

Maintaining SAFE SCHOOLS

Incorporating *Inside School Safety*

VOLUME 18, ISSUE 2

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QUICK TIPS

SROs

Communicate with local law enforcement departments about school resource officer assignments. Ask for an experienced officer who can exercise good judgment in crisis situations and who has good verbal skills for use in conflict resolution to be assigned to your school.

BULLYING

Link students with a teacher or administrator to contact in case of problems. Assign teachers or counselors to check in on certain students periodically to make them feel connected. Try to match students with staff with similar personalities.

LEGAL UPDATES

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School officials may search student's vehicle for tobacco. **Page 11**

Racial tension, prior altercation support ban on U.S. flag shirts. **Page 11**

Failure to ensure use of safety gear increased cheerleader's risk. **Page 12**

Failure to supervise nixes unemployment benefits. **Page 12**

COVER STORY

Updated E-Rate rules could require revisions to Internet safety policy

Districts that use the E-Rate program to help fund Internet access and connections must certify that they have an Internet safety policy showing that students' online activities are monitored and that objectionable material is filtered or blocked. Revised guidelines from the Federal Communications Commission take effect for the 2012 E-Rate funding year and will require additional certification that the policy includes Internet safety education. Find tips to help you act now to prepare to comply by July. **Full story, page 4.**

Cyberspace etiquette counts

Computer forensics expert says to educate all students on cyberethics. **See page 5.**

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Senate bill would revamp NCLB safety provisions

A Senate committee is proposing a radical reshaping of the NCLB school safety provisions in the committee's version of an ESEA reauthorization bill. **Page 9**

Did comments that sparked fight trigger duty to investigate?

A student who was Hispanic and a classmate who was black had a fight. The Hispanic student told the district that the classmate made “racist remarks” prior to and after the fight, but did not specify what the remarks were. The student’s friend who witnessed the fight informed the district that the classmate said “the border is that way.” Other students who witnessed the fight did not report such comments. However, the district did question them on the topic.

The district investigated to determine who started the fight and whether it was mutual. It concluded, based on witnesses’ accounts, that the fight was mutual and disciplined both students.

A few days later, the Hispanic student’s parent reported to the superintendent that the classmate yelled profanities against those of Mexican descent during the fight. He also claimed that the black classmate had previously shoved students into lockers and threatened and intimidated them. The parent’s email implied that the incidents were racially motivated.

The parent claimed to OCR that the district violated Title VI.

Was district required to investigate national origin discrimination?

A. Yes. It was on notice of possible national origin harassment.

B. No. The student never specifically complained of national origin discrimination.

C. No. The district’s initial inquiry revealed that the fight was mutual, therefore it could not have constituted harassment.

How OCR found: A.

The district had sufficient information based on the statements it received to believe that the student might have been harassed in violation of Title VI, OCR found. *San Diego (CA) Unified Sch. Dist.*, 111 LRP 65086 (OCR 08/01/11).

Once a district learns of possible harassment on the basis of race, color, or national origin, it must in all cases investigate to determine what occurred.

Based on the parent’s email to the superintendent, as well as the statements of the student and a witness after the fight, the district had a duty to investigate the allegations.

Although the district investigated the circumstances of the fight and whether it was mutual, it did not look into the allegations of harassment under Title VI. The allegation of verbal harassment based on national origin, and possible other incidents of national origin harassment, such as physical intimidation, threats, and verbal harassment, all triggered the district’s duty to respond.

Answer B is incorrect. There are no magic words triggering a district’s duty to investigate. In any case, allegations of “racist” remarks would have triggered the duty to investigate possible racial harassment under Title VI.

Answer C is incorrect. The issue was whether the classmate’s comments constituted harassment, not the fight itself.

Editor’s note: This feature is not intended as instructional material or to replace legal advice. ■

MAINTAINING SAFE SCHOOLS

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Motivate teaching staff to talk appropriately to students about personal safety

Typically, district-level experts, such as school psychologists, have limited daily access to assist students with problems that interfere with school, such as suicide ideation, depression, or bullying. Usually building level personnel make the initial contacts with students and the referrals, noted Melissa Evingham, assistant superintendent of Lakeshore Central School District in Angola, N.Y. But teachers with daily access to students don't always feel comfortable talking with the kids they teach about personal issues, she added.

Taylor used The Youth Suicide Prevention Program to help overcome teachers' hesitation to address student safety. Through the program, which offers virtual role-playing, teachers learn effective conversational tactics and motivational interviewing techniques to address psychological distress, motivate the student to seek help for his problems, and avoid the temptation to diagnose the student's problem or provided unwarranted advice.

Unless teachers receive training to help them break the barriers that prevent them from making that initial building level contact skillfully, district-level experts may never have the opportunity to meet and assist troubled students, she said.

Evingham shared the steps she took to gain buy-in from staff to participate in the interactive safety program.

- **Provide teachers realistic practice sessions.**

Taylor told teachers they could learn from experience without making mistakes at a student's expense, she said. Teachers can take baby steps to expand their comfort zone in talking with students about sensitive issues, she said. The program features a computer simulation that walks a teacher through typical talks with students about sensitive safety problems, she said. "If we are going to ask teachers to be more connected to kids, we need to provide examples of what that looks like" and give teachers reasons to participate in that training, Taylor said. The Youth Suicide Program lets a teacher talk during a computer simulation with an avatar student about safety problems, such as bullying or suicide ideation. An avatar counselor intervenes to offer guidance when a teacher makes a poor response, Taylor said.

- **Allow staff to review training at their convenience.** Once staff complete the program, teachers can review the training at their own pace. This feature lets some teachers proceed directly to a group review and allows others who want more practice time to access the training individually.

- **Give teachers an incentive to participate in safety program.** Taylor received permission from the state for teachers to count participation in the statewide program as a professional development credit. In New York, 100,000 teachers were trained in the Youth Suicide Prevention Program in three years, and at least one teacher in each school is trained, Taylor said. Also, the local school board and superintendent sent strong messages in support of the program and teacher participation.

- **Incorporate staff preferences during program implementation.** Taylor distributed a staff survey with questions about teachers' worries and needs, and then took their responses into consideration in presenting the program. Teachers are more apt to buy into a program when they have input into the way it is administrated, she said.

- **Point out academic benefits of safety training.** Taylor informed teachers about how they could use the safety training to improve students' attention for academic instruction. For example, the program makes staff think more about how they relate to students. Taylor said that teachers can get caught up in presenting academic material and lose sight of the need to hold students' attention. A counselor may point out that a teacher could draw a student out by generally asking, "Is everything OK?" rather than alienate him by stating in an accusing tone, "You did not respond exactly as expected." Role modeling by the counselor avatar in the safety training helps hone teachers' skills in working with students in general, Taylor said. Teachers liked hearing about this broader application, she said.

Email Melissa Evingham at MEvingham@lake shoresd.org. Check out the Youth Suicide Prevention Program simulation for free at www.kognito.com/atrisk. ■

Key points

- Experts, such as district school psychologists, are the best people to counsel students about safety issues.
- But district experts usually don't have daily access to students.
- Train staff to talk with students about safety. ■

Updated E-Rate rules could require revisions to policy

Some revisions to your Internet safety policy may be in order to comply with Federal Communications Commission regulations by July if your district counts on the E-Rate program to help fund Internet access and internal connections.

Key points

- Prepare to comply by July with updated FCC E-Rate rules.
- Applicants must certify provision of Internet safety education.
- Program must be referenced in policy for compliance. ■

You must certify that you have an Internet safety policy showing you monitor students' online activities and filter or block objectionable material. You will be required to teach students about appropriate online behavior, according to revised guidelines from the FCC and published in

the Sept. 13 edition of the *Federal Register*. You may already do that, but to be compliant with revised E-Rate rules, you need to be certain your Internet safety policy states that your district has the program.

"Technically, you could have every student in the school attend an hour a week program on Internet safety, but if there is no reference in your Internet safety policy to the program, it's technically a violation of the E-Rate rules," said Winston Himsworth, president of E-Rate Central, a New York-based firm that provides consulting services to districts nationwide.

The revised rules issued in FCC order 11-125 will take effect for the 2012 E-Rate funding year, which begins July 1. But you don't have to wait until then to update your policy. The FCC is encouraging districts to make any needed revisions as soon as practical. This following will help you get up to speed:

■ **Revisions long-awaited.** E-Rate applicants must follow guidelines the FCC issues for the Children's Internet Protection Act. These latest revisions to CIPA rules incorporate requirements that Congress set in 2008 with passage of the Protecting Children in the 21st Century Act and are long-awaited, Himsworth said. The 21st Century Act specified, among other things, that students should be taught appropriate means to interact with others on social networking sites and in chatrooms, and an awareness of cyberbullying and how to respond.

It also stipulated the additional E-Rate certification requirement. The FCC proposed revised CIPA rules and requested comments in November 2009.

■ **Program details unnecessary.** Under the finalized revisions, your policy must address your Internet safety education program, but it doesn't have to spell out specifics or include educational materials, Himsworth said. For E-Rate compliance, it must include a statement about your program. That's true even if your state has a curriculum for Internet safety, he added. You must still reference the educational program you provide in your policy, Himsworth said.

■ **Specifics determined locally.** The FCC does not provide guidelines for what your district should include in the Internet safety curriculum, Himsworth said. That's up to your district, or in some areas, your state. Nor does the FCC define what is inappropriate for minors. That is up to the community, he added. The FCC specifically noted, however, that social networking sites like Facebook and MySpace are not harmful *per se* nor are they in a category that must be blocked.

■ **Public policy development.** If this is the first Internet safety policy your district has created, you need input from the public. If you need to update your policy in order to reference the educational program, the FCC does not require that you hold another hearing, Himsworth said. But keep in mind that you must be able to prove your policy was adopted with public notice and a hearing or meeting, he added. If you don't have original documentation to that effect or did not follow that type of procedure, consider using a public process for the needed revisions, he added. That way you will have the necessary documentation if it's required in an audit.

■ **5-year record retention.** You must keep records of the policy and how it was adopted for at least five years after the end of the funding year in which you relied on the policy for your certification. That could mean keeping the documents for a longer period, Himsworth said.

■ **Personal portable devices.** Expect to see clarification in the future about how CIPA rules apply to personally owned devices like laptops and cell phones when used in schools or libraries. The FCC said it will seek public comment on the issue.

Visit www.e-ratecentral.com for more information, including a CIPA Policy Primer. Read the *Federal Register* notice at www.gpo.gov/fdsys/pkg/FR-2011-09-13/pdf/2011-23267.pdf. ■

Computer forensics expert: Educate all students on cyberethics

K-12 safety managers and administrators can expect to see the legal implications of technology misuse expand as students depend more on electronic devices such as smartphones, said Frederick Lane, a computer forensics expert and former school board administrator for the Burlington (Vt.) School District.

Common pitfalls include cyberbullying, sexting, plagiarism, and oversharing personal information, he said.

One way to educate students about proper use and the potential dangers of electronic gadgets is to incorporate cyberethics education into school district curricula at all grade levels, Lane said.

Following is an edited excerpt of an interview in which Lane answers questions about technology safety concerns in public schools.

Q: What is computer forensics?

A: Computer forensics involves retrieving information from electronic media, most typically from a hard drive. It can be as simple as looking at what can be readily seen. More typically, it involves using special tools to look for materials on a hard drive that have been damaged, deleted or hidden; retrieving it; and figuring out how someone has used that data.

Q: At what point did you start using this expertise to inform educators about the pitfalls of technology use by students?

A: It became clear to me that the age of potential perpetrators was dropping steadily. Kids love using technology. And we're getting more and more powerful technology. Things that kids couldn't do five years ago, they now can. Our district was constantly wrestling with the impact of cell phone cameras in schools. For example, kids can live-stream school safety incidents, such as a fight outside a school, and post it on YouTube

Q: What is the risk for kids when they have access to personal technologies and they're using it in the way you just described?

A: We need to do a better job of educating students about the law. In most states the only laws that apply to a teen sending a nude photo of herself are child pornography laws that were not written to deal with kids. Instead of protecting kids, these laws are being used to prosecute kids. A handful of states, including Vermont, have stepped in and said, "We recognize that this technology has changed

things," and have made exceptions to the rule so that teens don't wind up, for instance, on the sex offender registry. Educating students about such laws is basic.

Q: If schools were to incorporate cyberethics education at all grade levels, what would that look like?

A: We need a comprehensive community approach where parents start talking about technology issues to kids in age appropriate ways well before they get to school. This doesn't mean you talk with a 4-year-old about sexting. You talk about how to treat other people and what's appropriate sharing, and that's where significant prevention of cyberbullying occurs. There should be a well-organized approach to teaching cyberethics, the basic concepts of sharing and interpersonal skills, to elementary school children. In middle and high schools, you get more explicit and specific about the legal trouble students can get into, and what they should and shouldn't be doing with their devices.

With this kind of organized approach, you are not putting a huge burden on the teachers, because it's a shared responsibility.

Q: How do you suggest teachers approach this topic in their classrooms at the middle and high school levels?

A: Make it relevant by providing students concrete examples of kids who are being prosecuted and put in jail for misuse of electronic devices. Point to people their age who have not gone to college; who have not gotten into the military; who have gone to jail; who have committed suicide because of misusing electronic devices.

Q: What are some policies that school districts ought to consider as they explore this issue?

A: We really need to make legal and electronic safety a central goal of the school district and the acceptable use policy is a good starting place. Besides talking about Internet safety the first week of school, build cyberethics into the curricula to be discussed on a regular basis as a systemwide priority.

Visit Burlington High School at <http://bhs.bsdrv.org>. ■

Key points

- Expanding digital landscape will stretch K-12 legal implications.
- Brace for pitfalls in cyberbullying, sexting, plagiarism, of oversharing personal information.
- Implement cyberethics education curricula at all grade levels. ■

Annual survey notes reasons for changes in substance abuse

Student alcohol abuse hit a historic low in 2011 and illicit drug abuse increased, a major annual survey said. Students reported that their perceptions about the harmful impact of substances increased for alcohol but dropped for marijuana, pollsters noted.

Key points

- Student alcohol abuse hit historic low in 2011. Illicit drug abuse is rising, mostly due to marijuana use.
- Abuse trends generally rise, fall with changing student perceptions of harm substance can cause. ■

Education officials can use the Monitoring the Future survey data to track substances that students are using most to get high and make more effective decisions about what substances to emphasize in upcoming anti-substance abuse education programs.

MTF surveys annually poll eighth-, 10th-, and 12th-graders in research conducted by the University of Michigan. MTF began tracking seniors in 1975 and added eighth- and 10th-graders in 1991. The latest 2011 survey polled 46,773 students from 400 public and private schools nationwide.

In 2011, 50 percent of high school seniors reported they used an illicit drug, and 40 percent said such use occurred in the past 12 months. Generally, increasing use of a particular substance follows decreasing perceptions of harm, the survey said.

Here are highlights of the latest MTF report.

■ **Alcohol abuse fell as student perceptions of the harm of alcohol rose.** The decrease included the most destructive form of alcohol abuse, binge drinking, the survey said. The proportion of students who reported having five or more drinks in a row at least once in the two weeks prior to being polled dropped in all three grades in 2011. Twelfth-graders reported that heavy drinking dropped from 41 percent in 1981 to 22 percent in 2011, a nearly 50 percent decline over 30 years. Students in all grades said they viewed drinking heavily over the weekend as more harmful than previous generations. Students' disapproval for use of alcohol also rose.

■ **Marijuana abuse rose as student perceptions of the harm on marijuana fell.** Illicit drug abuse increased mostly due to increased use of

marijuana, the survey said. In 2011, marijuana use among teens rose for the fourth straight year, in sharp contrast to a decline in the preceding decade. About one in every 15 high school seniors is now smoking pot on a daily or near daily basis, the survey said. Regular or daily use of marijuana, defined as use on 20 or more occasions in the last 30 days, rose significantly in all grades in 2010 and 2011. Fewer teens reported viewing marijuana as harmful, the survey noted. In 2011, researchers added synthetic marijuana to the study, noting that one in every nine high school seniors reported using synthetic marijuana in the past 12 months.

■ **Prescription drug abuse leveled off following public education campaigns.** Previously rising prescription drug abuse leveled off in 2011, a trend that researchers attribute to recent campaigns that urged the public to secure personal prescriptions against unauthorized access. The survey included data on prescription abuse that included amphetamines, tranquilizers, sedatives, or any narcotic drug other than heroin. In 2011, 22 percent of students reported they misused at least one prescription drug in their life, and 15 percent reported such misuse in the past year. Fewer students reported accessing others' prescriptions without asking, and more reported buying them from a friend or relative.

Find complete survey data and charts at http://monitoringthefuture.org/pressreleases/11drugpr_complete.pdf. ■

Educate students about harmful effects of marijuana

Find educational online activities and lesson plans from the National Institute of Drug Abuse to help educate students about the harmful effects of marijuana. Ask students to read about how marijuana affects people at http://teens.drugabuse.gov/facts/facts_m_mj1.php. Print out a quiz at http://teens.drugabuse.gov/parents/documents/marijuana_quiz.pdf and ask students to test their knowledge. Reinforce messages shared at school by pointing parents to www.nida.nih.gov/MarijBroch/parents and help them talk with students about marijuana abuse. Find other resources for students, teachers, and parents at <http://teens.drugabuse.gov>. ■

Report delves into fine points of state laws

In 2010, the Education Department reviewed bullying laws in selected states, showing the various approaches to the issue.

Now the department has issued a report on all state bullying laws, to see how “expansive” they are.

New Jersey, for example, got an expansiveness rating of 30 out of a possible 32 because its law defines the problem well, sets clear guidelines for district action, and has strong prevention and training components, according to the report, *Analysis of State Bullying Laws and Policies*.

In contrast, Minnesota’s law got a rating of 3, because it is weak on most of the 16 criteria the department used.

The ED’s report may be useful in amending existing laws. In fact, Minnesota Attorney General Lori Swanson urged her state to pass a tougher bullying law before the federal report was released.

“In the last few years, Minnesota has garnered adverse national public attention for a spate of school bullying incidents,” she said “Minnesota’s current anti-bullying law is one of the shortest in the nation and simply requires schools to adopt a written policy prohibiting bullying, without specifying any standards or reporting requirements.”

The report may also be useful in creating laws in the three states without one: Michigan, Montana, and South Dakota. The report did not examine the District of Columbia, where legislation is pending, according to the district council’s website.

For all intents and purposes, Hawaii also still does not have a bullying statute. Democratic Gov. Neil Abercrombie signed a measure in July, but it is merely a placeholder, after the House and the Senate could not agree on the scope of the measure.

Making a distinction

As indicated above, one of the items the Education Department looked at was how states defined the behavior they want to prevent. Bullying, for example, is not the same as harassment, but some state laws use them as if they are synonymous.

“The legislative language used in crafting bullying laws often borrows directly from harassment statutes,” the report says. “This has frequently led to a conflation of terms used to define prohibited conduct, with ‘bullying’ and ‘harassment’ often used interchangeably in laws, despite their important legal distinctions.”

Simply put, there is no federal law against bullying, but various federal laws, including the ADA and the Rehabilitation Act, prohibit discrimination.

Discrimination, in turn, can show up as peer harassment, according to a *Dear Colleague* letter from the Office for Civil Rights, reported at 55 IDELR 174 (2010).

“The legal distinctions between bullying and harassment can have important implications for how laws are implemented and enforced,” the bullying report said. “For example, the potential violation of a student’s civil rights in harassment cases may prompt schools to establish separate policies and procedures for addressing bullying and harassment, or [it] may encourage districts to apply the more rigorous standards for investigating harassment claims to any bullying incident to protect schools from liability.”

Invoking criminal law

The report also notes the trend toward treating bullying as potentially criminal as a matter of both statute and practice.

For example, “seven state bullying laws now include provisions for criminal sanctions for bullying behavior, either by mandating school personnel to report bullying acts that potentially violate criminal law or by requiring policies to contain clear procedures for determining when and how violations should be reported to law enforcement,” the report says.

The authors of the report, from EMT Associates, are now conducting 24 case studies in four states “to highlight lessons from the field on how state legislation and model policies are shaping implementation of bullying programs and procedures, and to assess the ways that state and district policies facilitate or create challenges for effective implementation.”

In a statement, Education Secretary Arne Duncan said the report shows both the steps that states have been taking and the need to do more.

“Every state should have effective bullying prevention efforts in place to protect children inside and outside of school,” Duncan said. “This report reveals that while most states have enacted legislation around this important issue, a great deal of work remains to ensure adults are doing everything possible to keep our kids safe.”

View the report, *Analysis of State Bullying Laws and Policies*, at <http://www2.ed.gov/rschstat/eval/bullying/state-bullying-laws/state-bullying-laws.pdf>. Visit Lori Swanson at www.ag.state.mn.us. ■

Key points

- Report analyzes bullying laws, related policies in 46 states.
- Authors note distinction between bullying, harassment.
- Duncan hails report, calls on states to keep working on issue. ■

Prevention rooted in policy development

By Charles J. Russo, J.D., Ed.D.

Hazing inflicts both short- and long-term damage on victims and perpetrators. An anti-hazing policy demonstrates your commitment to eliminating a dangerous practice — while also limiting your liability if hazing occurs.

Key points

- Hazing negatively impacts victims, perpetrators.
- Clearly define hazing for athletes, coaches, and administrators.
- Anti-hazing policy reduces behavior, district liability. ■

Hazing incidents put your school in the spotlight for all the wrong reasons. In recent years a lacrosse coach in Massachusetts resigned after his players accused him of physically abusing them following a loss. In 2003, high school football players in New York faced criminal charges for sexually assaulting teammates as part of a

hazing ritual at pre-season camp.

One of the problems school safety administrators often face is that hazing lacks a precise definition.

In Ohio, the law defines hazing as “doing any act or coercing another, including the victim, to do any act of initiation into any student or other organization that causes or creates a substantial risk of causing mental or physical harm to any person.” But in Pennsylvania, the statute defines hazing more broadly as “any action or situation which recklessly or intentionally endangers the mental health or physical safety of a student ... including, but ... not limited to, any brutality of a physical nature, such as whipping, beating, branding, forced calisthenics, exposure to the elements ... or any other forced physical activity which adversely affects physical health and safety of the individual, and shall include any activity which would subject the individual to extreme mental stress ... which could adversely affect the mental health or dignity of the individual.”

Both statutory definitions forbid individuals from physically, mentally, or emotionally abusing or inflicting harm on others. However, each definition leaves a wide chasm that is open to interpretation. The discrepancies often leave administrators wondering what should be said — and what shouldn't be said— in anti-hazing policies.

As such, while acknowledging the dangers of hazing, you must:

- Promulgate well-developed policies that prohibit all forms of hazing.

- Discuss the significance of hazing with coaches prior to the start of each season. This makes a clear, unequivocal statement about your desire to eliminate hazing from the athletics department.

- Emphasize that school officials and staff remain vigilant in eliminating hazing. Specify that the failure to supervise student-athletes properly can result in criminal and/or civil liability for staff and students.

- Make hazing a recurring topic for your staff during in-service days and meetings.

- Include clear statements about the district's anti-hazing policy in team handbooks.

- Address hazing when speaking with athletes at team meetings at the beginning of each season.

- Discuss hazing with parents and boosters at team meetings and other appropriate settings.

Anti-hazing policies should:

- Explicitly prohibit hazing among students, coaches, and staff. You should also specify that hazing is unacceptable —whether at school sponsored activities or other locations such as off-campus gatherings.

- Include specific examples of forbidden hazing behavior and detail the sanctions for perpetrators.

- Clearly state how, and with whom, aggrieved parties can file complaints.

- Provide procedures to ensure that an accused person, such as a head coach, is not the party with whom complaints must be filed. Policies should identify alternative venues where parties can file hazing complaints.

- Define the time frames within which parties must file complaints and can expect resolutions.

- Detail investigatory processes such as who may conduct investigations and/or hearings.

- Explain the appeals process.

- Provide privacy protections for both the accused and the accuser.

Charles J. Russo, J.D., Ed.D., Panzer Chair in Education and Adjunct Professor of Law at the University of Dayton (Ohio). Email Russo at charles.russo@notes.udayton.edu. ■

Find hazing prevention resources

Get information from:

The Education Department at www2.ed.gov/policy/speced/guid/idea/letters/2010-4/ocrcolleague102610harassbully4q2010.doc - 2011-06-30 .

The Stop Hazing.Org campaign at www.stophazing.org/high_school_hazing/index.htm .

Alfred University at www.alfred.edu/hs_hazing. ■

Senate bill would revamp NCLB safety provisions

A senate ESEA reauthorization bill would wipe out the “persistently dangerous” schools label and prohibit use of NCLB funds for school resource officers, metal detectors, and security equipment such as cameras.

Traditionally, districts also obtain such security funds under the Department of Justice’s Community Oriented Policing Services Secure Our Schools grant. Under the proposed bill, schools could use ESEA grant funds for programs that build a “culture of tolerance” and improve school social climate, such as positive behavior support programs. The Senate Health, Education, Labor, and Pensions Committee’s ESEA reauthorization bill aligns with the Obama administration’s ESEA reauthorization blueprint. It tailors federal funding for Successful, Safe and Healthy Students to local needs and research-based measures for violence and substance abuse prevention, as well as anti-bullying and anti-obesity initiatives.

In contrast to the senate bill that radically reshapes NCLB’s safety provisions, the House Education and the Workforce Committee’s piecemeal approach did not initially propose safety measures. Once the House wraps up its bill proposals, the House and Senate must resolve differences to present a final bill or set of bills.

Safety advocates and some legislators, including Rep. Carolyn McCarthy, D-N.Y., have called the “persistently dangerous” label a stigma that dissuades schools from reporting safety incidents. Currently, NCLB allows

students at “persistently dangerous schools” and victims of violent offenses to transfer to safer schools in the local education agency. Proposed senate language simply says that a student “who is threatened with, or becomes a victim of, a violent criminal offense” could transfer to a safe school within the LEA.

Also, the senate committee proposes that schools receiving Successful, Safe and Healthy Students grants must establish Conditions for Learning Measurement Systems that are consistent with state longitudinal data systems. They must collect school-level data on students’ physical education, attendance and truancy rates, and disciplinary actions.

The Education Department would distribute SSHS grants to states based on yearly allocations. If Congress funded the program at \$500 million or more in a given fiscal year, the grants would go to states based on their shares of Title I, Part A funds. Title I, Part A provides funds to local educational agencies and schools with a high number or high percentage of children from low-income families. If a yearly allocation falls below \$500 million, grants would go to states on a competitive basis. Either way, state subgrants would go to districts, based on local needs set by the Conditions for Learning Measurement Systems and based on research-based programs that improve learning conditions.

The bill is at <http://help.senate.gov/imo/media/doc/ROM118313.pdf> and safety funding information is at www2.ed.gov/policy/elsec/leg/blueprint/publication_pg8.html. ■

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Feds offer grant for crisis prep, training resources

Districts can find funds for emergency management from ED's Readiness and Emergency Management for Schools grant program. Grantees can use these funds to improve prevention, mitigation, preparedness, response, and recovery phases in crisis planning as well as to pay for training and training resources, such as publications.

Eligibility: School districts (including charter schools considered to be local education agencies under state law) that do not currently have an active REMS grant.

Areas: REMS grants can provide resources to districts to offer training for staff on emergency management procedures. Districts must develop comprehensive all-hazards emergency management plans in collaboration with community partners, including local law enforcement, public safety, public health, mental health, and local government agencies.

Amount: Grants range from \$150,000 to \$600,000.

Deadline: Feb. 26.

Contact: Sara Strizzi, Department of Education, 1244 Speer Blvd., Suite 201, Denver, CO 80204-3514. Phone (303) 346-0924.

Email: sara.strizzi@ed.gov.

Web: <http://edocket.access.gpo.gov/2010/2010-130.htm>. ■

FedEx supports emergency management planning

Grant: The FedEx Social Responsibility Program

Scope: FedEx aims to support emergency and disaster relief and child pedestrian safety.

Eligibility: Eligible applicants include nonprofit organizations with 501(c)(3) status. Corporate resources include financial contributions, in-kind shipping services, and coordination of volunteer services by FedEx employees.

Deadline: Rolling

Contact: FedEx Corporation at http://about.fedex.designcdt.com/charitable_contribution_guidelines. ■

Survey: Student marijuana abuse to surpass pain pill abuse in 2012

People who experimented with drug abuse for the first time turned more to marijuana more than pain pills or Ecstasy, according to the *2010 National Survey on Drug Use and Health: Detailed Tables*. The University of Maryland's Center for Substance

Abuse Research recently adapted data for analysis from Substance Abuse and Mental Health Services Administration surveys.

Data analysis on first-time drug abuse is important because the changes in initiation levels can indicate emerging new abuse patterns. The data predicts that:

- Marijuana abuse could continue to rise. More than 2.4 million people age 12 or older used marijuana for the first time in 2010 compared with 2.1 million in 2006.

- Prescription pain pill abuse (not including over-the-counter meds) and Ecstasy abuse could slow. First-time pain pill abuse at 2.0 million declined in 2010 from 2.5 million in 2003. First-time Ecstasy abuse increased since 2005, and reached more than 1.1 million in 2009, but stabilized from 2009 to 2010.

- Cocaine use is not likely to increase among students. First-time cocaine use decreased steadily since 2001 and has not changed since 2008.

View the 2010 data tables at <http://oas.samhsa.gov/NSDUH/2k10NSDUH/tabs/Cover.pdf> and 2005 tables at <http://oas.samhsa.gov/NSDUH/2k4nsduh/2k4tabs/2k4TabsCover.pdf>. ■

Find safer future school sites

School districts can find safer and more environmentally healthy school sites in the future with help from a recently released U.S. Environmental Protection Agency guide. Officials can use voluntary recommendations in *School Siting Guidelines* to evaluate potential environmental challenges and benefits at building sites. The Energy Independence and Security Act of 2007 mandated the guidelines developed in consultation with other federal agencies, states, school districts, community organizations, health care professionals, and teachers, as well as environmental justice leaders and children's health and environmental groups.

Learn more about the guidelines at the EPA web site at www.epa.gov/schools. ■

Post-suicide toolkit available online

School safety planners can use recommendations in *After a Suicide: A Toolkit for Schools* to address school needs following a suicide. The guide, from the American Foundation for Suicide Prevention and Suicide Prevention Resource Center, aims to help officials know how to handle the tragedy of a suicide in ways that mitigate negative impacts.

Find key considerations and sample materials in a format applicable to diverse populations. While the guide is designed to address the aftermath of suicide, schools will find it useful following other deaths.

Find the toolkit at www.sprc.org/library/AfteraSuicideToolkitforSchools.pdf. ■

School officials may search student's vehicle for tobacco

Case name: *State of Idaho v. Voss*, 38366 (Idaho Ct. App. 2011).

Ruling: The Idaho Court of Appeals affirmed a district court's decision upholding a magistrate's denial of a student's motion to suppress evidence. The Court of Appeals held that under the Supreme Court's "schoolyard" exception to the Fourth Amendment, evidence of the student's possession of drug paraphernalia and a weapon was admissible because they were discovered through a reasonable search of the student's car conducted by district officials.

What it means: The Supreme Court has held that districts may execute warrantless searches of students' persons and property on school grounds if searches are justified at their inception and are reasonably related in scope to the circumstances. A search may be justified at the inception if there is a reasonable suspicion that a student is violating a legitimate school rule, even if violation of the rule may not also constitute a crime.

Summary: Upon questioning a student about unsafely driving his car on school property, a vice principal smelled cigarette smoke on the student's person. Because tobacco use violated school policy, the vice principal and a school resource officer searched the student's car. They discovered a marijuana pipe with residue and a set of brass knuckles. When police cited the student for misdemeanor possession of drug paraphernalia and carrying a concealed weapon, he moved to suppress the evidence pursuant to his Fourth Amendment right to be free of unreasonable searches. A magistrate denied the motion. The student appealed. A district court subsequently affirmed the magistrate's order. The student filed a motion for reconsideration contending that because he was 18, the school's prohibition of tobacco use did not apply to him, and the search was therefore unreasonable. The student relied on *Safford Unified School District No. 1 v. Redding*, 109 LRP 37085, 129 S. Ct. 2633 (2009), which provides that searching a student on school grounds is permissible where it isn't excessively intrusive based on the student's age, sex, and the nature of the infraction. The Court of Appeals pointed out, however, that the controlling case on the Fourth Amendment's application to searches of students on school grounds is *New Jersey v. T.L.O.*, 106 LRP 2727, 469 U.S. 325 (1985). There, the Supreme Court held that although students have a right against unreasonable searches, districts' interests in maintaining order on school grounds permit them to execute warrantless searches of students if the searches are justified at their inception and are reasonably related to the scope of the circumstances.

Therefore, following the schoolyard exception in *T.L.O.*, the court held that district officials reasonably searched the student's car. ■

Racial tension, prior altercation support ban on U.S. flag shirts

Case name: *Dariano v. Morgan Hill Unified Sch. Dist.*, C 10-02745 JW (N.D. Cal. 2011).

Ruling: A California federal court held that a vice principal did not violate students' First and 14th Amendment rights in prohibiting them from wearing American flag T-shirts on Cinco de Mayo. Accordingly, the court granted the vice principal's motion for summary judgment in the students' 1983 suit.

What it means: In some cases, suppression of a student's speech may be warranted even if the Constitution would not support punishing the student for the same speech. Violence or threat of violence against a student speaker qualifies as a substantial interference with school, warranting suppression of his speech.

Summary: When three high school students arrived at school wearing T-shirts bearing images of the American flag on Cinco de Mayo 2010, the vice principal informed them that if they didn't either change the T-shirts or turn them inside out, they would have to go home for the day. If the students chose to go home, they would receive excused absences that would not count against their attendance records, he explained. The students chose to leave school. Subsequently, they filed a Section 1983 lawsuit alleging violations of their First and 14th Amendment rights to free speech. The vice principal moved for summary judgment based on several factors, including his assertion that he reasonably forecasted that the students' clothing would cause a substantial disruption at school. The U.S. District Court, Northern District of California pointed to the test enumerated at *Tinker v. Des Moines Independent Community School District*, 393 U.S. 624, 107 LRP 7137 (1969), which provides that school district officials may have a legitimate reason for suppressing student speech if they can reasonably forecast that the speech will cause a substantial disruption in school activities. Noting the ambiguity as to what a "substantial disruption" is, the court pointed out that the 2d Circuit in *DeFabio v. East Hampton Union Free School District*, 623 F.3d 71, 109 LRP 62223 (2d Cir. 2010), determined that violence or a threat of violence certainly qualifies as substantial disruption. Here, the court observed that in the vice principal's six-year tenure at the school, there had been long-standing racial tension between white and Hispanic students. And, on Cinco de Mayo the year before, there was an altercation between a group of white students and a group of Mexican students in which there was

an exchange of profanities and threats over a makeshift display of an American flag. Noting that the 6th, 10th, and 11th Circuits have all upheld bans on displays of flags in schools with histories of racial tension and related squabbles, the court held that the vice principal was justified in banning the American flag shirts. ■

Failure to ensure use of safety gear increased cheerleader's risk of injury

Case name: *Ditta v. Nesaquake Middle Sch.*, 10-10230 (N.Y. Sup. Ct. 2011).

Ruling: The New York Supreme Court denied a district's motion for summary judgment in a negligence suit filed by a cheerleader.

What it means: Generally, student athletes assume the risks of the sports in which they participate. However, because athletes have reasonable expectations of care, districts can't increase the risks inherent in the sports by failing to issue and assure the use of safety gear and equipment.

Summary: While at practice, an eighth-grade cheerleader was injured after she fell on the bare gym floor. The coach had directed the squad to spread only one mat before practice began, although it was typical for them to use two mats. The cheerleader filed a negligence suit, and the district moved for summary judgment on the basis that she had assumed the risk of her sport. The trial court explained that while students who voluntarily participate in sports generally consent to injury-causing events inherent in the sports, they still have a reasonable expectation of care. As such, it posited that school districts can't unreasonably increase the risks assumed by student athletes in failing to issue and ensure the use of safety gear and equipment and failing to maintain the safe condition of a playing surface that is typical for the sport. The court noted the coach's explanation for the use of one mat rather than two. She explained that because no new stunts were being attempted, and because the cheerleaders had mastered the stunt they were practicing, she didn't think that there was need for the extra safety precaution of an additional mat. The court also observed the cheerleader's contention that two mats were typically used during practice, and that on the day of the incident, the use of one mat reduced the practice area by half of what was normally used. The court referenced case law illustrating that a district's contribution to the enhancement of the risk of a sport, arising from its "risky or imprudent conduct" may bar the defense of assumption of risk. Deciding it was plausible that the district unreasonably increased the risk of injury involved in cheerleading, the court ruled there was a genuine issue of material fact prohibiting dismissal of the case. ■

Failure to supervise nixes unemployment benefits

Case name: *Butler v. Independent Sch. Dist. No. 728*, A10-2133 (Minn. Ct. App. 2011).

Ruling: Finding that a district discharged a building supervisor for employment misconduct, the Minnesota Court of Appeals affirmed a decision that the custodian was ineligible for unemployment benefits.

What it means: To be eligible for unemployment benefits, a former employee must be able to show her behavior did not rise to the level of employment misconduct or interfere with her employer's interest. A Minnesota district can establish misconduct if the employee knowing violated its directives, policies, or procedures. *Editor's note: This decision has not been released for publication in official or permanent law reports.*

Summary: A part-time district employee supervised the community groups using the district's building during nonschool hours. She was to personally monitor the groups' activities by remaining in the areas they used, assist the groups as requested, and secure the buildings at the beginning and end of the activities. While supervising a church group at the east end of a school on a Sunday, a security camera monitored the supervisor lingering in the west end of the building throughout her shift. It also recorded her removing a floor mat from a locked custodial storage area and smoking a cigarette in her car. When the floor mat came up missing, the district discharged the supervisor for theft, violating its no-smoking policy, and failing to properly supervise the group. The supervisor was awarded unemployment benefits. The district appealed. The unemployment law judge determined that there was insufficient evidence the supervisor committed theft, but the evidence did show that she seriously violated the standards of behavior the district had the right to expect of its employees. The law judge denied the benefits. The supervisor appealed. The Minnesota Court of Appeals explained an employee who is discharged for employment misconduct is ineligible to receive unemployment benefits. Employment misconduct is "any intentional, negligent, or indifferent conduct, on the job or off the job that displays clearly: (1) a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee; or (2) a substantial lack of concern for the employment." stances does not constitute employment misconduct. The court concluded that she intentionally violated the district's directives, policies, or procedures. It did. Because the district had the right to expect the supervisor to conduct her assigned job duties and comply with reasonable policies, the ULJ did not err by concluding that her conduct constituted misconduct. The court affirmed the denial of benefits. ■