

Enumerated Anti-Bullying Policies Make Sense For Ohio Schools

Bullies prey on students perceived as socially weaker or inferior because of a personal characteristic:

- In a survey of Ohio students ages 13 to 18, the majority cite physical appearance as the most common reason students are bullied and harassed (49%), followed by sexual orientation (18%) and gender expression (9%).
- Roughly one third (34%) of Ohio students surveyed reported feeling unsafe in school because of a personal characteristic, such as physical appearance, race/ethnicity, or sexual orientation.

Policies that enumerate protected characteristics reduce overall harassment, including physical assaults, and make students feel safer:

- Ohio students from schools with enumerated anti-bullying policies reported that other students were *bullied less often* based on sexual orientation (15% vs. 40%), gender expression (14% vs. 30%), race/ethnicity (7% vs. 16%), and physical appearance (26% vs. 50%) than students from schools without enumerated policies.
- Ohio students reported *feeling safer* in schools with enumerated, inclusive anti-bullying policies than in schools without enumerated policies. Whereas nearly one-fifth (18%) of students from schools with generic policies felt unsafe, only 2% of students who came from schools with enumerated policies felt unsafe.
- Ohio students reported that they are *less likely to be physically assaulted* in schools with enumerated, inclusive anti-bullying policies. Nearly one-fifth (17%) of students from schools without inclusive policies reported that they were physically harassed or assaulted because of their gender expression and over a quarter (26%) because of their physical appearance. In contrast, less than 5% of students from schools with enumerated anti-bullying policies reported similar experiences.

There is broad-based support for anti-bullying policies that enumerate *specifically protected traits or characteristics*:

- The National Safe Schools Partnership, an organization representative of constituencies in education, health, civil rights, law enforcement, and youth development, states:

“By definition, comprehensive policies must enumerate bases of conduct that must be specifically covered because of its prevalence—such as race, color, national origin, sex, disability, sexual orientation, gender identity, or religion.” (*The National Safe Schools Partnership, 2007*).¹
- Members of the National Safe Schools Partnership who recommend enumeration as a proactive step to preventing bullying include:
 - ◆ The National Education Association (NEA),
 - ◆ The National PTA,
 - ◆ The American Association of School Administrators (AASA), and
 - ◆ The National Association of Secondary School Principals. (*The National Safe Schools Partnership, 2007*).²

School officials who do not end known peer harassment face personal liability for violating a student’s rights under federal law, and subject their school districts to lawsuits. For example:

- *Davis v. Monroe County Board of Education*, 526 U.S. 629 (1999) (holding that a school board may be liable for damages under Title IX when it fails to respond to student-on-student sexual harassment).
- *Nabozny v. Podlesny*, 92 F.3d 446 (7th Cir. 1996)(holding that a high school student could pursue equal protection violations under 42 U.S.C.S. § 1983 against school officials who were deliberately indifferent to anti-gay peer harassment).
- *Schroeder v. Maumee Board of Education*, 296 F. Supp. 2d 869 (2003)(holding that a student who suffered anti-gay harassment and beatings from other students in the fifth, sixth, and seventh grade could sue: 1) the principal and assistant principal under 42 U.S.C.S. § 1983 for their deliberate indifference; and 2) the school superintendent and board of education under Title IX for failing to effectively respond to known harassment).

Because enumeration encourages school personnel to intervene to protect students from harassment, it is a proactive measure to stopping harassment and preventing a lawsuit:

- As recently as 2005, about a third of Ohio students surveyed reported that faculty/staff *rarely or never* intervened when homophobic, racist, or sexist remarks were made in their presence (37%, 28% and 33%, respectively).
- In a national survey of students ages 13 to 18, about one quarter (25.3%) of students from schools with enumerated policies reported that faculty/staff were likely to intervene “always” or “most of the time” when anti-gay/lesbian remarks were made. In contrast, only 12.3% of students from schools with non-inclusive policies reported that their faculty/staff were equally likely to intervene. (Kosciw, J.G. and Diaz, E.M., 2006).³

- In the context of civil rights laws, the United States Supreme Court has stated: “Enumeration is the essential device used to make the duty not to discriminate concrete and to provide guidance for those who must comply.” *Romer v. Evans*, 517 U.S. 620 (1996).

References

Source (unless otherwise indicated): Harris Interactive, GLSEN (2005). *From Teasing to Torment: A Report on School Climate in Ohio*. New York: GLSEN.

¹ The National Safe Schools Partnership (2007). *Bridging the Gap in Federal Law: Promoting Safe Schools and Improved Student Achievement by Preventing Bullying and Harassment in Our Schools*, available at: <http://www.nea.org/schoolsafety/images/bridginggap.pdf>.

² *Id.*

³ Kosciw, J.G. and Diaz, E.M. (2006). *The National School Climate Survey*. New York: GLSEN.