



## **OREGON SAFE SCHOOLS ACT** **GENDER IDENTITY NON-COMPLIANCE REPORT PACKET**

This report packet was created by and is provided as a courtesy to students, families and other concerned citizens by TransActive Education & Advocacy.

Its primary purpose is to empower and inform transgender and gender non-conforming students, their families, allies and schools who are negatively impacted by bullying, intimidation, harassment, cyber-bullying and physical abuse while on or immediately adjacent to school grounds, at any school-sponsored activity, on school provided transportation or at any official school bus stop.

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**For more information, contact TransActive at:**  
**503-252-3000**  
**education@transactiveonline.org**  
**www.TransActiveOnline.org**

*TransActive Education & Advocacy is a non-profit organization dedicated to providing necessary support to improve the quality of life of transgender and gender non-conforming children, youth and their families through education, services, advocacy and research.*

## Safe Schools Act: District Notification of Non-Compliance

School Administrators:

The following report form is intended to bring to your attention information relating to a potential violation of requirements mandated by the "**Oregon Safe Schools Act**" (ORS 339.351 thru 339.364). Your attention to this matter is of the utmost importance to the complainant, school and school district.

In 2009, the "Oregon Safe Schools Act", was signed into law as Oregon Statute 339.351. The law defines bullying, intimidation, harassment and cyberbullying as any act that:

- Substantially interferes with a student's educational benefits, opportunities or performance;
- Takes place on or immediately adjacent to school grounds, at any school-sponsored activity, on school-provided transportation or at any official school bus stop;
- Has the effect of:
  - Physically harming a student or damaging a student's property; **or**
  - Knowingly placing a student in reasonable fear of physical harm to the student or damage to the student's property; **or**
  - Creating a hostile educational environment, including interfering with the psychological well-being of a student; **and**
- May be based on, but not limited to, the protected class status of a person. "Protected class" means a group of persons distinguished, or perceived to be distinguished by, race, color, religion, sex, sexual orientation (**including actual or perceived gender identity**), national origin, marital status, familial status, disability or source of income.

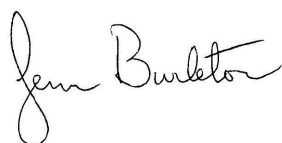
If a response which includes the following **is not received within ten (10) business days, a copy of this Non-Compliance Report will be filed with the office of the State Superintendent of Public Instruction.** As stated in ORS 339.356(3), **school districts that do not comply with the requirements of ORS 339.351 are considered "nonstandard" and at risk of losing state funding.**

**Response must include:**

- **Explanation of the immediate steps school officials, faculty and staff will take to protect students from bullying, intimidation, harassment or cyberbullying as defined above.**
- **Name and title of the school official responsible for following through on this report.**
- **A commitment to bring the school district into full compliance with all required policies as stated in ORS 339.356 within 30 days of receiving this Non-Compliance Report. (See attached Oregon Statutes)**

NOTE:

**ORS 339.364 allows the victim to seek redress under other laws.** ORS 339.351 to 339.364 may not be interpreted to prevent a victim of harassment, intimidation or bullying or a victim of cyberbullying from seeking redress under any other available law, whether civil or criminal.



Jenn Burleton  
Executive Director  
TransActive Education & Advocacy

## Safe Schools Act Non-Compliance Report Form

**PLEASE NOTE: THIS REPORT MAY BE FILED ANONYMOUSLY**

*(The Safe Schools Act does not permit formal punitive action in the case of reports filed anonymously)*

Today's Date:	Date(s) of Violation(s): From _____ To _____
Name of Complainant: (Optional)	Telephone (including area code): (Optional)
Address: (Optional)	City State Zip Code (Optional)
Name of individual (if any) complaint is against:	Telephone (including area code):
Address:	City State Zip Code
School Name:	School Telephone (including area code)
School Principal:	School Counselor:
School District:	School Superintendent:
School Address (street number and name):	School: City State Zip Code

School official responsible for investigating bullying-related issues: \_\_\_\_\_

**PLEASE SELECT WHICH FOLLOWING AREAS YOUR COMPLAINT PERTAINS TO (Select all that apply):**

Failure to facilitate, allow or respect the use the student's chosen name or correct gender pronoun?  
*Ex: Calling a transgender girl "he/him" or a transgender boy "she/her", or failing to utilize the student's preferred first name.*

Yes       No      Explain: \_\_\_\_\_

Denial of access to, or difficulty related to use of a gender appropriate restroom?

*Ex: Requiring student to use a restroom of assigned sex at birth rather than their affirmed gender identity or requiring the student to only use a single stall bathroom.*

Yes       No      Explain: \_\_\_\_\_

Denial of access to, or difficulty related to use of a gender appropriate locker room?

*Ex: Requiring the student to use a locker room corresponding to their assigned sex at birth rather than their affirmed gender identity and/or not making accommodations available that best meet the needs and privacy concerns of all students involved.*

Yes       No      Explain: \_\_\_\_\_

Exclusion from participating in gender congruent sports or physical education activities?

Ex: Refusing to allow the student to participate in gender-segregated recreational gym class activities and/or sports in accordance with the student's gender identity.

Yes       No      Explain: \_\_\_\_\_

\_\_\_\_\_

Selective or restrictive application of a gender-based dress code policy?

Ex: Enforcing a school dress code more narrowly for transgender or gender non-conforming students than other students. .

Yes       No      Explain: \_\_\_\_\_

\_\_\_\_\_

Gender identity/expression segregation or discrimination in other areas or activities?

Ex: Failure to allow student to participate in gender segregated school activities (i.e., field trips, class discussions) in accordance with the student's gender identity.

Yes       No      Explain: \_\_\_\_\_

\_\_\_\_\_

Failure of faculty or staff to intervene or take action in response to bullying (verbal/physical/cyber) or harassment by students, faculty or others?

Ex: Allowing or being indifferent to inappropriate or derogatory comments, cyber-harassment or physical aggression related to the student's actual or perceived gender identity or expression.

Yes       No      Explain: \_\_\_\_\_

\_\_\_\_\_

**BULLYING OR HARASSMENT BY STUDENTS, SCHOOL OFFICIALS OR OTHERS WAS (OR IS) ALSO BASED ON:**

The student's actual or perceived race, color, and/or national origin?

Ex: Making insulting, threatening and/or generally derogatory remarks because the student is, or is perceived to be Latino/Latina.

Yes       No      Explain: \_\_\_\_\_

\_\_\_\_\_

The student's actual or perceived religious beliefs and/or practices?

Ex: Making insulting, threatening and/or generally derogatory remarks because the student is, or is perceived to be "Muslim".

Yes       No      Explain: \_\_\_\_\_

\_\_\_\_\_

The student's actual or perceived sexual orientation?

Ex: Making insulting, threatening and/or generally derogatory remarks about the student being "gay" or "lesbian".

Yes       No      Explain: \_\_\_\_\_

\_\_\_\_\_

The student's actual or perceived disability?

*Ex: Not providing equal access to all areas and/or activities in the school and/or at off-site school sponsored activities based upon an actual or perceived physical or cognitive disability.*

Yes       No      Explain: \_\_\_\_\_

The student's actual or perceived socioeconomic status?

*Ex: Making insulting and/or generally derogatory remarks about the student's wealth or lack thereof.*

Yes       No      Explain: \_\_\_\_\_

Has the school district publicized the policy within the district, made it available at each school, district office or school district website or, at a minimum, made the policy annually available to parents, guardians, school employees and students in a student or employee handbook?

Yes       No       I Don't Know

To the best of your knowledge, has the school or district made an effort to provide any training or programming to faculty, staff or students about gender identity, gender expression or anti-bullying in general?

Yes       No       I Don't Know

Please describe, (in as much detail as you like), how the above mentioned occurrence(s) have negatively impacted the student:

*Ex: The student's ability to learn, to feel physically safe, to be psychologically well, to want to attend school, etc.*

Please describe the event(s) that led specifically to you filing this report:

Your preferred resolution or school district response (if any):

Signature of complainant: \_\_\_\_\_ Date: \_\_\_\_\_

**An Adobe Acrobat PDF copy of this report will be provided to:  
Complainant, District Superintendent, School Principal and School Counselor.**

**If there is no response from the school or district (as outlined on pg. 2)  
within 10 business days, a copy of this report will be sent to the  
State Superintendent of Public Instruction for further action.**

- Check here to authorize the sharing of this report *in its entirety* with those listed in the box above.
- Check here to authorize the anonymous sharing of this report *withholding your personal identification*.
- Check here to authorize TransActive to file this report with the State Superintendent of Public Instruction.

Please submit/return this completed report by mail or email to:

**TransActive Education & Advocacy  
1631 NE Broadway  
Ste. 355-T  
Portland, OR 97232  
ossa@transactiveonline.org**

## School District Policy Requirements

### AS OF THE 2009-2010 SCHOOL YEAR DISTRICT POLICIES MUST INCLUDE:

- A statement prohibiting harassment, intimidation or bullying & prohibiting cyber-bullying
- A description of the type of behavior expected from each student
- A statement of the consequences and appropriate remedial action for a person who commits an act of harassment, intimidation or bullying or an act of cyber-bullying
- Definitions of “protected classes” that are consistent with state law
- Notice that the policy applies to behavior at school-sponsored activity, on school-provided transportation and at any official school bus stop
- A procedure that is uniform throughout the district to report an act of harassment, intimidation or bullying or an act of cyber-bullying, including anonymous reports
- A uniform procedure for prompt investigation of a report of an act of harassment, intimidation or bullying or an act of cyber-bullying
- Designating who is in charge of dealing with bullying complaints and investigations

#### **COMPLIANCE DEADLINE**

The Oregon Safe Schools Act is effective July 1, 2009, and applies to the 2009-2010 school year.

#### **CONSEQUENCES FOR NON-COMPLIANCE**

A school district that does not have an anti-bullying policy (ORS 339.356) in place by the beginning of the 2010-2011 school year will be considered “nonstandard” under ORS 327.103 [2001 c.617 §3; 2007 c.647 §3; 2009 c.249 §2] and reported to the State Superintendent of Public Instruction.

**THE SUPERINTENDENT MAY INCLUDE WITHHOLDING FUNDING FROM “NON-STANDARD” DISTRICTS.**

*See attached Oregon Statutes (ORS 339.356) pertaining to the above.*

#### **PROCEDURES FOR HANDLING BULLYING**

The district is required to spell out in the policy how they will handle incidences of bullying. The law states that the district’s anti-bullying policy must include:

- A description of how a school and school district will respond after an act of bullying is reported, investigated and confirmed.
- A statement of the consequences and appropriate remedial action for a person found to have committed an act of bullying.

#### **PUBLIC NOTIFICATION**

- The law requires that a district publicize the policy within the district.
- At a minimum, a school district shall make the policy annually available to parents, guardians, school employees and students in a student or employee handbook.
- It must also be readily available to parents, guardians, school employees, volunteers, students, administrators and community representatives at each school or district office and, if available, on the school or district website.

## Safe Schools Act: School District Checklist

The Oregon Safe Schools Act became effective July 1, 2009 and applies to the 2009-2010 school year.

All of the steps below must be completed before the beginning of the 2010-2011 school year or the district will be "nonstandard" and will risk losing state funding.

<input checked="" type="checkbox"/>	
	School Board approves updated model policy
	School Board instructs School District Superintendent to give notice to all schools that a new anti-bullying policy is in place
	Superintendent assigns school district official to be in charge of implementation of updated policy requirements
	District creates uniform bullying incident report form and investigation procedure and ensures that uniform system is in place in all schools
	District updates anti-bullying policy on website and in student, parent, and employee handbooks
	District employee in charge of implementation ensures that the principal of each school in the district has assigned a school employee to receive reports of bullying and ensures that that person's role is known to students, employees and parents

Checklist used with permission: *Basic Rights Oregon "2009 Oregon Safe Schools Implementation Toolkit"*.

## Transgender Students: Policy Implementation Guidelines

### NAMES/PRONOUNS

- Students shall have the right to be addressed by a name and pronoun corresponding to their gender identity.
- Students should not be required to obtain a court ordered name and/or gender change or to change their official records as a prerequisite to being addressed by the name and pronoun that corresponds to their gender identity.
- This guideline does not prohibit inadvertent slips or honest mistakes, but it does apply to intentional or persistent refusals to respect a student's gender identity.
- The requested name shall be included in the eSIS (or equivalent) system in order to inform teachers of the name and pronoun to use when addressing the student.

### RESTROOM ACCESSIBILITY

Students shall have access to the restroom that corresponds to their gender identity exclusively and consistently asserted at school. Where available, a single stall restroom may be used by any student who desires increased privacy, regardless of the underlying reason. The use of such a single stall restroom shall be a matter of choice, and no student shall be compelled to use such restroom.

### SPORTS AND GYM CLASS

Students should be permitted to participate in gender-segregated recreational gym class activities and sports in accordance with the student's gender identity that is exclusively and consistently asserted at school. Participation in competitive athletic activities and contact sports should be resolved on a case by case basis.

**[Note: See "On the Team: Equal Opportunities for Transgender Student Athletes" at [http://www.transactiveonline.org/school\\_life.html](http://www.transactiveonline.org/school_life.html)**

### LOCKER ROOM ACCESSIBILITY

Transgender students shall not be forced to use the locker room corresponding to their assigned sex at birth. In locker rooms that involve undressing in front of others, transgender students who want to use the locker room corresponding to their gender identity exclusively and consistently asserted at school will be provided with the available accommodation that best meets the needs and privacy concerns of all students involved. Such accommodations could include, but are not limited to:

- Use of a private area in the public area (i.e., a restroom stall with a door, an area separated by a curtain, a PE instructor's office in the locker room), **or**
- A separate changing schedule (either utilizing the locker room before or after the other students); **or**
- Use of a nearby private area (i.e., a nearby restroom, a nurse's office).

### DRESS CODES

Some schools have specific dress codes for boys and specific dress codes for girls. It is important that school staff do not enforce a school's dress code more strictly in the case of transgender and gender non-conforming students than other students. For example, if your school has a policy about skirt lengths, transgender girls can't be held to a more narrow definition of "appropriate" than other girls.

### GENDER SEGREGATION IN OTHER AREAS

As a general rule, in any other circumstances where students are separated by gender in school activities (i.e., field trips, class discussions), students shall be permitted to participate in accordance with their gender identity exclusively and consistently asserted at school.

## Safe Schools Act: ORS 339.351 – 339.364

*In 2009, the “Oregon Safe Schools Act”, was signed into law as Oregon Statute 339.351. This document includes the actual statutes as they appear in the 2009 Edition of the Oregon Statutes, Chapter 339.*

### Harassment, Intimidation and Bullying

**339.351 Definitions for ORS 339.351 to 339.364.** As used in ORS 339.351 to 339.364:

- (1) “Cyberbullying” means the use of any electronic communication device to harass, intimidate or bully.
- (2) “Harassment, intimidation or bullying” means any act that:
  - (a) Substantially interferes with a student’s educational benefits, opportunities or performance;
  - (b) Takes place on or immediately adjacent to school grounds, at any school-sponsored activity, on school-provided transportation or at any official school bus stop;
  - (c) Has the effect of:
    - (A) Physically harming a student or damaging a student’s property;
    - (B) Knowingly placing a student in reasonable fear of physical harm to the student or damage to the student’s property; or
    - (C) Creating a hostile educational environment, including interfering with the psychological well-being of a student; and
    - (d) May be based on, but not be limited to, the protected class status of a person.
- (3) “Protected class” means a group of persons distinguished, or perceived to be distinguished, by race, color, religion, sex, sexual orientation, national origin, marital status, familial status, source of income or disability. [2001 c.617 §2; 2007 c.647 §1; 2009 c.249 §1]

### **339.353 Findings.**

- (1) The Legislative Assembly finds that:
  - (a) A safe and civil environment is necessary for students to learn and achieve high academic standards.
  - (b) Harassment, intimidation or bullying and cyberbullying, like other disruptive or violent behavior, are conduct that disrupts a student’s ability to learn and a school’s ability to educate its students in a safe environment.
  - (c) Students learn by example.
- (2) The Legislative Assembly commends school administrators, faculty, staff and volunteers for demonstrating appropriate behavior, treating others with civility and respect, refusing to tolerate harassment, intimidation or bullying and refusing to tolerate cyberbullying. [2001 c.617 §1; 2005 c.209 §32; 2007 c.647 §2]

### **339.356 District policy required.**

- (1) Each school district shall adopt a policy prohibiting harassment, intimidation or bullying and prohibiting cyberbullying. School districts are encouraged to develop the policy after consultation with parents, guardians, school employees, volunteers, students, administrators and community representatives.
- (2) School districts must include in the policy:
  - (a) A statement prohibiting harassment, intimidation or bullying and prohibiting cyberbullying.
  - (b) Definitions of “harassment,” “intimidation” or “bullying” and of “cyberbullying” that are consistent with ORS 339.351.
  - (c) Definitions of “protected class” that are consistent with ORS 174.100 and 339.351.
  - (d) A statement of the scope of the policy, including a notice that the policy applies to behavior at school-sponsored activities, on school-provided transportation and at any official school bus stop.

- (e) A description of the type of behavior expected from each student.
- (f) A statement of the consequences and appropriate remedial action for a person who commits an act of harassment, intimidation or bullying or an act of cyberbullying.
- (g) A procedure that is uniform throughout the school district for reporting an act of harassment, intimidation or bullying or an act of cyberbullying. A procedure established under this paragraph shall identify by job title the school officials responsible for receiving such a report at a school and shall allow a person to report an act of harassment, intimidation or bullying or an act of cyberbullying anonymously. Nothing in this paragraph may be construed to permit formal disciplinary action solely on the basis of an anonymous report.
- (h) A procedure that is uniform throughout the school district for prompt investigation of a report of an act of harassment, intimidation or bullying or an act of cyberbullying. A procedure established under this paragraph shall identify by job title the school officials responsible for investigating such a report.
- (i) A procedure by which a person may request a school district to review the actions of a school in responding to a report of an act of harassment, intimidation or bullying or an act of cyberbullying or investigating such a report.
- (j) A statement of the manner in which a school and a school district will respond after an act of harassment, intimidation or bullying or an act of cyberbullying is reported, investigated and confirmed.
- (k) A statement of the consequences and appropriate remedial action for a person found to have committed an act of harassment, intimidation or bullying or an act of cyberbullying.
- (L) A statement prohibiting reprisal or retaliation against any person who reports an act of harassment, intimidation or bullying or an act of cyberbullying and stating the consequences and appropriate remedial action for a person who engages in such reprisal or retaliation.
- (m) A statement of the consequences and appropriate remedial action for a person found to have falsely accused another of having committed an act of harassment, intimidation or bullying or an act of cyberbullying as a means of reprisal or retaliation, as a means of harassment, intimidation or bullying or as a means of cyberbullying.
- (n) A statement of how the policy is to be publicized within the district. At a minimum, a school district shall make the policy:
  - (A) Annually available to parents, guardians, school employees and students in a student or employee handbook; and
  - (B) Readily available to parents, guardians, school employees, volunteers, students, administrators and community representatives at each school office or at the school district office and, if available, on the website for a school or the school district.
- (o) The identification by job title of school officials and school district officials responsible for ensuring that policy is implemented.

(3) A school district that does not comply with the requirements of this section is considered nonstandard under ORS 327.103. [2001 c.617 §3; 2007 c.647 §3; 2009 c.249 §2]

**339.359 Training programs; prevention task forces, programs and other initiatives.**

- (1) School districts are encouraged to incorporate into existing training programs for students and school employees information related to the prevention of, and the appropriate response to, acts of harassment, intimidation and bullying and acts of cyberbullying.
- (2) School districts are encouraged to form task forces and to implement programs and other initiatives that are aimed at the prevention of, and the appropriate response to, acts of harassment, intimidation or bullying and acts of cyberbullying and that involve school employees, students, administrators, volunteers, parents, guardians, law enforcement and community representatives. [2001 c.617 §6; 2007 c.647 §4; 2009 c.249 §3]

**339.362 Retaliation against victims and witnesses prohibited; school employee immunity.**

(1) A school employee, student or volunteer may not engage in reprisal or retaliation against a victim of, witness to or person with reliable information about an act of harassment, intimidation or bullying or an act of cyberbullying.

(2) A school employee, student or volunteer who witnesses or has reliable information that a student has been subjected to an act of harassment, intimidation or bullying or an act of cyberbullying is encouraged to report the act to the appropriate school official designated by the school district's policy.

(3) A school employee who promptly reports an act of harassment, intimidation or bullying or an act of cyberbullying to the appropriate school official in compliance with the procedures set forth in the school district's policy is immune from a cause of action for damages arising from any failure to remedy the reported act. [2001 c.617 §5; 2007 c.647 §5]

**339.364 Victim may seek redress under other laws.** ORS 339.351 to 339.364 may not be interpreted to prevent a victim of harassment, intimidation or bullying or a victim of cyberbullying from seeking redress under any other available law, whether civil or criminal. ORS 339.351 to 339.364 do not create any statutory cause of action. [2001 c.617 §7; 2007 c.647 §6]

This is an abridged [with emphasis added] version of the original “Dear Colleague” letter from the U.S. Department of Education Office of Civil Rights. The original document, in its entirety can be viewed at:

<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>



**UNITED STATES DEPARTMENT OF EDUCATION**  
**OFFICE FOR CIVIL RIGHTS**

October 26, 2010

Dear Colleagues:

In recent years, many state departments of education and local school districts have taken steps to reduce bullying in schools. The U.S. Department of Education (Department) fully supports these efforts. Bullying fosters a climate of fear and disrespect that can seriously impair the physical and psychological health of its victims and create conditions that negatively affect learning, thereby undermining the ability of students to achieve their full potential. The movement to adopt anti-bullying policies reflects schools’ appreciation of their important responsibility to maintain a safe learning environment for all students. I am writing to remind you, however, that some student misconduct that falls under a school’s anti-bullying policy also may trigger responsibilities under one or more of the federal antidiscrimination laws enforced by the Department’s Office for Civil Rights (OCR). As discussed in more detail below, by limiting its response to a specific application of its anti-bullying disciplinary policy, a school may fail to properly consider whether the student misconduct also results in discriminatory harassment.

The statutes that OCR enforces include:

- Title VI of the Civil Rights Act of 1964 (Title VI), which prohibits discrimination on the basis of race, color, or national origin;
- Title IX of the Education Amendments of 1972 (Title IX), which prohibits discrimination on the basis of sex;
- Section 504 of the Rehabilitation Act of 1973 (Section 504); and
- Title II of the Americans with Disabilities Act of 1990 (Title II)
- Section 504 and Title II prohibit discrimination on the basis of disability

School districts may violate these civil rights statutes and the Department’s implementing regulations when peer harassment based on race, color, national origin, sex, or disability is sufficiently serious that it creates a hostile environment and such harassment is encouraged, tolerated, not adequately addressed, or ignored by school employees.

School personnel who understand their legal obligations to address harassment under these laws are in the best position to prevent it from occurring and to respond appropriately when it does. Although this letter focuses on the elementary and secondary school context, the legal principles also apply to postsecondary institutions covered by the laws and regulations enforced by OCR.

Some school anti-bullying policies already may list classes or traits on which bases bullying or harassment is specifically prohibited. Indeed, many schools have adopted anti-bullying policies that go beyond prohibiting bullying on the basis of traits expressly protected by the federal civil rights laws enforced by OCR—race, color, national origin, sex, and disability—to include such bases as sexual orientation and religion. While this letter concerns your legal obligations under the laws enforced by OCR, other federal, state, and local laws impose additional obligations on schools. And, of course, even when bullying or harassment is not a civil rights violation, schools should still seek to prevent it in order to protect students from the physical and emotional harms that it may cause.

Harassing conduct may take many forms, including:

- Verbal acts and name-calling;
- Graphic and written statements, which may include use of cell phones or the Internet; *or*
- Other conduct that may be physically threatening, harmful, or humiliating.

Harassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents. Harassment creates a hostile environment when the conduct is sufficiently severe, pervasive, or persistent so as to interfere with or limit a student’s ability to participate in or benefit from the services, activities, or opportunities offered by a school. **When such harassment is based on race, color, national origin, sex, or disability, it violates the civil rights laws that OCR enforces.**

A school is responsible for addressing harassment incidents about which it knows or reasonably should have known. In some situations, harassment may be in plain sight, widespread, or well-known to students and staff, such as harassment occurring in hallways, during academic or physical education classes, during extracurricular activities, at recess, on a school bus, or through graffiti in public areas. In these cases, the obvious signs of the harassment are sufficient to put the school on notice. In other situations, the school may become aware of misconduct, triggering an investigation that could lead to the discovery of additional incidents that, taken together, may constitute a hostile environment. **In all cases, schools should have well-publicized policies prohibiting harassment and procedures for reporting and resolving complaints that will alert the school to incidents of harassment.**

When responding to harassment, a school must take immediate and appropriate action to investigate or otherwise determine what occurred. The specific steps in a school’s investigation will vary depending upon the nature of the allegations, the source of the complaint, the age of the student or students involved, the size and administrative structure of the school, and other factors. In all cases, however, the inquiry should be prompt, thorough, and impartial.

If an investigation reveals that discriminatory harassment has occurred, a school must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring. These duties are a school’s responsibility even if the misconduct also is covered by an anti-bullying policy, and regardless of whether a student has complained, asked the school to take action, or identified the harassment as a form of discrimination.

Appropriate steps to end harassment may include:

- Separating the accused harasser and the target
- Providing counseling for the target and/or harasser, or
- Taking disciplinary action against the harasser.

These steps should not penalize the student who was harassed. For example, any separation of the target from an alleged harasser should be designed to minimize the burden on the target's educational program (e.g., not requiring the target to change his or her class schedule).

**In addition, depending on the extent of the harassment, the school may need to provide training or other interventions not only for the perpetrators, but also for the larger school community, to ensure that all students, their families, and school staff can recognize harassment if it recurs and know how to respond.**

A school also may be required to provide additional services to the student who was harassed in order to address the effects of the harassment, particularly if the school initially delays in responding or responds inappropriately or inadequately to information about harassment. An effective response also may need to include the issuance of new policies against harassment and new procedures by which students, parents, and employees may report allegations of harassment (or wide dissemination of existing policies and procedures), as well as wide distribution of the contact information for the district's Title IX and Section 504/Title II coordinators.

Finally, a school should take steps to stop further harassment and prevent any retaliation against the person who made the complaint (or was the subject of the harassment) or against those who provided information as witnesses. At a minimum, the school's responsibilities include:

- Making sure that the harassed students and their families know how to report any subsequent problems,
- Conducting follow-up inquiries to see if there have been any new incidents or any instances of retaliation, and
- Responding promptly and appropriately to address continuing or new problems.

When responding to incidents of misconduct, schools should keep in mind the following:

The label used to describe an incident (e.g., bullying, hazing, teasing) does not determine how a school is obligated to respond. Rather, the nature of the conduct itself must be assessed for civil rights implications. So, for example, if the abusive behavior is on the basis of race, color, national origin, sex, or disability, and creates a hostile environment, a school is obligated to respond in accordance with the applicable federal civil rights statutes and regulations enforced by OCR.

When the behavior implicates the civil rights laws, school administrators should look beyond simply disciplining the perpetrators. While disciplining the perpetrators is likely a necessary step, it often is insufficient. A school's responsibility is to eliminate the hostile environment created by the harassment, address its effects, and take steps to ensure that harassment does not recur. Put differently, the unique effects of discriminatory harassment may demand a different response than would other types of bullying.

**Title IX: Gender-Based Harassment**

Example:

*Over the course of a school year, a gay high school student was called names (including anti-gay slurs and sexual comments) both to his face and on social networking sites, physically assaulted, threatened, and ridiculed **because he did not conform to stereotypical notions of how teenage boys are expected to act and appear (e.g., effeminate mannerisms, nontraditional choice of extracurricular activities, apparel, and personal grooming choices)**. As a result, the student dropped out of the drama club to avoid further harassment. Based on the student's self-identification as gay and the homophobic nature of some of the harassment, the school did not recognize that the misconduct included discrimination covered by Title IX. The school responded to complaints from the student by reprimanding the perpetrators consistent with its anti-bullying policy. The reprimands of the identified perpetrators stopped the harassment by those individuals. It did not, however, stop others from undertaking similar harassment of the student.*

**As noted in the example, the school failed to recognize the pattern of misconduct as a form of sex discrimination under Title IX.** 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.

More information about the applicable legal standards and OCR's approach to investigating allegations of sexual harassment is included in OCR's *Sexual Harassment Guidance*, available at <http://www.ed.gov/about/offices/list/ocr/docs/shguide.html>

I encourage you to reevaluate the policies and practices your school uses to address bullying and harassment to ensure that they comply with the mandates of the federal civil rights laws. For your convenience, the following is a list of online resources that further discuss the obligations of districts to respond to harassment prohibited under the federal antidiscrimination laws enforced by OCR:

*Sexual Harassment: It's Not Academic* (Revised 2008):  
<http://www.ed.gov/about/offices/list/ocr/docs/ocrshpam.html>

*Dear Colleague Letter: Sexual Harassment Issues* (2006):  
<http://www2.ed.gov/about/offices/list/ocr/letters/sexhar-2006.html>

*Dear Colleague Letter: Religious Discrimination* (2004):  
<http://www2.ed.gov/about/offices/list/ocr/religious-rights2004.html>

*Dear Colleague Letter: First Amendment* (2003):  
<http://www.ed.gov/about/offices/list/ocr/firstamend.html>

*Sexual Harassment Guidance* (Revised 2001):  
<http://www.ed.gov/about/offices/list/ocr/docs/shguide.html>

*Dear Colleague Letter: Prohibited Disability Harassment* (2000):  
<http://www.ed.gov/about/offices/list/ocr/docs/disabharassltr.html>

*Racial Incidents and Harassment Against Students* (1994):  
<http://www.ed.gov/about/offices/list/ocr/docs/race394.html>

Please also note that OCR has added new data items to be collected through its Civil Rights Data Collection (CRDC), which surveys school districts in a variety of areas related to civil rights in education. The CRDC now requires districts to collect and report information on allegations of harassment, policies regarding harassment, and discipline imposed for harassment. In 2009-10, the CRDC covered nearly 7,000 school districts, including all districts with more than 3,000 students.

For more information about the CRDC data items, please visit <http://www2.ed.gov/about/offices/list/ocr/whatsnew.html>

OCR is committed to working with schools, students, students' families, community and advocacy organizations, and other interested parties to ensure that students are not subjected to harassment. Please do not hesitate to contact OCR if we can provide assistance in your efforts to address harassment or if you have other civil rights concerns.

For the OCR regional office serving your state, please visit: <http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm>, or call OCR's Customer Service Team at 1-800-421-3481.

I look forward to continuing our work together to ensure equal access to education, and to promote safe and respectful school climates for America's students.

Sincerely,

Russlynn Ali  
Assistant Secretary for Civil Rights  
United States Department of Education