

Peters
Kalail &
Markakis
CO., L.P.A.

ATTORNEYS AT LAW

OAPSA
Conference

Quest Conference Center
8405 Pulsar Place
Columbus, Ohio 43240

WWW.OHIOEDLAW.COM

BULLYING

September 28, 2018

Presented by

Maria L. Markakis, Esq.

mlmarkakis@ohioedlaw.com

6480 Rockside Woods Blvd. South
Suite 300

Cleveland, Ohio 44131

Phone: (216) 503-5055

Fax: (216) 446-6032

LIABILITY

- Parents sue not only the district itself, but also any individuals they feel contributed to the problem.
- School districts typically indemnify their employees, but being a named defendant is very stressful and time-consuming.
- Even unnamed employees are typically dragged into the litigation process.



WHAT IS BULLYING?

- There is no one definition.
- Many definitions include a power imbalance.
- Most definitions include conduct sufficiently severe to affect the school environment and/or limit the student's participation.
- Definition differences can have real-world impact, e.g., ODE's model policy requires conduct to take place more than once, but OCR's definition specifies that harassment does not have to involve repeated incidents.

PART I: PREVENTION

- Policies – general tips and cyberbullying suggestions
- Forms
- Anti-Bullying Curricula
- Communication

POLICIES – GENERAL

- Policy Requirements – R.C. 3313.666.
- Training and Review – All staff working with children should be thoroughly familiar with anti-bullying policies and guidelines. Review these policies annually and in detail.
- Courts and, especially, agencies examine the staff's understanding of, and compliance with, district policies and guidelines.

FORMS – DOCUMENT, DOCUMENT, DOCUMENT!

Use separate forms for reporting and investigating bullying.

- Bullying Reporting Form:
 - All bullying complaints (e-mail, phone call) should be reduced to writing. This creates a clean record documenting your district's responses to bullying.
 - These forms should be easily available and parents, children, and staff should be encouraged to use them.

FORMS (CON'T)

- Investigation Form. This form should document each step:
 - Witnesses and their statements
 - Interviews with victim, bully, etc.
 - Results of the investigation
 - Consequences
 - Follow-up
 - Parent contact

DOCUMENT RETENTION

- Store reports by victim so staff can easily retrieve them.
- Do not shred or discard emails, discipline records, or bullying forms on a yearly basis, unless required by your district's policies.
- Save all related documents, emails, forms, etc., especially when litigation or charges are pending or threatened.

ANTI-BULLYING PROGRAMS

- Your anti-bullying program should:
 - Be evidence-based
 - Be age-appropriate, tailored to different grade levels
 - Include regular activities or presentations
 - Include parent and staff training components



COMMUNICATION

- Staff across buildings should communicate with each other about students who either have a history of bullying or being bullied.
- Relevant teachers, bus drivers, etc. should also be informed early on in the school year and asked to keep an eye on the situation.

PART II: ADDRESSING BULLYING COMPLAINTS

- **Immediate steps:** Reduce the complaint to writing and investigate.
- **Responsive Interventions:** School-wide, class-wide, group, or individual interventions may be appropriate.
- **Consultants:** Districts with intensive bullying problems can consider hiring a consultant.

IMMEDIATE STEPS

1. Reduce the complaint to writing by filling out a Bullying Report Form.
2. Contact the parent. **Document.**
3. Conduct a thorough investigation. Investigate everyone involved and bystanders, take statements. **Document.**
4. Determine whether the complaint is substantiated and the appropriate consequences. **Document.**
5. Contact the victim's parent – general explanation only. **Document.**
6. Follow-up with victim as necessary.

RESPONSIVE INTERVENTIONS

- **Class-wide or school-wide training:** Diversity training may be especially useful for protected-category bullying.
- **Group or individual intervention:** Mediation or Social Skills Group.
- **Individual intervention:** Offer Counseling when appropriate, increased supervision, safety plans.



CONSULTANTS AND SURVEYS

- Consultants can be useful when your district's bullying problem is extensive.
- Surveys: Some districts like to develop formal surveys to assess the extent of the bullying and determine whether their interventions are successful.

PART III: DOS AND DON'TS

1. **Don't** emphasize the infraction title or code to the victim/parent.
2. **Don't** insist behavior can't be bullying or harassment just because it happens only once, especially for egregious conduct.
3. **Do** emphasize that you issue consequences based on the particular facts, and there is no one-size-fits-all approach.
4. **Do** apply student code of conduct flexibly within appropriate parameters. Be careful of zero tolerance policies.

DOS AND DON'TS (CON'T)

5. **Don't** issue consequences or solve problems in ways that force victims and bullies to work in close proximity to each other.

6. **Do** consider, when possible, scheduling classes and seating to keep bullies away from victims. **Caution advised:** If you are changing the victim's class, document that change, indicating that both the victim and parent are on board with the change, so this does not appear to be a punishment to the victim.

DOS & DON'TS (CON'T)

7. **Do** offer mediation, unless the conflict involves sexual assault. Avoid if complaint involves sexual assault, to forgo situation where bringing alleged perpetrator and victim in the same room together. In the alternative, investigate, if allegation substantiated punish perpetrator and assist victim.
8. **Don't** accept a “kids-will-be-kids” approach to student conflicts.
9. **Do** recognize and address patterns.
10. **Do** invite outside consultants, agencies, presenters.

DOS AND DON'TS (CON'T)

11. **Do** consider:

- Location: Is there a connection to the district system or network?
- Disruptive effect
- Nature of speech
- Manner in which speech was distributed

12. **Do** act action even if you cannot mete out discipline: increasing monitoring/supervision, offer counseling, mediation.

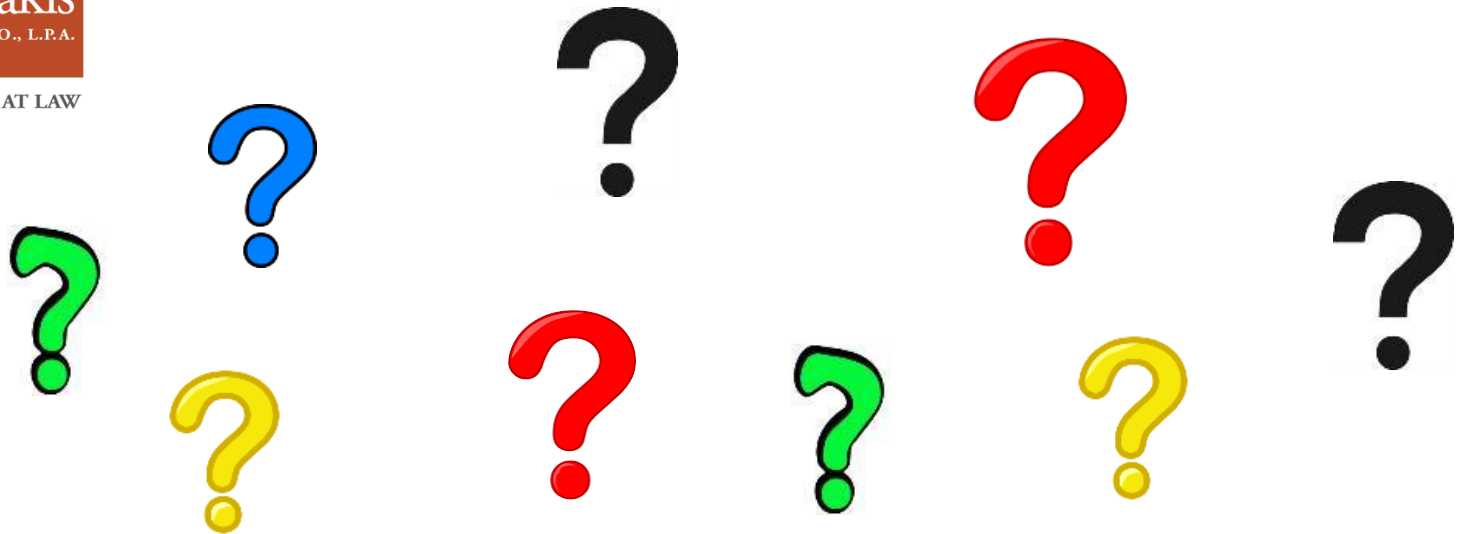
DOS AND DON'TS (CON'T)

13. **Do** include cyberbullying in your anti-bullying policy, including your Acceptable Use Policy. Illegal or inappropriate internet conduct should be grounds for disciplinary action.

14. **Do** require students to sign a statement agreeing to comply with district rules on internet use and have parent consent and release form.



QUESTIONS?



Important Notice: The content of this presentation is for informational purposes only and is not intended as legal advice for any purpose. This handout is not intended to present an exhaustive summary of all applicable laws, or to take the place of legal advice. If you have any questions regarding the law, please contact Peters Kalail & Markakis, Co., L.P.A. for assistance.

Pursuant to a recent guidance by the Supreme Court of Ohio, under the Ohio Rules of Professional Conduct, attorneys may answer questions about the content of our lectures or materials we present, but are prohibited from providing legal advice to attendees. Therefore, if you have a question regarding the application of the law to a specific situation, you are encouraged to contact the presenters or your regular Peters Kalail & Markakis, Co., L.P.A. attorney.