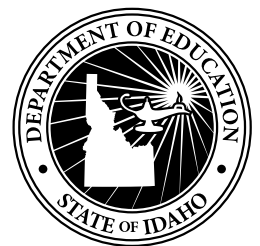




CODE OF ETHICS

VIOLENCE AND THREATS AT SCHOOLS



IDAHO DEPARTMENT OF EDUCATION
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FOREWORD

No school is immune from violence or the fear of violence. Problems occur in every type of school, in every part of the state. Although serious injuries are rare, some school employees are hurt each year, and others receive frightening threats from students or parents.

This Idaho Professional Standards Commission booklet offers practical information for crime victims and for school employees seeking to make schools safer. This booklet is not intended to provide complete information or legal advice on specific problems. We encourage employees to follow their school district policies for reporting any incidents involving violence.

Thank you to the Arizona Education Association for graciously sharing materials useful in preparing this booklet.

Professional Standards Commission
Executive (Ethics) Committee

AN EMPLOYEE RESPONSE TO VIOLENCE AT SCHOOL

A SCHOOL EMPLOYEE ASSAULTED OR SERIOUSLY THREATENED AT SCHOOL IS BOTH A CRIME VICTIM AND AN EMPLOYEE.

A school employee's response to violence will vary depending on the circumstances. When a second grader pokes his teacher with a pencil, the best response might be a phone call home and no recess. Perhaps after-school detention is appropriate when an older student makes a fist and mumbles a threat under his breath. More serious remedies are needed as violence and threats of violence escalate.

As a school employee, you can recommend specific student discipline. You also can request that communication from threatening parents be restricted or conducted under safe supervision at school. The school administration and governing board, however, may disagree with your recommendations, and they have the authority to make the final decisions on student discipline and school management.

As a victim of violence, you have legal remedies available that are not related to your job responsibilities. If a school employee is assaulted or seriously threatened during work, the employee should do the following:

- Immediately notify the school nurse and seek medical treatment for any injury.
- Immediately notify the supervisor, school resource officer, or school administration.
- Gather information by immediately recording all facts surrounding the incident, including the time and specific location. Often, a drawing is useful.
 - List all witnesses. Include addresses and phone numbers, if available.
 - Keep all physical evidence (notes, phone messages, etc.).
 - Take color photographs of any injury or damage as soon as possible.
- Ask the administration to document the incident. Obtain copies of any police and district reports. Submit your corrections or additions if the police or district reports are inaccurate.

- Wait for police permission to clean up a crime scene. You may destroy evidence inadvertently before tests and photographs are taken.
- Immediately record all facts surrounding the incident, including the time and specific location. Often, a drawing is useful.

The employee may also do the following:

- Report the incident to the local police. If the district refuses to contact the police, you may do so on your own time. If the county attorney prosecutes the case and the individual admits guilt or is found guilty, the defendant may face counseling, volunteer work, restitution, probation or loss of freedom. Even if there are no immediate consequences for the defendant, the police report may help demonstrate a pattern of misconduct if violence recurs. In some areas, a victim/witness program is available to provide information and other assistance.
- Seek an injunction against harassment or ask your employer to do so.
- Sue the person who committed the assault for damages due to physical injuries and harm to clothing, eyeglasses and other property. Sue the parents of a minor who committed an assault, up to \$10,000.
- Submit an insurance claim to the district for any property damaged during an assault.
- File a worker's compensation claim for any injuries.

Criminal Statutes That May Apply to Abuse or Violence Involving School Employees:

I.C. § 18-916. Abuse of school teachers

Every parent, guardian or other person who upbraids, insults or abuses any teacher of the public schools, in the presence and hearing of a pupil thereof, is guilty of a misdemeanor.

I.C. § 18-904. Assault defined

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.

I.C. § 18-905. Aggravated assault defined

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.

Self-Defense: When Is The Use of Physical Force Justified?

A person may use physical force only to the extent a reasonable person would believe that physical force is immediately necessary to protect himself or others. See, generally, I.C. §§ 19-201 through 19-203. Physical force is not justified in response to verbal provocation alone. Physical force is not justified when the person who provoked the incident withdraws or clearly communicates an intent to withdraw.

On rare occasions, a school employee must use physical force to defend himself or to briefly restrain a student to prevent injury to the student or others. In most cases, the employee should use the minimum force necessary to prevent harm and immediately call for help. Unless a student faces immediate danger (such as a young student running into a busy street), the school employee should not use physical force to prevent a student from running away.

Ask your district to explain its policy on the use of physical force, restraints and touching students. Ask your district for special training if you work with severely disabled students or others who require frequent touching or restraints.

The following are Idaho statutes that provide guidance on the use of self-defense:

I.C. § 19-201. Lawful resistance

Lawful resistance to the commission of a public offense may be made:

1. By the party about to be injured.
2. By other parties.

I.C. § 19-202. Resistance by threatened party

Resistance sufficient to prevent the offense may be made by the party about to be injured:

1. To prevent an offense against his person, or his family or some member thereof.
2. To prevent an illegal attempt by force to take or injure property in his lawful possession.

I.C. § 19-202A. Legal jeopardy in cases of self-defense and defense of other threatened parties

No person in this state shall be placed in legal jeopardy of any kind whatsoever for protecting himself or his family by reasonable means necessary, or when coming to the aid of another whom he reasonably believes to be in imminent danger of or the victim of aggravated assault, robbery, rape, murder or other heinous crime.

I.C. § 19-203. Resistance by other parties

Any other person, in aid or defense of the person about to be injured, may make resistance sufficient to prevent the offense.

Removing Disruptive Students From Class

A student may be denied enrollment or attendance by the district board of trustees if the student is a habitual truant, incorrigible or whose conduct is continuously disruptive of school discipline, its instructional effectiveness or the health and safety of other pupils. I.C. § 33-205. The same statute permits a district superintendent or school principal to suspend temporarily any student for disciplinary reasons, to include student harassment, bullying or other disruptive behavior. Check with your school district and principal to determine the policy you are to follow when confronted with disruptive behavior in the classroom.

The Individuals with Disabilities Education Act (IDEA) is a federal law that requires some additional protections for special education students, especially for students facing discipline for misconduct related to their disabilities. IDEA does not prevent districts from imposing discipline on special education students, but may require additional procedures such as an IEP meeting or consideration of various alternatives before the district can change the student's placement.

Idaho law provides additional bases for dealing with abusive students:

I.C. § 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.

I.C. § 18-6409. Disturbing the peace

Every person who maliciously and willfully disturbs the peace or quiet of any neighborhood, family or person, by loud or unusual noise, or by tumultuous or offensive conduct, or by threatening, traducing, quarreling, challenging to fight or fighting, or fires any gun or pistol,

or uses any vulgar, profane or indecent language within the presence or hearing of children, in a loud and boisterous manner, is guilty of a misdemeanor.

Working to Make Your School Safer

There are a number of initial actions you can take to gain greater control over school violence.

- Encourage and establish school board policies that encourage a safe school environment for students and employees.
- Ensure a system of policies or strategies that when implemented provide effective disciplinary measures for violators.
- Establish school safety committees to consider a wide variety of safety and violence problems.
- Form coalitions with other organizations attempting to eradicate all forms of school violence.
- Remind students and staff not to joke about possible violence.
- Publicize the problem in news releases and brochures.
- Advocate the development and implementation of a multicultural/diversity curriculum in schools that encourages students to get along with one another.
- Provide multicultural training for all education employees.
- Advocate the development and implementation of conflict resolution programs for students and all education employees.
- Consider hiring security guards, having metal detectors, and adopting emergency code words and other safety measures.

Help for Employees Accused of Using Excessive Force

If you have been accused of using excessive or inappropriate force, take the accusation seriously.

Your statements to parents, supervisors, police and others may be used against you. You do not have to confess or explain anything to the police.

Think carefully before you speak to anyone. Silence is better than a lie, and your statements might be misinterpreted.

Ask for representation at any meeting to discuss the incident with your supervisors. Your district policy may or may not give you rights to representation during an investigation. If you are denied representation, ask to postpone the meeting for at least a day or two until you can consult with or set up representation.

Ask for sufficient time to carefully write any incident report and consult with your representative before submitting it.

Employees face a difficult decision when asked to respond to an employer's investigation that involves accusations of criminal conduct. The choices include the following:

- **Remain silent.** Silence is the best way to avoid making incriminating statements. Silence is especially important when the charges are serious and the police are involved. Unfortunately, your employer may perceive silence as guilt or an insubordinate refusal to cooperate.
- **Respond fully and immediately.** You might resolve a minor matter quickly if you are completely innocent. It is also likely, however, that you may make statements that will be used against you later at criminal or disciplinary proceedings.
- **Delay your response.** Request a postponement so that you can seek advice and provide a thoughtful response.

• **Control your response by making requests that will help you respond more carefully and thoughtfully.** Your requests may not be granted, depending upon your employer's policy. You may control your response by:

1. Asking for representation at all meetings.
2. Asking for details about the allegations before responding. Ask for written allegations.
3. Asking to give a written response (with review by your representative or attorney to assure brevity and positive statements).
4. Responding partially by giving a brief denial without details.
5. Responding with proof by attaching the names and statements of other witnesses.

It is especially important to contact your representative or attorney if your school threatens "adverse action" such as dismissal, non-renewal, or suspension without pay.

You should try to determine if the allegation is being treated as a criminal offense. The safest course is to assume that any allegation of excessive physical force will be treated as a criminal offense.

If the allegation is being treated as a criminal offense, you should contact a criminal defense attorney immediately. You may need a criminal defense attorney to help you decide whether to answer questions about the incident or whether to remain silent and invoke your Fifth Amendment privilege against self-incrimination.

This pamphlet is meant to be a general guide and is not intended to provide complete information or legal advice on specific problems. Changes in the law may modify the information provided. If you have legal questions, you should seek legal counsel.



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