

BULLYING:

WHAT YOU NEED TO KNOW, AND HOW THE MISSISSIPPI CENTER FOR JUSTICE CAN HELP

The Mississippi Center for Justice is working diligently to address the problem of bullying in Mississippi Public Schools. Bullying affects children's graduation rates, grades, and - in worst case scenarios - can even lead to suicide. Schools have historically been reluctant to recognize and report bullying, possibly because it affects their accreditation ratings. However, the Mississippi legislature has recently passed legislation which amends the definition of bullying, mandates certain contents for bullying policies, and expands upon the required reporting procedures.

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A 2017 statewide survey by the Mississippi Center for Justice has identified more than **173 separate instances** of schools failures to comply with the statutory bullying requirements and that was prior to the recent July 2017 amendments. Additionally over **227 separate violations** of Title IX's clear statutory mandates were identified, and that is without counting violations of current guidance which is in the process of being revised. Title IX is the federal statute that prohibits discrimination and harassment based on gender, which discrimination may also encompass bullying.

Here is what you need to know to protect yourself, or your child from bullying and prohibited discrimination under Title IX.

First, this is how bullying is defined in Mississippi:

§ 37-11-67. Bullying or harassing behavior in public schools prohibited

- (1) As used in this section, "bullying or harassing behavior" is any pattern of gestures or written, electronic or verbal communications, or any physical act or any threatening communication, or any act reasonably perceived as being motivated by any actual or perceived differentiating characteristic, that takes place on school property, at any school-sponsored function, or on a school bus, and that:
 - (a) Places a student or school employee in actual and reasonable fear of harm to his or her person or damage to his or her property; or
 - (b) Creates or is certain to create a hostile environment by substantially interfering with or impairing a student's educational performance, opportunities or benefits. For purposes of this section, "hostile environment" means that the victim subjectively views the conduct as bullying or harassing behavior and the conduct is objectively severe or pervasive enough that a reasonable person would agree that it is bullying or harassing behavior.
- (2) No student or school employee shall be subjected to bullying or harassing behavior by school employees or students.
- (3) No person shall engage in any act of reprisal or retaliation against a victim, witness or a person with reliable information about an act of bullying or harassing behavior.
- (4) A school employee who has witnessed or has reliable information that a student or school employee has been subject to any act of bullying or harassing behavior shall report the incident to the appropriate school official.
- (5) A student or volunteer who has witnessed or has reliable information that a student or school employee has been subject to any act of bullying or harassing behavior should report the incident to the appropriate school official.

- (6) Conduct described in subsection (1) of this section is considered bullying if that conduct interferes with a student's education or substantially disrupts the operation of a school. SOURCES: Laws, 2010, ch. 508, § 1; Laws, 2017, ch. 365, § 1, eff from and after July 1, 2017.

[Miss. Code Ann. § 37-11-67](#)

This is a complicated definition. We have highlighted the crucial language. Following are a few pointers.

In reading this definition note that while school administrators may tell you that a "pattern" of acts are required to constitute bullying the statute requires only a single "act" if it is physical, or a threat, or if it is reasonably perceived as being motivated by "any actual or perceived differentiating characteristic."

Please also note that bullying is not restricted to actions by other students. School employees are also prohibited from engaging in bullying.

Please also note that - unfortunately - the definition does not appear to include acts which occur *off* school property, or outside school hours. As we all know bullying is most likely to occur away from the eye of school employees. Nevertheless, under this statutory definition bullying which occurs on the way to or from school, or to or from the bus stop, may not be included as "bullying," and this may impact on whether the school is liable for preventing the behavior, and that - in consequence - may influence whether a school for instance places a security guard at a bus stop where it has been advised problems have been occurring.

That does not mean there are no avenues for addressing bullying behavior outside school. For example Miss. Code§37-11-20 makes it a misdemeanor to "intimidate, threaten or coerce, or attempt to intimidate, threaten or coerce, whether by illegal force, threats of force or by the distribution of intimidating, threatening or coercive material, any person enrolled in any school for the purpose of interfering with the right of that person to attend school classes or of causing him not to attend such classes." Similarly, the state statutes regarding assault would also apply. So, if your child experiences bullying on the way to or from school, and the school will not take action, you do have the right to file a criminal affidavit in Youth Court if the bully is a child, or in Justice or Municipal Court. However, before taking such action be sure that there are witnesses and - ideally - obtain their statements so that, if your case is not successfully prosecuted, you can show you had a reasonable basis for bringing it.

Also note that a school employee who has "witnessed or has reliable information" is required to report the bullying to the appropriate school official. What this means is that if a school official has witnessed a child being bullied, or if your child orally reported it, the employee is required to have made a report. The failure to do so can give rise to liability on the part of the District in the event a child is subsequently assaulted or otherwise harmed.

The second state statute directly addressing bullying is Miss. Code §37-11-69

§ 37-11-69. Anti-bullying personnel and discipline policies and code of student conduct

- (1) Each local school district **shall** include in its personnel policies, discipline policies and code of student conduct a prohibition against bullying or harassing behavior and adopt procedures for reporting, investigating and addressing such behavior, that:
 - (a) Prohibit the bullying of a student;
 - (b) Prohibit retaliation against any person, including a victim, a witness, or another person, who in good faith provides information concerning an incident of bullying;
 - (c) Establish a procedure for providing notice of an incident of bullying to a parent or guardian of the victim and a parent or guardian of the bully within a reasonable amount of time after the incident;
 - (d) Establish the actions a student should take to obtain assistance and intervention in response to bullying;
 - (e) Set out the available counseling options for a student who is a victim of or a witness to bullying or who engages in bullying;
 - (f) Establish procedures for reporting an incident of bullying, investigating a reported incident of bullying and determining whether the reported incident of bullying occurred;
 - (g) Prohibit the imposition of a disciplinary measure on a student who, after an investigation, is found to be a victim of bullying on the basis of that student's use of reasonable self-defense in response to the bullying; and
 - (h) Require that discipline for bullying of a student with disabilities comply with applicable requirements under federal law, including the Individuals with Disabilities Education Act (20 USCS Section 1400 et seq.).
 - (2) The policies **must** recognize the fundamental right of every student to take reasonable actions as may be necessary to defend himself or herself from an attack by another student who has evidenced menacing or threatening behavior through bullying or harassing.
 - (3) The procedure for reporting bullying established under subsection (1) of this section must be posted on the district's Internet website.
- SOURCES: Laws, 2010, ch. 508, § 2; Laws, 2017, ch. 365, § 2, eff from and after July 1, 2017.

[Miss. Code Ann. § 37-11-69](#)

This statute, quoted above, requires that the school establish a prohibition against bullying or harassing behavior and include it in its personnel policies, discipline policies, and code of student conduct, and that it adopt procedures for reporting bullying.

So, you should see the prohibition against bullying in your student handbook. It is not completely clear whether the reporting procedure must appear in the code of student conduct in your student handbook. Nevertheless, the procedure for reporting bullying *must* be posted on the districts internet website.

If you look on your District's website and you do not see the procedure for reporting posted there you should contact your district. Alternatively you may contact the Mississippi Center for Justice and we will contact them for you.

It is important to be aware that many districts have adopted the Mississippi School Board Association model bullying policy. This policy is seriously flawed in that, among other things, it requires that students are required to report bullying incidents within five (5) days. There is no basis for such a short time period in the statute, and it flies in the face of Mississippi's general policy of staying statutes of limitations for taking legal action where minors are involved. If your school rejects your bullying complaint on this basis we would be happy to assist you if we can.

Another common school policy, again derived from the MSBA's model policy, is language that defines the "fundamental right of every student to take reasonable actions to defend him or herself from an attack" as being limited to reporting the attack. Should your school policy contain this language, or should your child be expelled for defending themselves, the Mississippi Center for Justice is ready to help.

Additionally, the statute requires the school to set out available "counseling options." If your child has been bullied it is likely that he or she will benefit from counseling, and the school

should have a psychologist available. If your school policy does not provide for such counseling options you should tell the District it needs to do so. Again, the Mississippi Center for Justice stands ready to help.

REPORTING BULLYING

As discussed above your school district is required to post its reporting procedures on its website. So far as possible, try and follow the posted procedure with regard to the appropriate person to take the report, and the posted time limits. However, as discussed above, given that all school employees are required to report bullying of which they are on notice, and the fact that the statute does not contain a reporting deadline, failure to follow posted procedures may not be fatal.

Whether or not a procedure requires it be sure in addition to whatever else is required that you make your complaint in *writing* and that you sign it, date it, and keep a copy. Make sure that you describe the incident, the participants, the date, the time it occurred, and the names of any witnesses. If possible, try and obtain signed witness statements in writing before filing the Complaint. Again, in addition to whatever the District requires ideally also have the District stamp your copy received, or - if you cannot hand deliver it - send it in a fashion that can be traced, i.e. U.S. mail return receipt requested, or via fax with a confirmation sheet, or via email. Remember, if it is not in writing, your complaint for all practical purposes never existed. Even if made in writing, if you have not kept a copy and proof of delivery, if your complaint is ignored and/or "lost" you will be unable to prove it was ever made.

TITLE IX

Title IX is a portion of the United States [Education Amendments of 1972](#), Public Law No. 92-318, 86 Stat. 235 (June 23, 1972), codified at 20 U.S.C. §§ 1681–1688. It provides in pertinent part that:

"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."

Note that private schools, which do not receive federal financial assistance, are not subject to Title IX, however every elementary, secondary, and post secondary state public school does receive such assistance, and therefore is subject to it.

According to an April 2011 Dear Colleague letter issued by the Dept. of Education, Office of Civil Rights, <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html>, "The sexual harassment of students, including sexual violence, interferes with students' right to receive an education free from discrimination and, in the case of sexual violence, is a crime."

There have been numerous regulations issued under Title IX. Some are unambiguous. Some provide interpretation. At an unambiguous minimum Districts should:

- 1) Designate at least one employee to serve as Title IX Coordinator (34 C.F.R. §106.8)
- 2) List the name, address, and telephone number for the Title IX Coordinator (34 C.F.R. §106.8)

- 3) Adopt a grievance procedure (34 C.F.R. §106.8)
- 4) Publish the grievance procedure (34 C.F.R. §106.8)
- 5) Provide for the prompt and equitable resolution of complaints (34 C.F.R. §106.8)
- 6) Notification of the policy to all parents and students (34 C.F.R. §106.9)

As with bullying, your School District must have a Title IX policy. Additionally it must have a person designated to serve as Title IX coordinator. If it does not you should contact your District. If you would like our assistance, the Mississippi Center for Justice will be happy to help in this process.

If your child has been subjected to discrimination, or has been sexually harassed based on their gender, you will have a right of action under Title IX, in addition to the state bullying statutes discussed above.

If you have questions please call the Mississippi Center for Justice for assistance at: 228-435-7284