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School Violence/Safety Policies/Procedures Manual



Harassment
Intimidation
Bullying
Threats

State Department of Education
Safe and Drug-Free Schools Program

2006

**State Department of Education
Safe and Drug-Free Schools Program
Is pleased to provide this
Idaho School Violence/Safety Policies/Procedures Manual**

PREFACE

The 2006 Idaho Legislature passed two criminal statutes which directly address the safety and well-being of students. Idaho Code § 18-917A defines harassment, intimidation, and bullying; prohibits such conduct by students; and provides that any student who commits an act of harassment, intimidation, and/or bullying may be found guilty of an infraction. Idaho Code § 18-3302I specifies that any person, including a student, who willfully threatens another person with the use of a firearm or other deadly or dangerous weapon while on school grounds may be charged with a misdemeanor.

Additionally, the Legislature amended Idaho Code § 33-512 to require that school districts adopt policies regarding discipline of students who engage in acts of harassment, intimidation and bullying. Idaho Code § 33-205 was also modified to clarify that students may be temporarily suspended for engaging in acts of harassment, intimidation or bullying.

This guide will provide an overview of the new statutory language, as well as Idaho school districts' obligations in meeting the language of the statutes. The obligations discussed herein also apply to Idaho public charter schools and private elementary and secondary schools.

“This publication is designed to provide accurate and authoritative information regarding the subject matter covered. The publisher is not engaged in rendering legal, accounting, or other professional services. If legal advice or other expert assistance is required, the services of a competent professional person should be sought.”

From a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

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SECTION I. HARASSMENT, INTIMIDATION, AND BULLYING

The 2006 Idaho Legislature enacted Idaho Code § 18-917A, which states as follows:

18-917A. STUDENT HARASSMENT -- INTIMIDATION -- BULLYING.

- (1) No student shall intentionally commit, or conspire to commit, an act of harassment, intimidation or bullying against another student.
- (2) As used in this section, “harassment, intimidation or bullying” mean any intentional gesture, or any intentional written, verbal or physical act or threat by a student that:
 - (a) A reasonable person under the circumstances should know will have the effect of:
 - (i) Harming a student; or
 - (ii) Damaging a student’s property; or
 - (iii) Placing a student in reasonable fear of harm to his or her person; or
 - (iv) Placing a student in reasonable fear of damage to his or her property; or
 - (b) Is sufficiently severe, persistent or pervasive that it creates an intimidating, threatening or abusive educational environment for a student.

An act of harassment, intimidation or bullying may also be committed through the use of a land line, car phone or wireless telephone or through the use of data or computer software that is accessed through a computer, computer system, or computer network.

- (3) A student who personally violates any provision of this section may be guilty of an infraction.

In addition to enacting Idaho Code § 18-917A, set forth above, the Idaho Legislature also amended Idaho Code § 33-512(6) and mandated that all school districts include in their rules for disciplining students a prohibition of student harassment, intimidation, and bullying. The Idaho Legislature further authorized each superintendent or principal to suspend a student for harassment, intimidation, or bullying.

- **To whom does the harassment, intimidation, or bullying prohibition apply?**

Idaho Code §18-917A applies solely to student-on-student harassment, intimidation, or bullying. Acts or threats of harassment, intimidation, or bullying to staff members, parents, or visitors are not prohibited by this statute, although the student may be subject to prosecution under some other criminal statute. The statute does not specifically limit the prohibition to students attending the same school. Therefore, it is conceivable that a student could violate the statute by harassing, intimidating, or bullying another student attending a different school, if his/her action meets the statutory definition.

- **Can a student be harassed, intimidated, or bullied by an adult, such as a teacher, administrator, or coach?**

Yes. However, the prohibitions under Idaho Code § 18-917A do not apply. In those instances where a student is harassed, intimidated, or bullied by an adult, other state and federal laws may come into play. Such behavior by an adult may fall within the federal definition of “harassment,” and, if perpetrated by a certificated employee, may further constitute a violation of the Code of Ethics for Idaho Professional Educators.

- **What behavior is prohibited, pursuant to Idaho Code § 18-917A?**

The prohibited behavior involves a student intentionally committing, or conspiring to commit, an act of harassment, intimidation, or bullying against another student. Additionally, the prohibition includes intentional threats of harassment, intimidation, or bullying by the student(s).

- **What is the difference between “harassment,” “intimidation,” and “bullying?”**

As defined in Idaho Code § 18-917A, there is no difference in the definition of “harassment,” “intimidation,” or “bullying,” although each word may have a distinct meaning in a different context.

- **What conduct constitutes harassment, intimidation, or bullying?**

Idaho Code § 18-917A does not define each term separately. Rather, the statute defines the phrase “harassment, intimidation or bullying” as “any intentional gesture, or any intentional written, verbal or physical act or threat” with the following consequences:

- 1) a reasonable person under the circumstances should know will have the effect of: a) harming a student; b) damaging a student’s property; c) placing a student in reasonable fear of harm to his or her person; or d) placing a student in reasonable fear of damage to his or her property; or
- 2) is sufficiently severe, persistent, or pervasive that it creates an intimidating, threatening, or abusive educational environment for a student.

- **What is the definition of “harassment” under other federal and state laws?**

Generally, “harassment” is defined under state and federal law as verbal, written, graphic, or physical conduct relating to an individual’s sex or sexual orientation, race, color, national origin, age, religious beliefs, ethnic background or disability that is sufficiently severe, pervasive, or persistent so as to interfere with or limit the ability of an individual to participate in or benefit from the district’s programs; that has the purpose or effect of creating an intimidating or hostile environment; unreasonably interferes with an individual’s educational performance, or otherwise adversely affects an individual’s educational opportunities. *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties* (U.S. Dept. of Education Office for Civil Rights, January 2001), p. 2.

- **Does the federal/state definition of “harassment” apply to Idaho Code § 18-917A?**

No. For purposes of Idaho Code § 18-917A, it is not necessary that the victim be a member of a suspect class based on sex or sexual orientation, race, color, national origin, age, religious beliefs, ethnic background, or disability.

- **What standard applies in determining whether a student has been, or fears that he/she will be, harmed or his/her property will be damaged?**

Idaho Code § 18-917A imposes a “reasonable person” standard in determining whether harm or damage exists. The issue is whether a “reasonable person” should, under the circumstances, know that harm or injury would occur or would be perceived to occur.

- **Does harassment, intimidation, or bullying exist when there is no actual or perceived harm to the student or damage to property?**

Sometimes. Harassment, intimidation, or bullying can be found to exist, under Idaho Code § 18-917A, solely because the student’s actions were so severe, persistent, or pervasive that the actions create an intimidating, threatening, or abusive environment at school for another student. In other words, the student against whom the harassment, intimidating, or bullying is directed was significantly negatively affected in the educational environment by the behavior.

- **What is the definition of “conspiracy?”**

Conspiracy is defined as an agreement between two or more persons to commit an unlawful act. BLACK’S LAW DICTIONARY 305 (7th ed. 1999).

- **If two or more students conspire to commit harassment, intimidation or bullying, but the actual act is only carried out by one student, what is the culpability of the other students?**

Criminal conspiracy is defined in Idaho Code § 18-1701 as follows: If two (2) or more persons combine or conspire to commit any crime or offense prescribed by the laws of the state of Idaho, and one (1) or more of such persons does any act to effect the object of the combination or conspiracy, each shall be punishable upon conviction in the same manner and to the same extent as is provided under the laws of the state of Idaho for the punishment of the crime or offenses that each combined to commit.

Thus, the student(s) who conspired with the student who carried out the act are just as culpable as the student who actually conducted the harassment, intimidation or bullying.

- **By what methods can harassment, intimidation or bullying occur?**

Idaho Code § 18-917A specifically provides that “harassment, intimidation or bullying” can occur through the use of any “intentional gesture, or any intentional written, verbal or physical act or threat.” Further, harassment, intimidation, or bullying can occur “through the use of a land line, car phone or wireless telephone or through the use of data or computer software that is accessed through a computer, computer system, or computer network.”

- **Is it possible to engage in harassment, intimidation, or bullying from a remote location?**

Yes. Idaho Code § 18-917A does not require that the act of harassment, intimidation, or bullying must occur on school property. Rather, the reference to various technologies suggests that the Legislature recognizes that students may send from any location, through electronic means, written or verbal messages that constitute harassment, intimidation, or bullying.

- **What obligation does a school district have if a student alleges she is being harassed, intimidated, or bullied through the use of a cell phone or computer?**

The school district has an obligation to investigate. It is important to remember that the “harassment, intimidation or bullying” is not limited to events occurring on school grounds. Rather, the limitation is that the action is student-to-student, regardless of where the action occurs. Thus, if a student comes forward with an allegation of “harassment, intimidation or bullying” by another student via cell phone or other electronic transmission, regardless of where it was initiated, the matter must be investigated. If it is determined that a student’s actions fall within the definition of “harassment, intimidation or bullying,” pursuant to Idaho Code § 18-917A, a referral should be made to law enforcement, and the appropriate discipline, based on the actions, must be determined. Such discipline can include suspension and/or expulsion.

- **Is an Idaho school district required to have a policy regarding harassment, intimidation or bullying?**

Yes. Idaho Code § 33-512(6) specifically requires Idaho school districts’ boards of trustees:

To prescribe rules for the disciplining of unruly or insubordinate pupils, *including rules on student harassment, intimidation and bullying*, such rules to be included in a district discipline code adopted by the board of trustees and a summarized version thereof to be provided in writing at the beginning of each school year to the teachers and students in the district in a manner consistent with the student’s age, grade and level of academic achievement. (Emphasis added.)

- **Must the policy regarding harassment, intimidation or bullying be published in the handbook?**

Yes. Idaho Code § 33-512 requires that a summarized version of the student harassment, intimidation, and bullying policy must “be provided in writing at the beginning of each school year to the teachers and students in the district in a manner consistent with the student’s age, grade and level of academic achievement.”

- **What issues should be addressed in the district’s policy on harassment, intimidation or bullying?**

The policy should, at a minimum:

- 1) clarify the district’s definition of harassment, intimidation, or bullying;
- 2) specify what proactive measures, if any, the schools will implement to educate students regarding harassment, intimidation, or bullying;

- 3) specify how students and staff members should report allegations of harassment, intimidation, or bullying;
 - 4) specify who determines whether the allegations of harassment, intimidation, or bullying should be reported to law enforcement, and the process for doing so;
 - 5) address disciplinary measures that may be imposed if it is determined that a student has engaged in conduct which constitutes harassment, intimidation, or bullying.
- **Should the district’s policy pertaining to harassment, intimidation, and bullying address personal student websites and/or blogs?**

Yes. It is helpful to set the limitations regarding student websites or blogs so that both students and parents are aware of the prohibitions of using websites or blogs, either at school or at home, for the purpose of harassment, intimidation, or bullying. Use of various types of technology and electronic media available to students for the purpose of forwarding communication that results in instilling fear or that is sufficiently severe, persistent, or pervasive that it creates an intimidating, threatening, or abusive educational environment is a violation if Idaho Code § 18-917A.

- **Does harassment, intimidation or bullying constitute free speech subject to constitutional protection?**

No. Clearly, public school students have free speech rights in the school setting. “Speech” is defined not just as spoken words, but also includes “symbolic speech.” However, free speech rights are not unlimited in the school setting. Student speech that falls within the definition of harassment, intimidation or bullying is not protected free speech. Thus, a student who, by an intentional gesture, or through an intentional written, verbal, or physical threat, makes a reasonable student under the circumstances experience or fear harm or damage to himself/herself or his/her property; or, if the speech is sufficiently severe, persistent, or pervasive to create an intimidating, threatening, or abusive educational environment, it does not constitute protected speech.

- **What is the obligation of the school district under Idaho Code § 18-917A?**

Idaho Code § 18-917A is a criminal statute and does not specify any obligation on the part of the school district. However, given the school district’s general obligation to provide a safe environment for all students, the school district should immediately report to law enforcement all incidents which are reasonably determined to meet the criteria of Idaho Code § 18-917A.

- **What is an infraction?**

An infraction is defined as a “civil public offense, not constituting a crime, which is punishable only by a penalty not exceeding one hundred dollars (\$100) and for which no period of incarceration may be imposed.” Idaho Code § 18-111.

- **Can a school district discipline a student who has been found guilty of an infraction for harassment, intimidation, or bullying?**

Yes. A school district has every right, if authorized under its own policies, to discipline a student for his or her actions relating to school matters, even if there are criminal charges or convictions levied against the student. The criminal conviction does not preclude the school district from

disciplining a student as double jeopardy does not apply.¹ Within the boundaries of its policies, and depending on the severity of the incident, the school district can impose discipline, up to and including expulsion, against the student.

- **Can a school district discipline a student who has been found NOT guilty of an infraction for harassment, intimidation, or bullying?**

Yes. Even though a court may determine that insufficient evidence was produced to find that a student threatened violence on school grounds, or, for whatever reason, the charges were dismissed against a student, the school district may discipline the student if its investigation found that the student had indeed engaged in harassment, intimidation or bullying on school grounds, pursuant to its policies. When determining whether or not disciplinary action is appropriate, the school district is not bound by the criminal standard for assessing evidence.

- **Do additional requirements come into play if the student causing the harassment, intimidation, or bullying is on an IEP or a Section 504 plan?**

Yes. If the student at issue is on an IEP or a Section 504 plan, the student cannot be suspended for more than ten (10) consecutive or cumulative days in a school year without additional procedures. Special education personnel should be notified so that the proper procedures are addressed. However, law enforcement can be notified to the same extent it would be notified regarding any nondisabled student's behavior constituting harassment, intimidation, or bullying.

¹ "Double jeopardy," prohibited by the Fifth Amendment, is defined as being prosecuted twice for substantially the same offense. BLACK'S LAW DICTIONARY 506 (7th ed. 1999).

SECTION II. THREATENING VIOLENCE ON SCHOOL GROUNDS

The 2006 Idaho Legislature passed a new criminal statute that prohibits an individual from threatening violence while on school grounds. Specifically, Idaho Code § 18-3302I states as follows:

18-3302I. THREATENING VIOLENCE ON SCHOOL GROUNDS.

(1) (a) Any person, including a student, who willfully threatens by word or act to use a firearm or other deadly or dangerous weapon to do violence to any other person on school grounds is guilty of a misdemeanor.

(b) The threats prohibited by this section encompass only those statements or acts where the speaker or actor intends to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals. The prosecution is not required to prove that the defendant actually intended to carry out the threat.

(2) Definitions. As used in this section:

(a) “Deadly or dangerous weapon” means a weapon, device, instrument, material or substance that is used for, or is readily capable of, causing death or serious bodily injury;

(b) “Firearm” means any weapon, whether loaded or unloaded, from which a shot, projectile or other object may be discharged by force of combustion, explosive, gas and/or mechanical means, regardless of whether such weapon is operable;

(c) “On school grounds” means in, or on the property of, a public or private elementary or secondary school.

- **To whom does the prohibition against making a violent threat apply?**

Idaho Code § 18-3302I prohibits violent threats made by any individual present on school grounds, regardless of the individual’s status as a student, teacher, staff member, or visitor, including parents.

- **Who is protected by Idaho Code § 18-3302I?**

Anyone on school grounds, including students, staff members, and visitors, is protected against the threat of violence by Idaho Code § 18-3302I. Both particular individuals and groups of individuals are protected under the statute.

- **Where must the threat occur?**

Idaho Code §18-3302I is clear that the intended victim must be on school grounds when the threat occurs. A student who threatens acts of violence against another student when both students are off school grounds does not violate this statute. However, it is unclear as to whether a student or other individual is in violation of this statute when he/she, while off school grounds, makes a threat against another individual who receives the threat while on school grounds.

- **What threats are prohibited under Idaho Code § 18-3302I?**

Idaho Code § 18-3302I prohibits any statements or acts where a student or other person “intends to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.” The threatening statement or act must be “willful,” and must involve the use of a firearm or other deadly or dangerous weapon. However, there is no requirement that the individual actually intended to carry out the threat or that any type of injury was incurred.

- **What does it mean that an individual acted “willfully?”**

The legal definition of “willful” is that the individual acted “voluntary and intentional, but not necessarily malicious.” BLACK’S LAW DICTIONARY 1593 (7th ed. 1999). In other words, the individual must intend to communicate a threat of violence.

- **Must an individual actually possess a firearm or other deadly or dangerous weapon to violate Idaho Code § 18-3302I?**

No. Idaho Code § 18-3302I does not require that the individual making the threat actually possess, or otherwise have available to him or her, a firearm or other deadly or dangerous weapon. The threat is the determining factor, not whether the individual can actually carry out the threat or even intends to carry out the threat.

- **What is the definition of firearm under Idaho Code § 18-3302I?**

A firearm is defined under Idaho Code § 18-3302I as “any weapon, whether loaded or unloaded, from which a shot, projectile or other object may be discharged by force or combustion, explosive, gas and/or mechanical means, regardless of whether such weapon is operable.” As a result, “look-alike” firearms that do not discharge by force or combustion are not included in the definition.

- **What is a deadly or dangerous weapon under Idaho Code § 18-3302I?**

Idaho Code § 18-3302I defines deadly or dangerous weapon to include a weapon, device, instrument, material or substance that is used for, or is readily capable of, causing death or serious bodily injury. This definition also does not include “look-alike” weapons, if such weapons are not readily capable of causing death or serious bodily injury. On the other hand, all lengths of knives and other types of cutting devices, if capable of causing death or serious bodily injury, are deadly or dangerous weapons.

- **Is the definition of deadly or dangerous weapon under Idaho Code § 18-3302I the same definition of deadly or dangerous weapon found in school districts' policies?**

Not necessarily. Each school district has the latitude to define, in its own policies, the definition of “weapon.” For example, many school districts have policies which provide that a student may be disciplined for possessing a “look-alike” weapon on school grounds.

- **Is the definition of deadly or dangerous weapon under Idaho Code § 18-3302I the same definition of dangerous weapon found in the Individuals with Disabilities Education Act (IDEA)?**

No. While the definitions of deadly or dangerous weapon in Idaho Code § 18-3302I and the IDEA are similar, they are not identical. Under the IDEA, pertaining to placing a special education student in a 45-day appropriate interim alternative educational setting for disciplinary reasons, a dangerous weapon is a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2½ inches in length. 18 U.S.C. § 930(g). In other words, the definition set forth in Idaho Code § 18-3302I is broader.

- **What definition of weapon should a school district use when disciplining a student for making threats or actually bringing a weapon or firearm to school?**

A school district must look to its own policies when determining whether it can discipline a student for making threats or for bringing a weapon or firearm to school. With regard to referring threats of violence on school grounds to law enforcement, a school district must determine that the provisions set forth in Idaho Code § 18-3302I have likely been met. Even though a referral to law enforcement may have been made, the school district may proceed with its own discipline of the student.

- **What is the definition of “on school grounds” under Idaho Code § 18-3302I?**

“On school grounds” is defined as “in, or on the property of, a public or private elementary or secondary school.” The definition encompasses charter schools.

- **Is the definition of “on school grounds” limiting with regard to school activities?**

It can be. Idaho Code § 18-3302I only addresses those instances where the threat of violence is received while on school grounds. It does not address threats occurring at school-sponsored activities that are at a different location. Thus, while a school district may discipline a student for threats of violence at school-sponsored events that occur off school grounds, the student cannot be charged under Idaho Code § 18-3302I for those threats. It is unclear whether the statute applies to threats which may occur on buses owned and/or operated by the school district.

- **Is the threat to do violence on school grounds different from an assault?**

Yes. Idaho Code § 18-3302I prohibits the willful making of a threat of violence through the use of a deadly or dangerous weapon by words or acts on school grounds. On the other hand, an assault is defined in Idaho Code § 18-901 as “[a]n unlawful attempt, coupled with apparent ability, to commit a violent injury on the person of another;” or “[a]n intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent.” An assault goes further than making threats; the individual must also appear to have the ability to harm another person. However, an assault does not require a reference to the use of a deadly or dangerous weapon and it may occur at any location, not just on school grounds.

- **What does “a serious expression of an intent to commit an act of unlawful violence” mean under Idaho Code § 18-3302I?**

The prohibition under Idaho Code § 18-3302I does not require that the individual making the threat have an apparent ability to carry out the threat with a firearm or other deadly or dangerous weapon. However, the threat must be “a serious expression,” insofar as the individual receiving the threat must conclude that the person speaking the threat is serious about it. In other words, the person making the threat is not joking or teasing, but is more than likely upset or angry. Courts have defined “true threats” as “those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.” *Watts v. United States*, 394 U.S. 705, 708 (1969). It has further been clearly established that “[t]hreats of violence are outside the First Amendment.” *R.A.V. v. St. Paul*, 505 U.S. 377, 388 (1992).

- **Does a written bomb threat found on school grounds violate the prohibitions of Idaho Code § 18-3302I?**

Yes, if it is concluded that the note is not a joke. One can presume that a bomb falls within the definition of a deadly or dangerous weapon, in that it is readily capable of causing death or serious bodily injury. Further, the language of Idaho Code § 18-3302I indicating that the threat is delivered by “word or act” does not preclude a written note. Additionally, school personnel, in order to protect the safety of the students, must take the threat seriously, unless there are other known facts that lead to another conclusion.

- **Does a bomb threat that is called into the school office by phone violate the prohibitions of Idaho Code § 18-3302I?**

The statute is unclear. Idaho Code § 18-3302I provides that “[a]ny person, including a student, who willfully threatens by word or act to use a firearm or other deadly or dangerous weapon to do violence to *any other person on school grounds*.” If the phone call is made off school grounds, it is unclear whether it falls within the provisions of Idaho Code § 18-3302I. On the other hand, it is clear that, if the phone call is made while the individual is on school grounds, Idaho Code § 18-3302I applies. Regardless of where the phone call occurred, it should be referred to law enforcement.

- **Does a “serious expression of an intent to commit an act of unlawful violence” received via computer fall within the provisions of Idaho Code § 18-3302I?**

The statute is unclear. If the message is received from a computer located on school grounds, the provisions of Idaho Code § 18-3302I clearly apply. If the message is sent from a home computer, or from a computer at some other location off school grounds, the statute is unclear whether it applies. Nevertheless, the matter should be referred to law enforcement.

- **What is the school district’s obligation, pursuant to Idaho Code § 18-3302I?**

Idaho Code §18-3302I does not specify that the school district has any obligation relative to threats of violence on school grounds. However, from the standpoint of ensuring student and staff safety, any threats which are reasonably believed to meet the definition set forth in Idaho Code § 18-3302I should be reported immediately to law enforcement.

- **Should the school district have a policy relative to threats of violence on school grounds?**

Yes. The board should adopt a policy which specifies that such threats are prohibited, and that they are to be reported to the building administrator. The policy should also address who will determine whether a referral will be made to law enforcement, what, if any, interim steps will be taken, and the parameter for disciplinary action, as appropriate.

- **What is a misdemeanor?**

A misdemeanor is defined as a crime that is less serious than a felony and is usually punishable by a fine, penalty, forfeiture, or confinement for a brief period of time in a place other than prison, such as a county jail. Idaho Code § 18-111; BLACK’S LAW DICTIONARY 1014 (7th ed. 1999).

- **Under what circumstances may a student be found guilty of a misdemeanor for threatening violence on school grounds with a deadly or dangerous weapon?**

Pursuant to Idaho Code § 18-3302I, a student may be found guilty of a misdemeanor if the student willfully threatens on school grounds by word or act to use a firearm or other deadly or dangerous weapon to do violence to any other person on school grounds. Further, while the threat must be of a serious nature, it is not necessary that the prosecutor prove that the individual had the ability, or even intended to, carry out the threat.

- **What actions, if any, can be taken against an individual, other than a student, for a violation of Idaho Code § 18-3302I?**

In addition to referring the matter to law enforcement, a school district has the right to notify the individual that he or she is no longer allowed to be present on school grounds. Such notification can be given orally or in writing. If the individual violates the directive to stay off school grounds, the matter can be referred to law enforcement for trespassing, pursuant to Idaho Code § 18-7008(8). In addition to the trespassing laws, Idaho Code § 33-512(11) provides that the board of trustees can prohibit entrance to schools and school grounds, prohibit loitering in schools or on school grounds, and...“to provide for the removal from each schoolhouse or school grounds of any individual or individuals who disrupt the educational processes or whose presence is detrimental to

the morals, health, safety, academic learning or discipline of the pupils. A person who disrupts the educational process or whose presence is detrimental to the morals, health, safety, academic learning or discipline of the pupils or who loiters in schoolhouses or on school grounds, is guilty of a misdemeanor.”

- **Does a school district have the right to discipline a student who has been found guilty of a misdemeanor for violating Idaho Code § 18-3302I?**

Yes. A school district has every right, if authorized under its own policies, to discipline a student for his or her actions relating to school matters, even if there are criminal charges or convictions levied against the student. The criminal conviction does not preclude the school district from disciplining a student as the “double jeopardy” law does not apply.² Within the boundaries of its policies, and depending on the severity of the incident, the school district can impose discipline, up to and including expulsion, against the student.

- **Can a school district discipline a student who has been found NOT guilty of a misdemeanor for violating Idaho Code § 18-3302I?**

Yes. Even though a court may determine that insufficient evidence was produced to find that a student threatened violence on school grounds, or, for whatever reason, the charges were dismissed against a student, the school district may discipline the student if its investigation found that the student had indeed threatened violence on school grounds, pursuant to its policies. When determining whether or not disciplinary action is appropriate, the school district is not bound by the criminal standard for assessing evidence.

- **Does the school district have authority to take disciplinary action against an employee who has been found guilty of a misdemeanor for violating Idaho Code § 18-3302I?**

Yes. A school district may discipline an employee, as a result of being convicted for violating Idaho Code § 18-3302I. Relative to a certificated employee, the conviction may constitute a violation of the Code of Ethics for Idaho Professional Educators, and may be a basis for discipline, up to and including termination of employment. Classified employees, who are “at-will” employees, may also be disciplined, including termination, for posing a threat to the safety of students.

- **Does the school district have authority to discipline an employee who has been found NOT guilty of a misdemeanor for violating Idaho Code § 18-3302I?**

Yes. Even though a court may determine that insufficient evidence was produced to find that the employee threatened violence on school grounds, or, for whatever reason, the charges were dismissed, the school district may discipline the employee if its investigation found that the employee had indeed threatened violence on school grounds. When determining whether or not disciplinary action is appropriate, the school district is not bound by the criminal standard for assessing evidence.

² “Double jeopardy,” prohibited by the Fifth Amendment, is defined as being prosecuted twice for substantially the same offense. BLACK’S LAW DICTIONARY 506 (7th ed. 1999).

- **Do additional requirements come into play if the student threatening violence on school grounds is on an IEP or a Section 504 plan?**

Yes. If the student at issue is on an IEP or a Section 504 plan, the student cannot be suspended for more than ten (10) consecutive or cumulative days in a school year without additional procedures. Special education personnel should be notified so that the proper procedures are addressed. However, law enforcement can be notified to the same extent it would be notified regarding any nondisabled student's behavior constituting a threat of violence on school grounds.

SECTION III

APPENDIX A

Forms

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Conducting a Harassment, Intimidation, or Bullying Investigation³ or Conducting a Threat Investigation

_____ School District

In the case of all such incidents—harassment, intimidation, bullying, and/or threats of violence on school grounds, each employee to hear about the concerns must immediately report the circumstances to the building administrator. An initial response to events will be required to take place prior to the ability to have a formal investigation by administration, law enforcement, or other persons designated by policy or by the administration. Note that it is important to limit the number of multiple interviews of individuals, including students.

I. Of first concern

- Begin the investigation as soon as possible.
 - Date written/oral complaint was received: _____
 - Alleged date of incident: _____
 - Date investigation began: _____
 - Date investigation and written report completed: _____
 - Complaint received from: _____
 - Complaint received by: _____
 - Name of alleged victim: _____
 - Name of alleged perpetrator: _____
 - Names of possible witnesses: _____

³ This form is provided solely for assistance in the interview process. It is not intended to provide legal advice or to be all-inclusive.

- Review applicable board policies, regulations and practices.
- Set forth applicable time lines for conducting the investigation and issuing a report.

- Conduct all interviews in a private setting/room. Parents may be present but are not legally required to be.
- Create written notes or audio record the interviews. Tell the persons being interviewed you are doing this.

II. Interview the alleged victim

Note: In circumstances where there is no identified victim, such as a threat to a specific building, the initial interview should be with the person who reported the incident.

- If the alleged victim wishes, allow a support person of his/her choice to be present during the interview.
- It may be appropriate, given the age of the child, or other circumstances, to interview parents, guardians, teachers, or other adults who can provide information regarding the alleged incident and its effect on the student.
- Explain the investigation process. Indicate that confidentiality will be maintained to the extent possible. Inform the alleged victim that:
 - The alleged perpetrator and any witnesses will also be interviewed;
 - A written report will be prepared;
 - The final determination regarding what action, if any, will be taken as specified in the district policy.
- Request the victim to write and sign a statement setting forth his or her version of the facts, and attach the statement to this report.

Conducting a Harassment, Intimidation, Bullying, or Threat Investigation – Page 2

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- Ask the alleged victim:
 - Why do you think you are here today? (Note: use the person's words.)
 - Who was involved?
 - How do you know them?
 - What happened?
 - What exactly did you (he/they) say?
 - Where did it happen (was it on school grounds)?
 - When did it happen?
 - How did you feel then?
 - Were you afraid?
 - What did you fear would happen?
 - Why do you think it happened?
 - How do you feel about it now?
 - Have the same/similar incidents occurred previously?
 - How many times has it happened?
 - What did you do when it happened?
 - Did you tell anyone about what happened? If yes, who?
 - Did anyone see or hear what happened?
 - Did the alleged victim provoke the alleged perpetrator?
 - Was there a prior relationship between the parties?

Conducting a Harassment, Intimidation, Bullying, or Threat Investigation – Page 3

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- Determine how the incident has affected the alleged victim by asking the following questions:
 - Why did the remarks/actions upset you?
 - What did you do in response to the remarks/actions?
 - Did the remarks/actions cause you to change the way you normally act?
 - Have you missed any school or school events because of the remarks/actions?
 - How has your school work been affected?
 - Have you made any changes to your participation at school or school events?
- Ask the alleged victim what he/she thinks should be done.
 - What can be done to help you feel better/safer?

Note: Try to determine if the alleged victim is telling the truth. Remember that the alleged victim may be scared, nervous, hurt, or embarrassed. These feelings can often result in unexpected and inappropriate reactions (i.e., laughing, getting angry, etc.). Lack of perceived credibility of the alleged victim is not grounds to abandon an investigation. The investigation policies and procedures must be followed.
 - Note the student's body language.
 - Does the student sound believable, or does his/her story sound made-up? (Why, why not?)
 - Does the student have reason to lie?
 - Does the student seem reluctant or refuse to relate specifics?
- Ask the alleged victim to immediately tell someone in authority if the alleged perpetrator or anyone else confronts him/her regarding the investigation.

Conducting a Harassment, Intimidation, Bullying, or Threat Investigation – Page 4

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- Instruct the alleged victim to keep everything regarding the interview confidential.
- Inform the alleged victim of any outside agency that can assist if the complaint is not resolved to the student's satisfaction.
- Keep notes of the interview process.

III. Interview the alleged perpetrator

- If the alleged perpetrator wishes, allow a support person of his/her choice to be present during the interview.
- Explain that allegations of harassment/intimidation/bullying/threats of violence have been made against the individual and that the purpose of the interview is to investigate the complaint. Tell the alleged perpetrator that:
 - The school takes allegations of harassment/intimidation/bullying/threats of violence seriously, and that harassment/intimidation/bullying/threats of violence are not tolerated.
 - Each complaint is fully investigated.
 - The interview will give the student a chance to tell his/her side of the story.
 - No decision has yet been made as to the truth of the allegations.
- Explain the investigation process. Indicate that confidentiality will be maintained to the extent possible. Inform the alleged victim that:
 - The alleged perpetrator and any witnesses will also be interviewed;
 - A written report will be prepared;
 - The final determination regarding what action, if any, will be taken as specified in the district policy.
- Identify the victim and provide the alleged perpetrator an opportunity to set forth whether he/she has had recent interactions with the alleged victim.
- Ask the alleged perpetrator the same questions asked of the alleged victim regarding the incident(s).

Conducting a Harassment, Intimidation, Bullying, or Threat Investigation – Page 5

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- Determine if the alleged perpetrator has any witnesses to back-up his/her statements.
- If the alleged perpetrator denies that the incident occurred, ask if he/she has had any contact with the alleged victim.
- Ask if the alleged perpetrator knows why the allegations would have been made against him/her.
- Ask the alleged perpetrator to write and sign a statement setting forth his/her version of the facts, and attach the statement to this report.
- Instruct the alleged perpetrator to keep everything regarding the interview confidential.
- Inform the alleged perpetrator that retaliation against the alleged victim or any of the witnesses is prohibited.
- Keep notes of the interview process.

Note: At this point, the investigator may now have enough information to determine those areas of agreement between the alleged victim's and alleged perpetrator's versions of the incident. If necessary, additional questions can be asked.

Note: If the investigator has reason to believe that a child under the age of 18 years has been abused, abandoned, or neglected, the investigator must cause a report to be made to law enforcement or Health & Welfare within 24 hours.

Note: If at any time you gained information that gives you reason to believe that any student or other person may be in danger from further threats or harassment, intimidation, or bullying, report your concerns immediately to administration with any recommendation for remedial actions. Idaho Code § 33-512.

Note: If at any time during the investigation you have gained information that gives you reason to believe that a crime or infraction has been committed, immediately report the information to administration and to law enforcement. Idaho Code § 18-705.

IV. Interview the witnesses

- If possible, do not reveal the identity of either the alleged victim or alleged perpetrator to the witness at the beginning of the interview but tell him/her the reason for the interview.

Conducting a Harassment, Intimidation, Bullying, or Threat Investigation – Page 6

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- Ask broad questions.
- If the witness does not offer information, ask if he/she saw or heard anything that the witness may feel was harassment/intimidation/bullying/threats of violence.
- Ask the witness for all information regarding the incident(s) he/she may have.
- Ask the witness how they know the information.
- Distinguish between firsthand and secondhand (hearsay) knowledge.
- Ask each witness to write and sign a statement setting forth his/her version of the facts, and attach the statement to this report.
- Instruct the witness to keep everything regarding the interview confidential.
- Inform the witness that retaliation against the alleged victim or any of the witnesses is prohibited, and could result in discipline.
- Keep notes of the interview process.

V. Evaluating the facts/making a decision

- Make the written report thorough, objective, and chronological.
 - Include when and how the investigator first learned of the incident.
 - Provide a summary of the complaint, and attach all written and signed statements.
 - List all board, district, and school policies, and all other pertinent school documents reviewed.
 - Give an overview of each relevant interview.
 - State the basis for person being reliable.
 - State the basis for person being credible.
 - When possible, distinguish between personal knowledge from hearsay.

Conducting a Harassment, Intimidation, Bullying, or Threat Investigation –Page 7

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- Set forth documentation and interview information that supports or negates the allegation.
- State a conclusion as to whether or not an incident occurred.
- Recommend corrective action, making sure that any disciplinary action recommended is supported by the findings.
- Submit report to administration.
- Respond to any questions.

VI. Actions by administration

- After a decision has been reached, follow-up with both the alleged victim and the alleged perpetrator.
- If disciplinary action will be taken against a student, document the action taken, and the due process provided to the student.
- Notify the victim of the outcome of the investigation to the extent possible. If disciplinary action is taken against another student, that is confidential information and cannot be revealed to the victim without prior written consent.
- Monitor the situation to be reasonably sure the incident does not resume or continue, and that retaliation does not occur.

VII. Possible corrective actions to be taken

Note: The following list of possible corrective actions is intended to provide suggestions; other corrective actions may be appropriate. Indicate all that are appropriate.

- Separate the victim and perpetrator. Make sure that the victim is not penalized for reporting.
- Oral or written warnings.
- Counseling.
- Suspension.

Conducting a Harassment, Intimidation, Bullying, or Threat Investigation – Page 8

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- Transfer.
- Expulsion.
- Referral to law enforcement.
- Referral to the Professional Standards Commission for actions involving certificated staff.

Conducting a Harassment, Intimidation, Bullying, or Threat Investigation –Page 9

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Record of Complaint Received

_____ **School District**

First Offense **Second Offense** **Other** _____

1. Allegations [verbal/written] made against:

Name: _____ **ID#:** _____

School: _____ **Grade:** _____ **Date:** _____

2. Allegation(s): (Use additional paper if necessary)

3. Complaint filed by:

Name: _____ **ID#:** _____

School: _____ **Grade:** _____ **Date:** _____

4. Complaint investigated by:

Name(s): _____

Title(s): _____

Record of Complaint Received – Page 1

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5. Results of Investigation: (Use additional paper if necessary)

6. Conclusions and Actions Taken: (Use additional paper if necessary)

Investigator Signature and Title

Date

Record of Complaint Received – Page 2

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SECTION IV

APPENDIX B

Policies/Procedures

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It is the policy of this district to maintain a learning environment that is free from harassment. Each student has the right to attend school in an atmosphere that promotes equal opportunities and that is free from all forms of discrimination and conduct that can be considered harassing, coercive, or disruptive.

Students attending district schools are:

1. Prohibited from engaging in any conduct which could reasonably be construed as constituting harassment on the basis of sex (including sexual orientation), race, color, national origin, age, religious beliefs, ethnic background, or disability;
2. Prohibited from sexually harassing other students; and
3. Required to report to the school principal or designee, harassment of which the student becomes aware.

This policy applies to all conduct on the district's premises and at school-sponsored events, conduct during transportation to and from school and school-sponsored events, and to conduct off the district's premises that has an adverse affect upon a student's educational environment.

DEFINITION OF HARASSMENT

Harassment is defined to include verbal, written, graphic, or physical conduct relating to an individual's sex or sexual orientation, race, color, national origin, age, religious beliefs, ethnic background, or disability that is sufficiently severe, pervasive, or persistent so as to interfere with or limit the ability of an individual to participate in or benefit from the district's programs that:

1. Has the purpose or effect of creating an intimidating or hostile environment.
2. Unreasonably interferes with an individual's educational performance.
3. Otherwise adversely affects an individual's educational opportunities.

Harassment includes, but is not limited to:

1. Physical acts of aggression or assault, damage to property, or intimidation and implied or overt threats of violence motivated by the victim's sex or sexual orientation, race, color, national origin, age, religious beliefs, ethnic background, or disability;
2. Demeaning jokes, taunting, slurs, and derogatory "nicknames," innuendos, or other negative remarks relating to the victim's sex or sexual orientation, race, color, national origin, age, religious beliefs, ethnic background, or disability;

3. Graffiti and/or slogans or visual displays such as cartoons or posters depicting slurs or derogatory sentiments related to the victim’s sex or sexual orientation, race, color, national origin, age, religious beliefs, ethnic background, or disability; and
4. Criminal offenses directed at persons because of their sex or sexual orientation, race, color, national origin, age, religious beliefs, ethnic background, or disability;

Harassment also includes an act of retaliation taken against (1) any person bringing a complaint of harassment, (2) any person assisting another person in bringing a complaint of harassment, or (3) any person participating in an investigation of an act of harassment.

DEFINITION OF SEXUAL HARASSMENT

Sexual harassment is a form of misconduct that undermines the student’s relationship with educators and with other students. No student, male or female, should be subject to unasked for and unwelcome sexual overtures or conduct, either verbal or physical. Sexual harassment refers to sexual overtures or conduct, including those that relate to the student’s sexual orientation, that is unwelcome, personally offensive, and affecting morale, thereby interfering with a student’s ability to study or participate in school activities.

Sexual harassment is a form of misconduct that includes unwelcome sexual advances, requests for sexual favors, sexually motivated physical conduct, or other verbal or physical conduct of a sexual nature when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s participation in the educational process;
2. Submission to or rejection of such conduct by an individual is used as a factor for educational decisions affecting the individual; or
3. Such conduct has the purpose or effect of unreasonably interfering with an individual’s education, or creating an intimidating, hostile, or offensive educational environment.

Examples of sexual harassment include, but are not limited to, the following:

1. Unwelcome verbal statements of a sexual or abusive nature, including requests or demands for sexual activity, sexual jokes, and obscene comments, etc.;
2. Unwelcome, sexually motivated or inappropriate touching, pinching, or other physical contact;
3. Unwelcome sexual behavior or communications, accompanied by implied or overt threats concerning an individual’s education;
4. Unwelcome behavior or communications directed at an individual because of his/her gender; and

5. Stalking or unwelcome, sexually motivated attention.

REPORTING PROCEDURES

1. Any student, and/or parents of a student, who believe the student is being harassed should immediately report the situation to school personnel.
2. Any district employee who receives a report of harassment from a student, becomes aware that a student is being subjected to harassment, or in good faith believes that a student is being subjected to harassment, is required to report the matter to the building principal immediately. In the event the complaint involves the principal, the matter must be immediately reported to the superintendent.
3. Any district employee who witnesses harassment of a student should take immediate, appropriate action to intervene to stop the harassment.
4. Any student who becomes aware that a fellow student is being subjected to harassment should immediately report the incident to a counselor, teacher, or the principal.

INVESTIGATION AND REPORT**[Option A—the board must choose either Option A or Option B.]**

When a report of harassment is received by the principal or the superintendent, immediate steps will be taken to follow the policy entitled “Civil Rights Grievance Procedure,” Policy No. (294).

[Option B—the board must choose either Option A or Option B.]

When a report of harassment is received by the principal or the superintendent, immediate steps will be taken to do the following:

1. Obtain a written statement from the complainant regarding the allegations;
2. Obtain a written statement from the accused;
3. Obtain written statements from witnesses, if any; and
4. Prepare a written report detailing the investigation.

An investigator may be appointed to conduct the investigation or the principal or superintendent may conduct the investigation. The investigation should be completed within ten (10) workdays.

DISCIPLINARY ACTION

If the allegation of harassment involves a teacher or other school employee, the principal will submit the report of the investigation to the superintendent. If there is sufficient evidence to support the allegation, disciplinary action, up to and including dismissal, may be taken against the offender.

If the allegation of harassment is against a student and there is sufficient evidence to support the allegation, disciplinary action, up to and including suspension or expulsion, may be taken against the offender.

If there is insufficient evidence to support the allegation, no record will be made of the allegation in the complaining student's permanent record. No record of the allegation will be placed in the accused employee's personnel record or in an accused student's permanent record if insufficient evidence supports the allegation.

In the event the investigation discloses that the complaining student has falsely accused another individual of harassment knowingly or in a malicious manner, the complaining student may be subject to disciplinary action, up to and including expulsion.

In the event the harassment involves violent or other conduct which could be reasonably considered to be criminal in nature, the principal/superintendent will refer the matter to the local law enforcement agency.

PROTECTION AGAINST RETALIATION

No retaliation will be taken by this district or by any of its employees or students against a student who reports harassment in good faith. Any person found to have retaliated against another individual for reporting an incident of harassment may be subject to the same disciplinary action provided for harassment offenders. Those persons who assist or participate in an investigation of harassment are also protected from retaliation under this policy.

CONFIDENTIALITY

Any investigation will be conducted, to the maximum extent possible, in a manner that protects the privacy of both the complainant and the accused. However, if it is suspected that child abuse has occurred, such abuse will be reported to the proper authorities as required by state law.

RECORD OF ALLEGATIONS

This district will keep and maintain a written record, including, but not limited to, witness statements, investigative reports, and correspondence, from the date any allegation of harassment is reported to district personnel. The information in the written record will also include the action taken by the district in response to each allegation. The written record will be kept in the district's administrative offices and will not, at any time, be purged by district personnel.



LEGAL REFERENCE:

Idaho Code Sections

16-1619

18-917A

33-205

33-512(6)

Title IX of the Education Amendments of 1972

Franklin v. Gwinnett Co. Pubic Schools, 112 S. Ct. 1028 (1992)

Gebser v. Lago Vista Independent School District, 118 S. Ct. 1989 (1998)

Davis v. Monroe County Board of Education, 119 S. Ct. 1661 (1999)

Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties (U.S. Dept. of Education Office of Civil Rights, January 2001)

ADOPTED:

AMENDED:

**Language in text set forth in italics is optional.*

It is the policy of this district to maintain a safe school environment for all students while attending school, riding the school bus, and attending district-sponsored activities on school premises or at other locations. Harassment, intimidation, and/or bullying, regardless of the specific nature of the students' behavior, is disruptive to a safe school environment and will not be tolerated. This district shall observe the week of September 10 through September 16, 2006, as Bullying Awareness Week.

DEFINITION

Harassment, intimidation, and/or bullying is defined as misconduct by a student(s), which is characterized by the aggressor(s) repeatedly engaging in negative actions against another student(s) in an attempt to exercise control over the victim. Harassment, intimidation, and/or bullying is generally characterized by aggressive or intentionally harmful behavior, which is carried out repeatedly over time.

PROHIBITED BEHAVIOR

Students attending district schools are prohibited from engaging in the following behaviors:

1. Physical abuse against a student, including, but not limited to, hitting, pushing, tripping, kicking, blocking, or restraining another's movement; sexual misconduct; causing damage to another's clothing or possessions; and taking another's belongings.
2. Verbal abuse against a student, including, but not limited to, name calling, threatening, sexual misconduct, taunting, and malicious teasing.
3. Psychological abuse against a student, including, but not limited to, spreading harmful or inappropriate rumors regarding another, drawing inappropriate pictures or writing inappropriate statements regarding another, and intentionally excluding another from groups, or similar activities.
4. Harassment, intimidation, and/or bullying, including any intentional gesture or any intentional written, verbal, or physical acts or threats, against another student that:
 - a. A reasonable person under the circumstances should know will have the effect of:
 - (1) Harming a student; or
 - (2) Damaging a student's property; or
 - (3) Placing a student in reasonable fear of harm to his or her person; or
 - (4) Placing a student in reasonable fear of damage to his or her property; or

- b. Is sufficiently severe, persistent, or pervasive that it creates an intimidating, threatening, or abusive educational environment for a student.

The prohibition extends not only to actions taking place on school grounds but also actions originating at a remote location and carried out via any technology, including, but not limited to, the use of a landline, car phone, or wireless telephone, or through the use of data or computer software that is accessed through a computer, computer system, or computer network.

INVESTIGATION

The school administrator or designee will investigate any allegations of misconduct that are reasonably characterized as harassment, intimidation, or bullying. At the discretion of the school principal and/or superintendent, the alleged perpetrator(s) may be suspended pending the outcome of the investigation.

DISCIPLINARY ACTION

Students who engage in harassment, intimidation, or bullying will be disciplined as determined to be appropriate, up to and including suspension and/or expulsion.

REPORT TO LAW ENFORCEMENT

The school administrator will refer allegations of bullying to law enforcement if he/she reasonably believes that the student has engaged in conduct, including harassment, intimidation, and/or bullying, in violation of Idaho Code Section 18-917A.



LEGAL REFERENCE:

Idaho Code Sections
18-917A
33-512

ADOPTED:

AMENDED:

**Language in text set forth in italics is optional.*

This district is committed to providing a safe environment for all students and staff when they are at school, on a school bus, or at any school-sponsored activity. The district's commitment includes the prohibition against any weapons or other objects/substances which may pose a threat to the health and safety of other students, staff members, or visitors, or could be used to disrupt the educational process.

PROHIBITIONS

Students attending district schools are prohibited from:

1. Possessing or carrying objects/substances which are manufactured, used, or intended for use as a weapon, or facsimiles thereof, at school, on a school bus, or at any school-sponsored activity without prior permission of school officials.
2. Possessing, carrying, using, and/or threatening to use, any normally non-dangerous object or substance with the intent or result of causing harm to another individual at school, on a school bus, or at any school-sponsored activity.
3. Knowingly assisting another student(s) to possess, carry, or use a weapon at school, on a school bus, or at any school-sponsored activity.

DEFINITIONS

“Possess” is defined as bringing an object, or causing it to be brought, onto the property of a school, or onto a vehicle being used for school-provided transportation, or exercising dominion and control over an object located anywhere on such property or vehicle. A student will be determined to possess a weapon when the item is found to be in any of the following locations:

1. On a student's person;
2. In the student's personal property, including, but not limited to, the student's clothing, backpack, purse, or any other item the student transports or carries and/or causes to be transported or carried to school;
3. A vehicle parked in the school parking lot which the student drives and/or is transported in;
4. The student's locker; or
5. Any other school-related or school-sponsored event, regardless of location.

“Deadly or dangerous weapon” means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2½ inches in length as defined in 18 U.S.C. Section 930. “Weapon” additionally includes a knife with a blade of any length.

“Firearm” shall mean any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; the frame receiver of any such weapon; any firearm muffle or firearm silencer; any destructive device, including any explosive, incendiary or poisonous gas, bomb, grenade, or rocket, missile, mine, or similar device, as defined in 18 U.S.C. Section 921, and air rifles or other weapons that propel a projectile with air, or pellet guns, or paint ball guns. Antique firearms are specifically excluded.

INVESTIGATION

The superintendent or designee will immediately investigate any allegation that a student is in violation of this policy. If determined necessary by the superintendent or designee, law enforcement may be requested to conduct the investigation. Any item identified as a weapon may be confiscated by the superintendent or designee. Students reasonably believed to be in possession of these items may be suspended from school until a thorough investigation is completed.

DISCIPLINARY ACTIONS

Any student found to be in violation of this policy will be subject to disciplinary action, including, but not limited to, expulsion, suspension, or other appropriate penalties. The board may, at its discretion, expel a student for the possession and/or use of a weapon, regardless of whether the item at issue falls within the definition of “weapon” under the Gun-Free Schools Act. Disciplinary action will be taken after reviewing all factors, including, but not limited to, the mandates of federal and state law; the student’s actions; the risk of harm to the students, district personnel, and patrons; the student’s academic standing; the likelihood of recurring violation; and the student’s prior conduct.

Expulsion Mandated by Federal Law

The board of trustees shall expel a student when the student’s actions violate federal law, as set forth in the Gun-Free Schools Act and Idaho law, regarding the prohibition of weapons:

Gun-Free Schools Act. A student is found by district personnel or by law enforcement personnel to have carried a dangerous weapon as defined by 18 U. S. C. Section 921 on school property. The definition of weapon, for purposes of expulsion under this provision, includes a firearm or destructive device which is designed to or may be readily converted to expel a projectile by the action of an explosive or other propellant. Destructive devices such as any explosive, incendiary, or poisonous gas, bomb, or grenade are also defined as firearms. Specifically excluded from the definition of “weapons” pursuant to the Gun-Free Schools Act, and therefore not subject to mandatory expulsion, are the following:

1. Antique firearms and rifles which the owner intends to use solely for sporting, recreational, or cultural purposes;
2. Firearms that are lawfully stored inside a locked vehicle on school property; and
3. Weapons which are used in activities, approved and authorized by the superintendent or designee, when appropriate safeguards are adopted to ensure student safety.

The expulsion, pursuant to the Gun-Free Schools Act, will be for a period of not less than one (1) year (twelve (12) calendar months). The board may modify the expulsion order on a case-by-case basis, *taking into account the individual circumstances and the severity of the incident.*

Referral to Law Enforcement

The district will refer any student who brings onto school property a weapon or firearm, as defined under the Gun-Free Schools Act or Idaho law, to law enforcement.

The board may, at its discretion, refer other students who violate this policy to law enforcement.

STUDENTS WITH DISABILITIES

Disciplining students with disabilities, as defined by Public Law 94-142 and subsequent amendments, and Section 504 of the 1973 Rehabilitation Act, under this policy will follow federal guidelines.

DENIAL OF ENROLLMENT

This district will not admit a student who has been expelled from another school district for violation of a statute, regulation, or policy which prohibits weapons until the student is eligible to return to his or her home school district. If a student wishes to challenge that decision, he or she is entitled to a due process hearing pursuant to Idaho Code Section 33-205.



LEGAL REFERENCE:

Idaho Code Sections

33-205

18-3302D

18 USC 921

18 USC 930

Elementary and Secondary Education Act, Section 4141 (2001)

ADOPTED:

AMENDED:

**Language in text set forth in italics is optional.*

Note: The district has the right to determine what items constitute a weapon. The definitions of “deadly or dangerous weapon” and “firearm” are the definitions referenced in Idaho Code § 18-3302D, which is the state statute governing carrying weapons or firearms on school property. Districts may add other items to its definition of “weapon” to address local concerns.

Expulsion is currently only mandated (to be modified on a case-by-case basis) in those instances where a weapon, as defined by the Gun-Free Schools Act, is involved. If the board modifies the expulsion in a specific instance, it has the right to impose alternative disciplinary measures.

The superintendent of this district or the principal of any school within this district may temporarily suspend any student for the following reasons:

1. Disciplinary reasons, including student harassment, intimidation, or bullying, or for any other conduct disruptive of good order or of the instructional effectiveness of the school.
2. Failure of the parent/guardian to furnish, or to request of a previous administration, out-of-state records for a student transferring into this district. The parent/guardian of a student transferring from out-of-state to a school in this district is required, if requested, to furnish the district accurate copies of the student's school records, including records containing information concerning violent or disruptive behavior, *student harassment, intimidation, or bullying*, or disciplinary action involving the student.

The temporary suspension by the principal will not exceed five (5) school days in length. The superintendent may extend the temporary suspension an additional ten (10) school days. If the board finds that immediate return to school attendance by the temporarily suspended student would be detrimental to other students' health, welfare, or safety, the board may extend the temporary suspension for an additional five (5) school days.

Prior to suspending any student, the superintendent or principal will grant an informal hearing on the reasons for the suspension and the opportunity to challenge those reasons. Any student who has been suspended may be readmitted to the school by the superintendent or the principal who suspended him or her upon such reasonable conditions as the superintendent or principal may prescribe. The board will be notified of any temporary suspensions, the reasons therefore, and the response, if any, thereto.

Suspension of students with disabilities as defined by Public Law 94-142, and subsequent amendments, and Section 504 of the 1973 Rehabilitation Act, will follow federal guidelines and the provisions of this policy.



LEGAL REFERENCE:

Idaho Code Sections

18-917A

33-205

33-209

33-512(6)

Goss v. Lopez, 419 U.S. 565 (1975)

Honig v. Doe, 108 S. Ct. 592 (1988)

ADOPTED:

AMENDED:

**Language in text set forth in italics is optional.*

The board may deny a student enrollment, or may deny a student attendance at any of its schools by expulsion, for the following reasons:

1. The student is a habitual truant, is incorrigible, or whose conduct, in the judgment of the board, is such as to be continually disruptive of school discipline or of the instructional effectiveness of the school, or whose presence in a public school is detrimental to the health and safety of other students.
2. The student has been expelled from another school district in this state or any other state.
3. The parent/guardian fails to furnish, or to request of the out-of-state school from which the student is transferring, school records for a student transferring into this district. The parent/guardian of a student transferring from out-of-state to a school in this district is required, if requested, to furnish the district accurate copies of the student's school records, including records containing information concerning violent or disruptive behavior or disciplinary action involving the student.

Any student having been denied enrollment or expelled may be enrolled or readmitted to school by the board upon such reasonable conditions as may be prescribed by the board; but such enrollment or readmission will not prevent the board from subsequently expelling such student for cause.

The board will expel from school for a period of not less than one (1) year, twelve (12) calendar months, or may deny enrollment to, a student who has been found to have carried a weapon or firearm on school property in this state or any other state, except that the board may modify the expulsion or denial of enrollment order on a case-by-case basis. An authorized representative of the board will report such student and incident to the appropriate law enforcement agency.

Discipline of a student with disabilities will be in accordance with the requirements of federal law Part B of the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act (Section 504) as well as the provisions of this policy.

No student will be expelled or denied enrollment without first receiving the following due process rights:

1. The board, through the superintendent or his or her designee, will give written notice to the parent/guardian of the student;

2. The notice will state the grounds for the proposed expulsion or denial of enrollment and the time and place where such parent/guardian may appear to contest the action of the board to deny school attendance;
3. The notice will also state the right of the student to be represented by counsel, to produce witnesses, and submit evidence on his or her own behalf, and to cross-examine any adult witnesses who may appear against him or her.
4. Within a reasonable period of time following such notification, the board will grant the student and his or her parent/guardian a full and fair hearing on the proposed expulsion or denial of enrollment.
5. The board will allow a reasonable period of time between such notification and the holding of such hearing to allow the student and the parent/guardian to prepare their response to the charge.
6. Any student who is within the age of compulsory attendance, who is expelled or denied enrollment as herein provided, will come under the purview of the Juvenile Corrections Act, and an authorized representative of the board will provide, within five (5) days, written notice of the expulsion to the prosecuting attorney of the county of the student’s residence in such form as the court may require under the provisions of the Juvenile Corrections Act.



LEGAL REFERENCE:

Idaho Code Sections
33-205
33-209
20-527

ADOPTED:

AMENDED:

All procedures set forth in the “Student Suspension” policy and the “Student Expulsion” policy will be followed when it is necessary to discipline students with disabilities as defined by the Individuals with Disabilities Education Act (IDEA). The following additional procedures will also be adhered to when disciplining students with disabilities.

DISCIPLINARY ACTIONS

Ten-day disciplinary removal

School personnel may order a disciplinary removal of a student with disabilities for not more than ten (10) consecutive school days per infraction to the extent suspension would apply to students without disabilities. Cumulative suspensions, if over ten (10) school days in a school year must not constitute a significant change in placement.

In determining whether a significant change in placement has occurred, school personnel will review whether the student is subjected to a series of removals that constitute a pattern of exclusion because they cumulate to more than ten (10) school days in a school year, and because the length of each removal, the total amount of time the child is removed, and the proximity of the removals to one another indicate such a pattern of exclusion.

Any time a student is suspended for more than ten (10) school days in a school year the student will be provided services to the extent necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out on his or her IEP, although in another setting, as determined by school personnel, in consultation with at least one of the student’s teachers.

Forty-five school day disciplinary removal

1. The Superintendent or designee may order a change in placement of a student with a disability to an appropriate interim alternative educational setting, as determined by the IEP Team. The placement change may occur regardless of whether the behavior is a manifestation of the student’s disability, and may occur for the same amount of time that a student without a disability would be subject to discipline, but for not more than forty-five (45) school days if:
 - a. The student carries or possesses a weapon to or at school, on school premises, or to or at a school function. “Weapon” for the purposes of this policy is defined as any weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury. This term does not include a pocket knife with a blade of less than two and one-half (2½) inches in length.

- b. The student knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function.
 - c. The student has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function. “Serious bodily injury” for the purposes of this policy is defined as a showing of substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of function of a bodily member, organ, or mental faculty.
2. School personnel may request a change in placement to an appropriate interim alternative educational setting from a hearing officer for not more than forty-five (45) school days if it is determined by personnel that a student with a disability is substantially likely to cause injury to himself or herself, or to others in the current educational placement.
 3. School personnel may petition the court for an injunction to remove any student with a disability from school or to change the student’s current educational placement if personnel believe that maintaining the student in the current educational placement is substantially likely to result in injury to the student or to others.

FUNCTIONAL BEHAVIORAL ASSESSMENT/BEHAVIORAL INTERVENTION PLAN

If a student with a disability is removed from his/her current placement to an appropriate interim alternative educational setting for not more than forty-five school days (irrespective of whether the behavior is determined to be a manifestation of the student’s disability) or if school personnel seek to order a change in placement that would exceed ten (10) school days for behavioral violations, and it has been determined that the misbehavior is not a manifestation of the student’s disability, the student shall receive, as appropriate, a functional behavioral assessment, behavioral intervention services, and modifications that are designed to address the behavioral violation so that it does not recur.

Within ten (10) school days of any decision to change the placement of a student with a disability because of a violation of a code of student conduct, a manifestation determination shall be conducted. In the event it is determined that the student’s conduct was a manifestation of his/her disability, the IEP team shall:

1. Conduct a functional behavioral assessment and implement a behavioral intervention plan for the student, provided such an assessment has not been conducted prior to the manifestation determination; or
2. In the situation where a behavioral intervention plan has been developed, review the plan and modify it, as necessary, to address the behavior; and
3. Return the student to the placement from which the student was removed, unless the student has been placed in an appropriate interim alternative educational setting, or the parent and the district agree to a change of placement as part of the modification of the behavioral intervention plan.

MANIFEST DETERMINATION

Within ten (10) school days of any decision to change the placement of a student with a disability because of a violation of a code of student conduct, the district, the parent, and relevant members of the IEP Team will conduct a manifestation determination. A decision to change the placement of a student for disciplinary reasons may include expulsion in the event the student’s behavior is not found to be a manifestation of his/her disability.

EXPULSION

If a student on an Individualized Education Program (IEP) is expelled from school after a manifestation determination has found that the student’s behavior was not a manifestation of the student’s disability, educational services, consisting of services necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student’s IEP, will be provided to that student at an alternative setting.



LEGAL REFERENCE:

- IDEA Amendments of 2004
 - 20 U.S.C. Chapter 33, Section 1415(k)
 - 34 C.F.R. Part 300
- Honig v. Doe*, 484 U.S. 686, 108 S. Ct. 592 (1988)
- IDAPA 08.02.03.600
- Idaho Special Education Manual, September 2001

ADOPTED:

AMENDED:

**Language in text set forth in italics is optional.*

This policy addresses disciplining students with disabilities, as defined by Section 504 of the 1973 Rehabilitation Act. For those students with disabilities under the Individuals with Disabilities Education Act (IDEA), the disciplinary procedures required by the IDEA will be followed. In the event a student has disabilities under both Section 504 and the IDEA, both policies shall be followed in determining appropriate disciplinary actions.

SUSPENSION

A student with a disability, as defined by Section 504 of the 1973 Rehabilitation Act, may be suspended for not more than ten (10) consecutive school days per incident.

Whenever a school considers suspending a student with a disability for more than ten (10) cumulative school days in a school year, a *Multi-Disciplinary Team (MDT)* will be convened to determine if the cumulative suspensions constitute a significant change in placement by reviewing the following factors:

1. The length of each suspension;
2. The proximity of the suspension to one another; and
3. The total amount of time the student is excluded from school.

The *MDT* will consist of individuals who are knowledgeable about the student, the student's school history, the student's individual needs, the evaluation data, and the placement options.

If the *MDT* determines that the exclusion would constitute a significant change in placement, the school will conduct a manifestation determination as set forth below.

EXPULSION

Prior to submitting an expulsion recommendation to the board of trustees for any student with a disability as defined by Section 504 of the 1973 Rehabilitation Act, an *MDT* will make a "manifestation determination." A manifestation determination involves a review of the student's misconduct, the student's disability and the services provided to determine:

1. Is the misconduct a manifestation, or result, of an inappropriate placement or educational program for the student?
2. Is the misconduct a manifestation, or result, of the student's disability?

In reviewing the questions set forth above, the *MDT* will review information regarding the student’s disability that is recent enough to afford an understanding of the student’s current behavior. In the absence of reasonably current information about the student’s disability, the school district will conduct or cause to be conducted additional evaluation(s) regarding the student’s disability before making the manifestation determination. If either manifest determination question answer is “yes,” the student will not be expelled. However, the *MDT* may determine that a placement change is necessary for that student.

If the answers to both the questions set forth above are “no,” the school may proceed with the recommendation of expulsion to the board in the same manner as for similarly-situated students who do not have disabilities.

If the student’s parent/guardian disagree with the *MDT’s* determination of the manifestation determination, a hearing may be requested under this district’s Section 504 hearing procedure. Although the parent/guardian may disagree with the manifestation determination findings, the student may be expelled after following the proper procedures. Educational services may cease after expulsion.



LEGAL REFERENCE:

Section 504 of the 1973 Rehabilitation Act

29 U.S.C. Ch. 16 Sacs 706(8) and 794-794b

34 CFR Part 104

Idaho Code Section 33-205

Akron (OH) City School Distr., OCR Letter, 19 IDELR 542 (1992)

Discipline of Students with Disabilities in Elementary and Secondary Schools, OCR, October 1996

ADOPTED:

AMENDED:

**Language in text set forth in italics is optional.*

This district prohibits students from committing acts of violence against other students, district personnel, or other persons. Any assault or battery by a student on an employee of this district, another student, or other person, occurring on or near the school grounds or at a school sponsored event will result in the student being disciplined.

Further, any person, including a student, who, while on school grounds, willfully threatens, by word or act, to use a firearm or other deadly or dangerous weapon to do violence to any other person on school grounds will be referred to law enforcement for prosecution.

DEFINITIONS

“Assault” is defined as any willful attempt or threat to inflict injury upon another person, when coupled with an apparent present ability to do so, and any intentional display of force such as would give the individual reason to fear or expect immediate bodily harm. An assault may be committed without actually touching, or striking, or doing bodily harm to another person.

“Battery” is defined as the willful and unlawful use of force or violence, or the actual, intentional, and unlawful touching or striking against the will of another, or unlawfully and intentionally causing bodily harm.

“Deadly and dangerous weapon” means a weapon, device, instrument, material, or substance that is used for, or is readily capable of, causing death or serious bodily injury.

“Firearm” means any weapon, whether loaded or unloaded, from which a shot, projectile, or other object may be discharged by force of combustion, explosive, gas, and/or mechanical means, regardless of whether such weapon is operable.

“On school grounds” means in, or on the property of, a public or private elementary or secondary school or at an event sponsored by the district.



LEGAL REFERENCE:

Idaho Code Section 18-901, *et seq.*
BLACK’S LAW DICTIONARY 105 (5th ed. 1979)

ADOPTED:

AMENDED:

**Language in text set forth in italics is optional.*

This school district seeks to promote a safe environment where students may participate in a variety of extracurricular activities without compromising their health, safety, or welfare. Membership in groups and other organizations sponsored by this district is intended to provide students with athletic, social, intellectual, leadership, and service opportunities to complement the academic program. The educational purpose of sponsoring such organizations is compromised by hazing activities of any nature, as such activities are harmful to students. Students and staff are prohibited from engaging in any hazing activity, on or off school premises.

DEFINITION

Hazing is defined as any act by a person, whether individually or in concert with others, against a student as a condition of attaining membership, or any office or status, in connection with any district-sponsored group or organization, when such act is intended, or is reasonably expected to have the effect of *humiliating, embarrassing, intimidating, or demeaning a student, or endangering the mental or physical health of a student. Hazing also includes soliciting, directing, aiding, or otherwise participating actively or passively in such acts. Hazing occurs regardless of the consent or willingness of a student to participate in the activity.*

PROHIBITIONS

No student or staff member shall ever require, encourage, authorize or permit a student to be subjected to any of the following:

- Total or substantial nudity;
- Compelled ingestion of any substance;
- Wearing or carrying of any obscene or physically burdensome article;
- Physical assaults upon a student or offensive physical contact;
- Participation by a student in boxing matches, excessive number of calisthenics, or other physical contests;
- Transportation and abandonment;
- Confinement of a student to unreasonably small, unventilated, unsanitary, or unlighted areas;
- Sleep deprivation;
- Assignment of pranks to be performed by a student; or
- Any activity undertaken for the purpose of causing ridicule or humiliation of a student.

EXCEPTIONS

Hazing does not include customary athletic events or similar contests or competitions, and is limited to those actions taken and situations created in connection with initiation into or affiliation with any group or organization. Also, the definition of hazing does not include corporal punishment administered in accordance with this district’s policies.

REPORTING REQUIREMENTS

Preventing hazing is the responsibility of every student and staff member of this district. All staff members and students who become aware of hazing activities are required to immediately report such incidents to the building principal. The building principal, or designee, will investigate and determine whether hazing has occurred. If hazing has occurred, appropriate disciplinary action will be taken against the students and/or staff members involved. Additionally, any staff member or student who violates this policy will be referred to the local law enforcement agency for prosecution.



LEGAL REFERENCE:

Idaho Code § 18-917

ADOPTED:

AMENDED:

**Language in text set forth in italics is optional.*

It is the intent of the board of trustees of this district that the district take reasonable actions to provide a safe environment for all participants and spectators at school-sponsored events. While the board encourages students, parents, and patrons to take an interest in the district's educational programs, including extracurricular activities, and attend those events open to the public, the board has an obligation to maintain an atmosphere of respect, order, and professionalism on district premises and at school-sponsored events.

In addition, this district adopts the sportsmanship standards imposed by the Idaho High School Activities Association (IHSAA). Individuals attending events sponsored by the district and/or IHSAA are expected to demonstrate respect, order, and good sportsmanship.

PROHIBITION

Any conduct, including, but not limited to, verbal and/or physical assault of another individual, on district premises or at school-sponsored events that is determined by school officials to be disruptive to the educational process or detrimental to the morals, health, safety, academic learning, or discipline of students is prohibited.

Additionally, all persons, while on school grounds, are prohibited from willfully threatening, by word or act, to use a firearm or other deadly or dangerous weapon to do violence to any other person on school grounds. Such threats, if known to school personnel, will be immediately reported to law enforcement. For purposes of this policy, "school grounds" means any district-owned property or vehicle, or location where a school-sponsored event is occurring.

DENIAL OF ENTRY

The superintendent or designee has the authority to determine if an individual's conduct violates this policy. In the event such disruption or detrimental conduct is determined to have occurred or is occurring, the individual(s) causing the disruption will be notified in writing, or verbally, to immediately leave the district premises or school-sponsored event. The superintendent or designee may determine that such individuals will be denied entry to future school-sponsored events, upon giving notice to the individual.

In the event the individual(s) refuse to leave or, without permission or invitation, return and enter the district premises or school-sponsored event, it will be deemed to be trespassing and may be referred to law enforcement.

In the event a student or staff member causes the disruption or detrimental conduct, other appropriate disciplinary action may also be imposed.



LEGAL REFERENCE:

Idaho Code Sections

18-3302I

18-7008

33-512(11)

ADOPTED:

AMENDED:

**Language in text set forth in italics is optional.*

SECTION V

APPENDIX C

Idaho Statutes

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Idaho Statutes

TITLE 18 CRIMES AND PUNISHMENTS CHAPTER 9 ASSAULT AND BATTERY

18-901. ASSAULT DEFINED.

- (1) An assault is:
- (a) An unlawful attempt, coupled with apparent ability, to commit a violent injury on the person of another; or
 - (b) An intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent.

18-902. ASSAULT - PUNISHMENT. An assault is punishable by fine not exceeding one thousand dollars (\$1,000), or by imprisonment in the county jail not to exceed three (3) months, or by both such fine and imprisonment.

18-905. AGGRAVATED ASSAULT DEFINED.

- (1) An aggravated assault is an assault:
- (a) With a deadly weapon or instrument without intent to kill; or
 - (b) By any means or force likely to produce great bodily harm. [; or]
 - (c) With any vitriol, corrosive acid, or a caustic chemical of any kind.
 - (d) "Deadly weapon or instrument" as used in this chapter is defined to include any firearm, though unloaded or so defective that it can not be fired.

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Idaho Statutes

TITLE 18 CRIMES AND PUNISHMENTS CHAPTER 9 ASSAULT AND BATTERY

18-917A. STUDENT HARASSMENT -- INTIMIDATION -- BULLYING.

- (1) No student shall intentionally commit, or conspire to commit, an act of harassment, intimidation or bullying against another student.
- (2) As used in this section, "harassment, intimidation or bullying" means any intentional gesture, or any intentional written, verbal or physical act or threat by a student that:
 - (a) A reasonable person under the circumstances should know will have the effect of:
 - (i) Harming a student; or
 - (ii) Damaging a student's property; or
 - (iii) Placing a student in reasonable fear of harm to his or her person; or
 - (iv) Placing a student in reasonable fear of damage to his or her property; or
 - (b) Is sufficiently severe, persistent or pervasive that it creates an intimidating, threatening or abusive educational environment for a student.

An act of harassment, intimidation or bullying may also be committed through the use of a land line, car phone or wireless telephone or through the use of data or computer software that is accessed through a computer, computer system, or computer network.

- (3) A student who personally violates any provision of this section may be guilty of an infraction.

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Idaho Statutes

TITLE 18 CRIMES AND PUNISHMENTS CHAPTER 33 FIREARMS, EXPLOSIVES AND OTHER DEADLY WEAPONS

18-3301. DEADLY WEAPON -- POSSESSION WITH INTENT TO ASSAULT. Every person having upon him any deadly weapon with intent to assault another is guilty of a misdemeanor.

18-3302D. POSSESSING WEAPONS OR FIREARMS ON SCHOOL PROPERTY.

- (1)
 - (a) It shall be unlawful and is a misdemeanor for any person to possess a firearm or other deadly or dangerous weapon while on the property of a school or in those portions of any building, stadium or other structure on school grounds which, at the time of the violation, were being used for an activity sponsored by or through a school in this state or while riding school provided transportation.
 - (b) The provisions of this section regarding the possession of a firearm or other deadly or dangerous weapon on school property shall also apply to students of schools while attending or participating in any school sponsored activity, program or event regardless of location.
- (2) Definitions. As used in this section:
 - (a) "Deadly or dangerous weapon" means any weapon as defined in 18 U.S.C. section 930;
 - (b) "Firearm" means any firearm as defined in 18 U.S.C. section 921;
 - (c) "Minor" means a person under the age of eighteen (18) years;
 - (d) "Possess" means to bring an object, or to cause it to be brought, onto the property of a public or private elementary or secondary school, or onto a vehicle being used for school provided transportation, or to exercise dominion and control over an object located anywhere on such property or vehicle. For purposes of subsection (1)(b) of this section, "possess" shall also mean to bring an object onto the site of a school sponsored activity, program or event, regardless of location, or to exercise dominion and control over an object located anywhere on such a site;
 - (e) "School" means a private or public elementary or secondary school.
- (3) Right to search students or minors. For purposes of enforcing the provisions of this section, employees of a school district shall have the right to search all students or minors, including their belongings and lockers, that are reasonably believed to be in violation of the provisions of this section, or applicable school rule or district policy, regarding the possessing of a firearm or other deadly or dangerous weapon.
- (4) The provisions of this section shall not apply to the following persons:
 - (a) A peace officer;
 - (b) A person who lawfully possesses a firearm or deadly or dangerous weapon as an appropriate part of a program, an event, activity or other circumstance approved by the board of trustees or governing board;

Idaho Code 18-3302D Continued

- (c) A person or persons complying with the provisions of section 19-202A, Idaho Code;
- (d) Any adult over eighteen (18) years of age and not enrolled in a public or private elementary or secondary school who has lawful possession of a firearm or other deadly or dangerous weapon, secured and locked in his vehicle in an unobtrusive, nonthreatening manner;
- (e) A person who lawfully possesses a firearm or other deadly or dangerous weapon in a private vehicle while delivering minor children, students or school employees to and from school or a school activity;
- (f) Notwithstanding the provisions of section 18-3302C, Idaho Code, a person or an employee of the school or school district who is authorized to carry a firearm with the permission of the board of trustees of the school district or the governing board.

(5) Penalties. Persons who are found guilty of violating the provisions of this section may be sentenced to a jail term of not more than one (1) year or fined an amount not in excess of one thousand dollars (\$1,000) or both. If a violator is a student and under the age of eighteen (18) years, the court may place the violator on probation and suspend the juvenile detention or fine or both as long as the violator is enrolled in a program of study recognized by the court that, upon successful completion, will grant the violator a general equivalency diploma (GED) or a high school diploma or other educational program authorized by the court. Upon successful completion of the terms imposed by the court, the court shall discharge the offender from serving the remainder of the sentence. If the violator does not complete, is suspended from, or otherwise withdraws from the program of study imposed by the court, the court, upon receiving such information, shall order the violator to commence serving the sentence provided for in this section.

18-3302I. THREATENING VIOLENCE ON SCHOOL GROUNDS.

- (1) (a) Any person, including a student, who willfully threatens on school grounds by word or act to use a firearm or other deadly or dangerous weapon to do violence to any other person on school grounds is guilty of a misdemeanor.
 - (b) The threats prohibited by this section encompass only those statements or acts where the speaker or actor intends to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals. The prosecution is not required to prove that the defendant actually intended to carry out the threat.
- (2) Definitions. As used in this section:
 - (a) "Deadly or dangerous weapon" means a weapon, device, instrument, material or substance that is used for, or is readily capable of, causing death or serious bodily injury;
 - (b) "Firearm" means any weapon, whether loaded or unloaded, from which a shot, projectile or other object may be discharged by force of combustion, explosive, gas and/or mechanical means, regardless of whether such weapon is operable;
 - (c) "On school grounds" means in, or on the property of, a public or private elementary or secondary school.

Idaho Statutes

TITLE 18 CRIMES AND PUNISHMENTS CHAPTER 67 COMMUNICATIONS SECURITY

18-6710. USE OF TELEPHONE TO ANNOY, TERRIFY, THREATEN, INTIMIDATE, HARASS OR OFFEND BY LEWD OR PROFANE LANGUAGE, REQUESTS, SUGGESTIONS OR PROPOSALS --THREATS OF PHYSICAL HARM -- DISTURBING THE PEACE BY REPEATED CALLS --PENALTIES.

- (1) Every person who, with intent to annoy, terrify, threaten, intimidate, harass or offend, telephones another and
 - (a) addresses to or about such person any obscene, lewd or profane language, or makes any request, suggestion or proposal which is obscene, lewd, lascivious or indecent; or
 - (b) addresses to such other person any threat to inflict injury or physical harm to the person or property of the person addressed or any member of his family, or any other person; or
 - (c) by repeated anonymous or identified telephone calls whether or not conversation ensues, disturbs the peace or attempts to disturb the peace, quiet, or right of privacy of any person at the place where the telephone call or calls are received, is guilty of a misdemeanor and upon conviction thereof, shall be sentenced to a term of not to exceed one (1) year in the county jail. Upon a second or subsequent conviction, the defendant shall be guilty of a felony and shall be sentenced to a term of not to exceed five (5) years in the state penitentiary.
- (2) The use of obscene, lewd or profane language or the making of a threat or obscene proposal, or the making of repeated anonymous telephone calls as set forth in this section may be prima facie evidence of intent to annoy, terrify, threaten, intimidate, harass or offend.
- (3) For the purposes of this section, the term "telephone" shall mean any device which provides transmission of messages, signals, facsimiles, video images or other communication between persons who are physically separated from each other by means of telephone, telegraph, cable, wire or the projection of energy without physical connection.

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Federal law prohibits discrimination on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, or marital or family status in any educational programs or activities receiving federal financial assistance. (Title VI and VII of the Civil Rights Act of 1964; Title IX of the Educational Amendments of 1972; Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990.)

It is the policy of the State Department of Education not to discriminate in any educational programs or activities or in employment practices.

Inquiries regarding compliance with this nondiscriminatory policy may be directed to State Superintendent of Public Instruction, P.O. Box 83720, Boise, Idaho 83720-0027, (208) 332-6800, or to the Director, Office of Civil Rights, Seattle Office, U.S. Department of Education, 915 Second Avenue, Seattle WA 98174-1099, (206) 220-7880; FAX (206) 220-7887.



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