

El Nido Elementary School District

Board Policy

Bullying

BP 5131.2

Students

Note: Education Code 234.4, as added by AB 2291 (Ch. 491, Statutes of 2018), mandates districts to adopt, on or before December 31, 2019, procedures for preventing acts of bullying, including cyberbullying. The following policy and accompanying administrative regulation contain sample procedures that fulfill this mandate and may be revised to reflect district practice.

Note: In addition, Education Code 234.1 and federal law mandate that the Governing Board adopt policy prohibiting discrimination, harassment, intimidation, and bullying based on specified characteristics and ensuring the protection of complainants from retaliation. Also see BP 5145.3 - Nondiscrimination/Harassment for language fulfilling this mandate.

Note: In its October 2010 Dear Colleague Letter: Harassment and Bullying, the U.S. Department of Education Office for Civil Rights (OCR) clarified that misconduct that falls under a district's general anti-bullying policy may also trigger responsibilities under one or more federal or state antidiscrimination laws if the bullying is on the basis of race, color, national origin, sex, sexual orientation, gender identity or expression, age, disability, and/or another legally protected category. Federal law requires the district to take immediate and appropriate action to investigate or otherwise determine what occurred and, if it finds that unlawful discrimination did occur, take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring.

Note: OCR's October 2014 Dear Colleague Letter: Responding to Bullying of Students with Disabilities points out that any bullying of a student with a disability that results in the student not receiving meaningful educational benefit constitutes a denial of a free appropriate public education and must be remedied under the federal Individuals with Disabilities Education Act. As necessary, the school may need to convene the student's individualized education program (IEP) team to determine whether the student's needs have changed as a result of the bullying and, if so, revise the IEP to ensure that the student continues to receive appropriate special education and related services.

Note: Thus, while this policy is intended to prevent and address all types of bullying incidents among students, when "discriminatory bullying" is committed and the bullying is sufficiently serious to create a hostile educational environment for the alleged victim or to otherwise deny or limit the student's educational benefits and services, including denial of a free appropriate public education, the alleged victim must be afforded the protections specified under relevant state and/or federal law.

The Governing Board recognizes the harmful effects of bullying on student well-being, student learning, and school attendance and desires to provide a safe school environment that protects students from physical and emotional harm. No individual or group shall, through physical, written, verbal, visual, or other means, harass, sexually harass, threaten, intimidate, cyberbully, cause bodily injury to, or commit hate violence against any student or school personnel, or retaliate against them for filing a complaint or participating in the complaint resolution process.

(cf. 5131 - Conduct)

(cf. 5136 - Gangs)

(cf. 5145.3 - Nondiscrimination/Harassment)

(cf. 5145.7 - Sexual Harassment)

(cf. 5145.9 - Hate-Motivated Behavior)

Note: Because bullying and its effects extend beyond the school environment, collaboration among a variety of community agencies and organizations that serve youth may be helpful in preventing and responding to bullying. For further information about building a collaborative, see CSBA's publications *Safe Schools: Strategies for Governing Boards to Ensure Student Success* and *Building Healthy Communities: A School Leader's Guide to Collaboration and Community Engagement*.

The Superintendent or designee shall develop strategies for addressing bullying in district schools with the involvement of students, parents/guardians, and staff. As appropriate, the Superintendent or designee may also collaborate with social services, mental health services, law enforcement, courts, and other agencies and community organizations in the development and implementation of effective strategies to promote safety in schools and the community.

(cf. 1220 - Citizen Advisory Committees)

(cf. 1400 - Relations Between Other Governmental Agencies and the Schools)

(cf. 6020 - Parent Involvement)

Note: Education Code 32282 encourages districts to include bullying prevention policies and procedures in their comprehensive safety plan; see BP 0450 - Comprehensive Safety Plan. In addition, Education Code 52060-52077 require the Board to adopt and annually update a local control and accountability plan which includes, among other specified state priorities, goals for addressing school climate; see BP/AR 0460 - Local Control and Accountability Plan. Pursuant to Education Code 52060, school climate should be measured by student suspension and expulsion rates and other local measures, including surveys of students, parents/guardians, and teachers on the sense of safety and school connectedness, as applicable.

Such strategies shall be incorporated into the comprehensive safety plan and, to the extent possible, into the local control and accountability plan and other applicable district and school plans.

(cf. 0420 - School Plans/Site Councils)

(cf. 0450 - Comprehensive Safety Plan)

(cf. 0460 - Local Control and Accountability Plan)

Note: Pursuant to Education Code 234.1, districts are required to adopt a process for receiving and investigating complaints involving unlawful discrimination (such as discriminatory harassment, intimidation, and bullying) based on specified characteristics. Pursuant to 5 CCR 4600-4633, the uniform complaint procedures (UCP) must be used for this purpose. In addition, federal regulations require districts to adopt procedures providing for prompt and equitable resolution of complaints of unlawful discrimination (such as discriminatory harassment, intimidation, and bullying) on the basis of sex (34 CFR 106.8), disability (34 CFR 104.7 and 28 CFR 35.107), and age (34 CFR 110.25).

Note: Although some bullying incidents may not fall within the provisions of Education Code 234.1 or federal civil rights regulations, CSBA strongly recommends that districts use the UCP to investigate all bullying incidents (whether discriminatory or nondiscriminatory) to ensure consistent implementation by district staff. It is not always easy or possible for staff to know prior to an investigation whether a student was bullied because of an actual or perceived membership in a legally protected class. Those bullying incidents found to involve discrimination based on the results of the investigation would then be resolved using the UCP. When a bullying incident is determined to be nondiscriminatory, it should be resolved through the appropriate disciplinary process. Districts that are concerned about the capacity of a single district compliance officer to handle a possible increase in the number of UCP complaints, or that prefer to handle certain incidents at the school site level whenever possible, may designate multiple compliance officers in accordance with AR 1312.3 - Uniform Complaint Procedures.

Any complaint of bullying shall be investigated and, if determined to be discriminatory, resolved in accordance with law and the district's uniform complaint procedures specified in AR 1312.3. If, during the investigation, it is determined that a complaint is

about nondiscriminatory bullying, the principal or designee shall inform the complainant and shall take all necessary actions to resolve the complaint.

(cf. 1312.3 - Uniform Complaint Procedures)

Any employee who permits or engages in bullying or retaliation related to bullying shall be subject to disciplinary action, up to and including dismissal.

(cf. 4118 - Dismissal/Suspension/Disciplinary Action)

(cf. 4119.21/4219.21/4319.21 - Professional Standards)

(cf. 4218 - Dismissal/Suspension/Disciplinary Action)

Legal Reference:

EDUCATION CODE

Board approved 12/17/19

200-262.4 Prohibition of discrimination
32282 Comprehensive safety plan
32283.5 Bullying; online training
35181 Governing board policy on responsibilities of students
35291-35291.5 Rules
48900-48925 Suspension or expulsion
48985 Translation of notices
52060-52077 Local control and accountability plan
PENAL CODE
422.55 Definition of hate crime
647 Use of camera or other instrument to invade person's privacy; misdemeanor
647.7 Use of camera or other instrument to invade person's privacy; punishment
653.2 Electronic communication devices, threats to safety
CODE OF REGULATIONS, TITLE 5
4600-4670 Uniform complaint procedures
UNITED STATES CODE, TITLE 47
254 Universal service discounts (e-rate)
CODE OF FEDERAL REGULATIONS, TITLE 28
35.107 Nondiscrimination on basis of disability; complaints
CODE OF FEDERAL REGULATIONS, TITLE 34
104.7 Designation of responsible employee for Section 504
106.8 Designation of responsible employee for Title IX
110.25 Notification of nondiscrimination on the basis of age
COURT DECISIONS
Wynar v. Douglas County School District, (2013) 728 F.3d 1062
J.C. v. Beverly Hills Unified School District, (2010) 711 F.Supp.2d 1094
Lavine v. Blaine School District, (2002) 279 F.3d 719

Management Resources:

CSBA PUBLICATIONS

Final Guidance: AB 1266, Transgender and Gender Nonconforming Students, Privacy, Programs, Activities & Facilities, Legal Guidance, March 2014

Providing a Safe, Nondiscriminatory School Environment for Transgender and Gender-Nonconforming Students, Policy Brief, February 2014

Addressing the Conditions of Children: Focus on Bullying, Governance Brief, December 2012

Safe Schools: Strategies for Governing Boards to Ensure Student Success, 2011

Cyberbullying: Policy Considerations for Boards, Policy Brief, rev. July 2010

Building Healthy Communities: A School Leaders Guide to Collaboration and Community Engagement, 2009

CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS

Bullying Module

California's Social and Emotional Learning: Guiding Principles, 2018
Social and Emotional Learning in California: A Guide to Resources, 2018
Health Education Content Standards for California Public Schools: Kindergarten Through Grade Twelve, 2008
Bullying at School, 2003
CALIFORNIA OFFICE OF THE ATTORNEY GENERAL PUBLICATIONS
Promoting a Safe and Secure Learning Environment for All: Guidance and Model Policies to Assist California K-12 Schools in Responding to Immigration Issues, April 2018
U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS PUBLICATIONS
Dear Colleague Letter: Responding to Bullying of Students with Disabilities, October 2014
Guidance to America's Schools: Bullying of Students with Disabilities, October 2014
Dear Colleague Letter: Guidance on Schools' Obligations to Protect Students from Student-on-Student Harassment on the Basis of Sex; Race, Color and National Origin; and Disability, October 26, 2010
Dear Colleague Letter: Harassment and Bullying, October 2010
WEB SITES
CSBA: <http://www.csba.org>
California Department of Education, Safe Schools Office: <http://www.cde.ca.gov/lr/ss>
California Office of the Attorney General: <http://oag.ca.gov>
Center on Great Teachers and Leaders: <http://gtlcenter.org>
Collaborative for Academic Social and Emotional Learning: <http://casel.org>
Common Sense Media: <http://www.common Sense Media.org>
National School Safety Center: <http://www.schoolsafety.us>
Partnership for Children and Youth: <http://www.partnerforchildren.org>
U.S. Department of Education: <http://www.ed.gov>

(7/15 5/18) 5/19