

Responsibilities for Schools Related to Student Speech and Preventing and Responding to Discriminatory Harassment

BACKGROUND

This fact sheet outlines school district obligations to prevent and respond to bullying and discriminatory harassment, as well as protections for student speech and activism.

RESPONDING TO DISCRIMINATION AND HARASSMENT, INTIMIDATION, AND BULLYING (HIB)

Every student has the right to a learning environment that is free from discrimination, harassment, intimidation, and bullying.

State and federal nondiscrimination laws outline school district obligations to respond to discriminatory harassment, which includes harassment based on a protected class, including sex, race, creed, religion, color, national origin, sexual orientation, gender expression, gender identity, veteran or military status, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability.

Harassing conduct can be written, verbal, or physical and need not be directed at a particular individual. Harassing conduct can rise to the level of discriminatory harassment when it is based on a protected class and it creates a hostile environment. A hostile environment occurs when the conduct is sufficiently severe, persistent, or pervasive that it limits or denies a person's ability to participate in or benefit from the school district's education program or activity. When a school district knows or should know about discriminatory harassment, it must take immediate and appropriate action to investigate or otherwise determine what occurred, including documenting what has occurred. If an investigation reveals that discriminatory harassment has occurred, the school district must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent harassment from recurring.

State law also outlines school district obligations to respond to harassment, intimidation, and bullying (HIB), including HIB incidents that are not related to or motivated by a protected class. However, if a school receives a written HIB report that alleges conduct that could also be based on a protected class—such as race, creed, religion, color, national origin, sexual orientation, gender expression, gender identity, disability, or use of a service animal—the school must use both its HIB and discrimination complaint procedures to respond. This ensures the school



conducts a prompt investigation while also ensuring it addresses any discriminatory hostile environment.

No school employee, student, or volunteer may engage in reprisal or retaliation against a targeted student, witness, or other person who brings forward information about an alleged act of discrimination or harassment, intimidation or bullying of a student.

Preventing and Reporting Discrimination and HIB

All school districts in Washington state are required to have policies in place to prevent and respond to instances of discrimination, including discriminatory harassment and HIB. The district's policies and procedures must be available in each school in a language that families can understand.

Schools must ensure students, families, and staff have notice about how to report concerns or submit written complaints. In each school's student handbook, and on the school's and district's websites, the district must prominently post information on reporting discrimination and HIB, including the names and contact information for the district's Civil Rights Coordinator and HIB Compliance Officer. Students, families, and staff may submit written complaints to these coordinators or to any school or district administrator. However, all school staff are responsible for responding to concerns about discrimination and HIB.

Districts must identify on what basis students have been targeted and distinguish what cases are discriminatory harassment, or HIB, or both. In the case of discriminatory harassment based on a protected identity, districts must additionally conduct a civil rights investigation in coordination with their civil rights coordinator.

The school may need to provide interim supportive measures while the school district is investigating alleged discrimination or HIB. During the course of the investigation, the school must take reasonable measures to ensure that no further harassing conduct occurs between the targeted students and the alleged aggressors. If necessary, the district will implement a safety plan for the students involved. OSPI has HIB-targeted student safety plan templates available on its [HIB webpage](#).

SPEECH AND LANGUAGE

During student protests or other forms of student advocacy, schools should not violate students' protected free speech, while exercising caution and sensitivity to student speech or actions that may also be creating a discriminatory hostile environment for other students, families, and employees. Federal and state nondiscrimination laws prohibiting discriminatory harassment are not intended to restrict the exercise of any expressive activities protected under the U.S. Constitution. However, discriminatory harassment is not protected speech under the First Amendment.

To rise to the level of discriminatory harassment that is prohibited under state and federal law, the conduct must include something beyond the mere expression of views, words, symbols, or thoughts that some person finds offensive—it must also be considered sufficiently serious to deny or limit a student's ability to participate in, or benefit from, the educational program. For this reason, school districts investigating alleged discriminatory harassment should evaluate the conduct from the perspective of a reasonable person in the alleged focus's position, considering all the circumstances, including the focus's age. Districts are encouraged to consult with their legal counsel if they have questions regarding specific situations.

School-Sponsored Media

The United States Constitution protects freedom of speech, including within public schools. In Washington, the right of freedom of the press is also protected for student journalists at public high schools.

Washington state law ([RCW 28A.600.027](#)) outlines free speech protections for student journalists producing content for school-sponsored media:

"School officials may only prohibit student expression that:

- *Is libelous or dangerous;*
- *Is an unwarranted invasion of privacy;*
- *Violates federal or state laws, rules, or regulations;*
- *Incites students to violate federal or state laws, rules, or regulations;*
- *Violates school district policy or procedure related to harassment, intimidation, or bullying pursuant to [RCW 28A.300.285](#) or the prohibition on discrimination pursuant to [RCW 28A.642.010](#);*
- *Inciting of students so as to create a clear and present danger of:*
 - *The commission of unlawful acts on school premises;*
 - *The violation of lawful school district policy or procedure; or*
 - *The material and substantial disruption of the orderly operation of the school. A school official must base a forecast of material and substantial disruption on specific facts, including past experience in the school and current events influencing student behavior, and not on undifferentiated fear or apprehension; or*
- *Is in violation of the Federal Communications Act or applicable federal Communication Commission rules or regulations."*

Culturally Responsive Speech

The language used to refer to any member of the school community should be respectful. When speaking or writing about particular groups, it is best practice to respect how people belonging to these groups talk about themselves.

Student Protests and Activism

When students plan and/or participate in walkouts or protests, which are protected expression under the U.S. Constitution, school districts should work with students to ensure maximum communication, including providing clear guidelines for students about the three exceptions to free speech, which are: speech that will predictably cause substantial disruption to school operations (such as blocking exits or discriminating against another student); speech that is legally obscene; or speech that is slanderous or libelous while students do not make an attempt to verify its truth or know it is untrue.

ADDITIONAL RESOURCES

- [Harassment, Intimidation, and Bullying webpage](#) (OSPI)
- [Discriminatory Harassment webpage](#) (OSPI)
- [Reminders About School District Employees' Free Speech Rights](#) (OSPI, 2024)
- [Responding to Hate and Bias at School](#) (Learning for Justice, 2017)
- [Steps to Effective Bullying Prevention/Intervention](#) (Planning Template from the School Safety Center)
- [Stop Bullying](#) (DHHS)
- [Know Your Rights | Students' Rights](#) (ACLU, 2020)
- [Student Political Speech, Protest, and Walkouts: Know Your Rights](#) (ACLU of Washington, 2024)