misdemeanor and removing the “sex offender” reporting requirements.

## V. GROOMING

### A. Grooming Statistics

1. Nearly 10% of students from Kindergarten through 12th grade have been targets of sexual misconduct by school employees.
2. Approximately 40% of the perpetrators were female school employees.
3. Over 4.5 million students in the U.S. have been victims of sexual misconduct by an educator at some point during their years in elementary, middle or high school.
  - a. Compare to Catholic Church Priest Abuse Scandal – a study by the U.S. Conference of Catholic Bishops reported that between 1950 and 2002, priests sexually abused approximately 10,667 children.
  - b. Physical sexual abuse – between 1991 and 2000, approximately 290,000 public school students were victims of *physical* sexual misconduct by public school employees.
4. Same-sex misconduct accounts for 18 to 28% of reported cases.

### B. Definitions

1. “Sexual misconduct” includes any kind of sexual harassment or inappropriate behavior of a sexual nature. It can, but need not, include touching, intercourse or other physical activity.
2. An educator engages in “sexual harassment” of a student by making sexual advances, requesting sexual favors or engaging in other verbal or physical conduct of a sexual or sex-based nature, imposed on the basis of sex, that:



- a. Denies or limits the provision of educational aid, benefits, services or treatment; or makes such conduct a condition of the student's academic status; or
- b. Has the purpose or effect of:
  - (1) Substantially interfering with the student's educational environment;
  - (2) Creating an intimidating, hostile or offensive educational environment for the student;
  - (3) Depriving the student of educational aid, benefits, services or treatment; or,
  - (4) Making submission to or rejection of such conduct the basis for academic decisions affecting the student.
1.
  - c. Displaying or making available to a student sexually-suggestive objects, magazines, calendars, drawings, signs or pictures; discussing sexual experiences; telling crude jokes; discussing sexual experiences; or, teasing or spreading rumors related to the student's sexual characteristics or alleged sexual activities can constitute sexual harassment.

**C. Who are typical victims?**

1. Typical victims include: white female students (a high percentage), children with special needs, students with family problems, children who are engaged in risky behavior or have parents who are engaged in such behavior, children with a history of abuse/victimization, and students with low self-esteem.

**D. Identifying Offenders or Potential Offenders**

1. Until high profile cases such as Debra LaFave and Mary Kay Letourneau, the public's impression of the classic educator sexual predator was quite different.
2. Studies indicate that teachers account for the largest percent of misconduct by school employees; coaches are second.
3. Average age of perpetrator is 28 years old.
4. Significantly, at times even the most professionally accomplished,



celebrated, popular and trusted teachers may be potential offenders.

**E. Patterns of Behavior – Boundary Invasions and Sexual Grooming**

1. Pattern of sexual molestation of students by educators is to first prepare the child by engaging in inappropriate boundary invasion behaviors, then “sexually groom” the child.
2. Occasionally, it might be necessary for an educator to get involved with a student’s private life and/or invade his or her personal space. However, such boundary invasions are inappropriate when they lack valid health or educational purposes.
3. One expert on the subject has identified a five-step process that child educator predators use for sexual grooming. This process is facilitated by and based on inappropriate boundary invasions:
  - a. Selecting a child who is vulnerable to the conduct.
  - b. Peer-like involvement with the student with attention and rewards.
  - c. Asking the child to keep the special relationship secret and isolating the child from others by spending time with him or her.
  - d. Touching the student to desensitize him or her to inappropriate physical behavior.
  - e. Implicating the child in his/her own abuse and emotionally blackmailing the child.
4. Other examples of inappropriate boundary invasion behaviors (*i.e.*, in light of all the facts and circumstances where no legitimate health or educational purpose exists):
  - a. Giving a student special privileges; loaning or giving him or her money; giving him or her special attention; and/or, failing to discipline the child for inappropriate behavior in class.
  - b. Inviting a student to engage in excursions outside of the classroom and/or after classroom hours in the classroom and/or at the employee’s home.
  - c. Assisting a student with the student’s personal matters rather than referring him or her to a school counselor (unless the employee



*is a school counselor).*

- d. Discussing the educational employee's personal business with a student.
- e. Being frequently alone with a student.
- f. Giving a student rides home in a personal vehicle.
- g. Visiting a child at his or her residence and/or contacting a student via home telephone or email, or cell phone.
- h. Flirting with a student.
- i. Telling a child crude jokes.
- j. Showing pornography or sexually suggestive objects, magazines, calendars, drawings, signs or pictures to a student.
- k. Discussing sexual experiences or giving sex-related information to a student when unrelated to current curriculum being taught by the employee.

#### **F. Potential Indicators of Sexual Misconduct**

- 1. Children and adolescents who have been exposed to inappropriate sexual behaviors can suffer a range of psychological, physical and behavioral problems, from mild to severe. However, most victims manifest no obvious external signs.
- 2. The strongest indication that a child has been sexually abused is inappropriate sexual knowledge that is advanced for the child's age (often evident in drawings), sexual interest and/or persistent, inappropriate sexual play with self, peers or toys.
- 3. Other behavioral and emotional difficulties that may indicate sexual abuse include:
  - a. Regressive behaviors (*e.g.*, thumb-sucking or bed-wetting);
  - b. Sleep disturbances/nightmares;
  - c. Eating problems;
  - d. School-related difficulties, including an inability to concentrate,



faltering school performance, reluctance to change clothes for gym class or to participate in physical activities, and arriving at school early and staying late;

- e. Nonparticipation in school and social activities;
- f. Poor peer relationships;
- g. Overly compliant behavior;
- h. Acting-out behavior such as delinquency or aggression (often seen in children who attempted to get help but received none);
- i. Pseudo-mature behavior;
- j. Running away from home;
- k. Suicidal thoughts or attempts;
- l. Sexual promiscuity or avoidance of relationships;
- m. Withdrawal (*i.e.*, some children may retreat into a fantasy world);
- n. Drug/alcohol abuse;
- o. Depression, anxiety, guilt or fear; and,
- p. Indirect allusions to problems at home (*e.g.*, a child may tell a teacher “I’m afraid to go home tonight” or “I want to come live with you”).

### **G. Prevention**

1. All employees should be trained to identify and report inappropriate sexual behaviors by adults, including sexual grooming and boundary invasion behaviors, and student indicators of sexual misconduct.
2. Employees should know how to respond to allegations and disclosures.
3. Report any suspected sexual misconduct to the Department of Children and Family Services (“DCFS”).
  - a. Failing to report suspected abuse could result in conviction of a Class A misdemeanor and suspension of the individual’s



certificate.

- b. Mandated reporters who make a report in good faith are protected by immunity from any civil or criminal liability.
4. Review school district policies that address reporting duties and procedures.
    - a. Anytime the suspected perpetrator is a school employee, board policy should require all employees to report suspected abuse to the appropriate administrator.
    - b. Districts should have a specific policy on boundary invasion behaviors that lists boundary invasion behaviors and requires employees to report all such behaviors to the appropriate administrator.
    - c. Districts should also have a policy regarding investigations.

## VI. BULLYING

### A. Bulling in the News

1. In January 2010, a Massachusetts high school student committed suicide after reportedly enduring months of bullying, including cyberbullying, from school classmates. The matter made national and international news due to the intensity of taunting and bullying aimed at the student, who had recently transferred to the U.S. from Ireland.
2. In August 2010, two families pressed charges against an Ohio school district claiming the school's personnel failed to investigate multiple claims of bullying. The families claimed that between 2007 and 2009 students' reports of bullying were uninvestigated or under-investigated by school personnel, and led to the suicides of four students. One family claimed their 16-year-old daughter's suicide was a result of verbal and physical bullying from peers because of her Croatian heritage and accent. The other family claimed their freshman-aged son committed suicide because bullies perceived him to be gay.
3. In October 2010, a Georgia high school student with Asperger's Syndrome committed suicide after reportedly enduring months of bullying from his classmates. The boy's parents stated that their son was targeted because of his disability. Even after his death, the bullies were reportedly



permitted to mock the student by wearing nooses around their necks at school.

4. Also in October 2010, national news syndicates reported a wave of students committing suicide because of being the targets of anti-gay bullying. The reports highlighted the deaths of students at schools and universities in California, Massachusetts, Michigan, Minnesota, and New Jersey. The students were reportedly targeted for being gay or because they were perceived to be gay. In response to the deaths, politicians and media personalities initiated a web campaign called the “It Gets Better Project,” aimed at providing hope and coping strategies for bullied teens.

**B. Recent Data:**

1. A 2009 study by the U.S. Department of Justice found that approximately 32% of students, between the ages of 12 and 18, have reported being bullied at school in the past year.<sup>1</sup> In particular, the study reported that:
  - a. 21% of students said they had been made fun of;
  - b. 18% of students reported being the subject of rumors;
  - c. 11% of students stated they had been pushed, shoved, tripped or spit on;
  - d. 6% of students said they were threatened with harm;
  - e. 5% of students described that they were excluded from activities on purpose;
  - f. 4% of students reported that someone tried to make them do things they did not want to do; and
  - g. 4% of students said that their property was destroyed on purpose.
2. The same 2009 Department of Justice study found that more than 4% of 12 to 18-year olds reported having been cyber-bullied.<sup>2</sup>

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<sup>1</sup> Bureau of Justice Statistics and The National Center for Education Statistics, *2009 Indicators of School Crime and Safety*, Indicator 11, (2009), [http://nces.ed.gov/pubs2010/2010012\\_1.pdf](http://nces.ed.gov/pubs2010/2010012_1.pdf).

<sup>2</sup> *Id.*



3. The Department of Justice further determined that approximately 160,000 children a day stay home from school because they are afraid of being bullied.<sup>3</sup>
4. A 2005 study of students in grades three to five found a relationship between bullying and poor academic performance. In that study of 3,530 students, researchers determined that victims of bullying were less likely to be high achievers in school, measured by composite scores including reading, math and listening.<sup>4</sup>
5. Generally, boys are more often victimized than girls, with a particular emphasis on physical bullying.<sup>5</sup> However, girls are more likely to be targets of indirect bullying.<sup>6</sup>
6. A higher percentage of white students (34%) report being bullied than Hispanic students (27%) or Asian students (18%).<sup>7</sup> African American students report less bullying than white, Hispanic or Asian students.<sup>8</sup>
7. Students with disabilities are victimized more frequently than their nondisabled peers.<sup>9</sup> However, some reports suggest that students with disabilities may develop aggressive tendencies as a strategy to combat victimization.<sup>10</sup>
8. Amongst lesbian, gay, bisexual and transgender (“LGBT”) students, upwards of 80% report experiencing some form of harassment or bullying.<sup>11</sup>
9. Nationally, upwards of 10% of sixth grade students report being afraid of attack or harm at school.<sup>12</sup>

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<sup>3</sup> *Id.*

<sup>4</sup> Glew, Fan, Katon, Rivara, and Kerinic, *Bullying, Psychosocial Adjustment, and Academic Performance*, Archives of Pediatrics and Adolescent Medicine, 1026-1031 (2005).

<sup>5</sup> Espelage and Holt, *Bullying and Victimization During Early Adolescence*, Journal of Emotional Abuse, 123-142 (2001); Kumpulainen, Rasanen and Henttonen, *Children Involved in Bullying: Psychological Disturbance and the Persistence of the Involvement*, Child Abuse and Neglect, 1253-1262 (1998); Vaillancourt, McDougall, Hymel, et. al., *Bullying: Are Researchers and Children Talking About the Same Thing?*, International Journal of Behavior, 486-495 (2008).

<sup>6</sup> Jeffrey, Miller and Linn, *Middle School Bullying*, Bullying Behavior, 143-156 (2001).

<sup>7</sup> Bureau of Justice Statistics and The National Center for Education Statistics, *2009 Indicators of School Crime and Safety*, Indicator 11, (2009), [http://nces.ed.gov/pubs2010/2010012\\_1.pdf](http://nces.ed.gov/pubs2010/2010012_1.pdf).

<sup>8</sup> Nansel, Overpeck, Pilla, et. al., *Bullying Behavior Amongst U.S. Youth*, Journal of the American Medical Association, 2094-2100 (2001).

<sup>9</sup> Woods and Wolke, *Direct and Relational Bullying*, Journal of School Psychology, 135-155 (2004).

<sup>10</sup> VanCleave and Davis, *Bullying and Peer Victimization*, Pediatrics, 1212-1219 (2006).

<sup>11</sup> Kosciw, Diaz and Greytak, *The 2007 National School Climate Survey*, New York: GLSEN (2008), Rivers, *The Bullying of Sexual Minorities*, Educational and Child Psychology, 32-46 (2001).



10. Approximately 7% of students, 12 to 18 years of age, reported that they avoided a school activity or one or more places in school during the previous school year because of fear of harm or attack.<sup>13</sup>

**C. Bullying Definition**

1. In Illinois, bullying is defined as any severe or pervasive physical or verbal act or conduct, including communications made orally, in writing or electronically (*e.g.* email, Facebook), which are directed toward a student and which have the effect of:
  - a. Placing a student in reasonable fear of harm to the student's person or property;
  - b. Causing a substantially detrimental effect on the student's physical or mental health;
  - c. Substantially interfering with a student's academic performance; or
  - d. Substantially interfering with the student's ability to participate in or benefit from the services, activities or privileges provided by the school. Public Act 96-0952 (formerly SB 3266).
2. Bullying may take the form of harassment, threats, intimidation, stalking, physical violence, sexual harassment, sexual violence, theft, public humiliation, destruction of property, or retaliation for asserting or alleging an act of bullying.
3. Public Act 96-0952, which was put into effect on June 28, 2010, states that no student may be subjected to bullying during:
  - i. Any school-sponsored education program or activity;
  - ii. While in school, on school property, on school buses or other school vehicles, at designated school bus stops waiting for the school bus, or at school-sponsored or school-sanctioned events or activities; or

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<sup>12</sup> Bureau of Justice Statistics and The National Center for Education Statistics, *2009 Indicators of School Crime and Safety*, Indicator 11, (2009), [http://nces.ed.gov/pubs2010/2010012\\_1.pdf](http://nces.ed.gov/pubs2010/2010012_1.pdf).

<sup>13</sup> *Id.*



- iii. Through the transmission of information from a school computer, a school computer network, or other similar electronic school equipment.
- 4. Public Act 96-0952 also recommends that school districts educate students, parents and school district personnel about what behaviors constitute bullying.

**D. Bullying Policy**

- 1. All school districts must maintain a policy on bullying, including cyber bullying. The policy must be filed with the ISBE. 105 ILCS 5/10-20.14.
  - a. School districts are required to communicate the policy on bullying to students and their parents or guardians on an annual basis.
  - b. Further, school districts must update the bullying policy every two years.
  - c. ISBE will monitor the implementation of bullying policies.
  - d. According to ISBE's General Counsel, ISBE may reduce a district's funding in the event of noncompliance with the law's requirements.
- 2. The policy should:
  - a. Include provisions for consequences and remedial action. Effective harassment policies balance the school's important interest in preventing such conduct and ensuring a safe learning environment for students with the student's First Amendment rights.
  - b. Adequately inform the students and parents of the types of prohibited conduct. Definitions of terms should be consistent throughout the policy.
  - c. Apply to conduct occurring:
    - i. During any school-sponsored education program or activity;
    - ii. While in school, on school property, on school buses or other school vehicles, at designated school bus stops



waiting for the school bus, or at school-sponsored or school-sanctioned events or activities;

- iii. Through the transmission of information from a school computer, a school computer network, or other similar electronic school equipment.
- d. Apply only to characteristics protected by State and federal law, including actual or perceived race, color, religion, sex, national origin, ancestry, age, marital status, physical or mental disability, military status, sexual orientation, gender-related identity or expression, or homeless status, or association with persons possessing these characteristics.
  - i. A policy attempting to regulate harassment based on clothing, physical appearance, social skills, peer groups, values, activities, etc. will be struck down as overbroad.

**E. Investigation and Discipline**

- 1. All claims of bullying should be taken seriously by school personnel. Bring all claims of bullying to an administrator.
- 2. The administration in charge may conduct further investigation, including interview corroborative witnesses (including staff).
  - a. Students often raise cross-claims of bullying.
- 3. Students may be disciplined for bullying behavior (physical, verbal, emotional, etc.).
- 4. The administration may choose to report alleged harassment to law enforcement.

**B. Support and Education**

- 1. The student making the complaint should be directed to immediately alert the school if any more incidents occur. School staff should follow up proactively to check in on the victim to make sure the bullying has stopped.
- 2. The parties involved may be separated until a solution is found.
- 3. Prevent public disclosure of names of all involved – respect confidentiality.



4. Take steps to prevent retaliation by anyone, and continue to report subsequent occurrences of bullying.
5. Take part in and contribute to education initiatives for the school community regarding:
  - a. How to identify prohibited harassment and bullying and how to use the school's reporting procedure.
  - b. The basic rights and responsibilities to identify harassment and bullying and methods for opposing those behaviors.
  - c. Anti-harassment and anti-bullying initiatives.
6. Ensure consistency in the school regarding application of bullying policies and procedures for following up on claims of bullying.

## **VII. STUDENT CONFIDENTIALITY**

### **A. Student Records are Confidential under the *Illinois School Student Records Act* and the *Family Educational Records Privacy Act***

1. Student records may be accessed by “an employee or official of the school or school district or State Board with current demonstrable educational or administrative interest in the student, in furtherance of such interest ...” 105 ILCS 10/6.
2. Issues may be raised with regard to who has access to student records.
3. A student record is “[a]ny writing or other recorded information concerning a student and by which a student may be individually identified, maintained by a school or at its direction or by an employee of a school, regardless of how or where the information is stored...” 105 ILCS 10/1, *et. seq.*
  - a. Outside of school staff as described above, parents (even non-custodial, absent a court order to the contrary) must be granted access to student records.
  - b. Emails or other identifying documents qualify as student records. Even if a student is not named in an email, that may qualify as a student record.





1. Every school district, participating agency, or individual acting under the school district must protect the confidentiality of personally identifiable student information. This protection extends to the collection, storage, disclosure and destruction of records.

**C. Mental Health Records are Confidential Under the *Mental Health and Developmental Disabilities Confidentiality Act***

1. Written consent from a parent or guardian of a student who is under 12 years of age, and the student if he or she is 12 years or older, must be provided before any mental health records are disclosed.

**D. Confidentiality Issues**

1. The noncustodial parent of a student asks for copies of a student's records, or information about the student.
2. The librarian requests information from you about a student because the librarian is curious about the student's "emotional problems."
3. A student tells you she is pregnant and makes you promise not to tell anyone.
4. A friend of yours asks you "what's wrong with" a student at school.