



KATHLEEN E. BRODY
Legal Director
kbrody@acluaz.org

January 26, 2017

AMERICAN CIVIL
LIBERTIES UNION
FOUNDATION
OF ARIZONA

P.O. Box 17148
Phoenix, AZ 85011

Tel: 602-650-1854
Fax: 602-650-1376

<http://www.acluaz.org>

Kathy Senseman
President/Public Member
Arizona State Board for Charter Schools
P.O. Box 18328
Phoenix, AZ 85009

Re: Advisory on Bullying, Harassment, and Intimidation at Public Schools

Dear Ms. Senseman:

Enclosed is a copy of an advisory from the ACLU of Arizona, which our office recently sent to Arizona school district superintendents. Our goal in sending this advisory was to inform school districts, parents, students, and community members about the rights of children at school, and to provide resources to assist schools in taking appropriate measures to protect students' rights. We wanted to be sure that you also received a copy of the advisory and would appreciate it if the Arizona State Board for Charter Schools would disseminate the information in this letter further to the extent that you believe appropriate. Thank you in advance, and feel free to contact me at your convenience.

Sincerely,

Kathleen E. Brody
Legal Director

ALESSANDRA SOLER
EXECUTIVE DIRECTOR

ZENAIDO QUINTANA
PRESIDENT

KATHLEEN E. BRODY
Legal Director
kbrody@acluaz.org



AMERICAN CIVIL
LIBERTIES UNION
FOUNDATION
OF ARIZONA

P.O. Box 17148
Phoenix, AZ 85011

Tel: 602-650-1854
Fax: 602-650-1376

<http://www.acluaz.org>

January 23, 2017

To: Arizona Public School District Superintendents

Re: **Bullying, Harassment, and Intimidation at Public Schools**

Dear Superintendent:

The American Civil Liberties Union of Arizona (ACLU-AZ) is a non-profit, non-partisan organization dedicated to promoting, protecting, and preserving civil rights and civil liberties guaranteed to all Arizonans by the United States and Arizona Constitutions and other laws. Among these liberties is the right of students to a public school education free from unlawful bullying, harassment, and intimidation. We write today to offer support to schools, students, parents, and communities in the wake of numerous reports in recent months about discriminatory bullying and intimidation at public schools both locally and nationally.¹

Educators have a special duty to maintain a safe learning environment for all children regardless of their race, color, religion, sex, gender identity, sexual orientation, national origin, immigration status, or disability. Recent numerous incidents of bullying, harassment, and intimidation have created fear and anxiety among students who are or might be targets of such bullying, have increased tensions in school communities, and threaten schools' ability to maintain a safe learning environment. Therefore, school districts should take proactive steps to review their obligation to maintain a safe school environment for all students, educate staff and students about bullying prevention, and renew their commitment to preserving a positive learning environment through policies, programs, and practices that will prevent and counter harassment, intimidation, and bullying at Arizona schools.

¹ For instance, a recent report from the Southern Poverty Law Center cites a high school counselor who reported that a "group of white students held up a Confederate flag during the pledge of allegiance at a school-wide assembly." See After Election Day, The Trump Effect, The Impact of the 2016 Presidential Election on Our Nation's Schools, <http://www.tolerance.org/sites/default/files/general/After%20the%20Election%20Trump%20Effect%20Report.pdf>.

In an effort to assist schools in confronting these challenges, we are sending this advisory to all Arizona school district superintendents and other education leaders. Our goals in sending this advisory are to inform you, parents, students, and community members about the rights of children at school, to provide resources, and to ask that you take appropriate measures to protect your students' rights.

An important first step for school districts to address these concerns is for school officials to reiterate their firm commitment to inclusion and to create supportive environments for all children. By encouraging staff members to teach why harassment is wrong and that equality and respect are essential to a free society, schools may be able to help prevent harassment. Schools should not wait until bullying and harassment escalates to a point when it may be punished to address the possibility of negative inter-student conduct. There is no better way to avoid student harassment than to educate students about the harm of slurs and other harassing behavior. But when incidents do occur, quick intervention will promote student well-being by sending a clear message that such conduct is taken seriously and will not be tolerated. Furthermore, follow-up lessons about tolerance and respect in the aftermath of an incident of bullying or harassment will be more successful in preventing recurrence than sweeping the matter under a rug.²

Moreover, although we believe it is preferable for school administrators to address issues proactively, Arizona students are protected against harassment by state and federal law and may seek recourse through the courts and administrative agencies when their rights are violated.

Arizona law places explicit obligations on school districts to put in place and enforce policies that protect students from harassment. For instance, school district governing boards must “[p]rescribe and enforce policies and procedures to prohibit pupils from harassing, intimidating and bullying other pupils on school grounds, on school property, on school buses, at school bus stops, at school-sponsored events and activities and through the use of electronic technology or electronic communication on school computers, networks, forums and mailing lists.” A.R.S. § 15-341(A)(36). In addition, at the beginning of each year, schools must provide all students “with a written copy of the rights, protections and support services available” concerning bullying, harassment, and intimidation. A.R.S. § 15-341(A)(36)(c). Schools must also have procedures in place that allow students and parents to anonymously report incidents of bullying, harassment, and intimidation. A.R.S. § 15-341(A)(36)(a). In addition, all schools must also have a “process for the documentation of reported incidents of harassment, intimidation or bullying” and a “process for the investigation . . . of suspected incidents of harassment, intimidation or bullying, including procedures for notifying the alleged victim on completion and disposition of the investigation.” A.R.S. § 15-341(A)(36)(e)-(f).

Federal law also requires school districts to protect students against bullying. Under federal law, a district's indifference to repeated acts of bullying, harassment, and intimidation based on a student's race, color, religion, sex, gender identity, sexual orientation, national origin, immigration status, or disability may expose the district, district officials, and employees to

² Schools districts may want to explore the possibility of employing programs like those offered through the No Place for Hate initiative of the Ant-Defamation League: <http://arizona.adl.org/no-place-for-hate/>.

liability.³ School districts may violate federal civil rights statutes and the U.S. Department of Education's implementing regulations when peer harassment based on race, color, national origin, sex, or disability is sufficiently serious that it creates a hostile environment and such harassment is encouraged, tolerated, not adequately addressed, or ignored by school employees. 34 C.F.R. parts 100, 104, and 106.

These laws require school employees to take action when students are harassed. Federal courts have held that school officials can be held liable for failing to protect students from bullying and harassment. *See, e.g., Nabozny v. Podlesny*, 92 F.3d 446, 458 (7th Cir. 1996); *Flores v. Morgan Hill Unified Sch. Dist.*, 324 F.3d 1130, 1134-35 (9th Cir. 2003). School officials must take claims of harassment seriously and fully and effectively resolve them. *See Flores* at 1135-36 ("Failure to take any further steps once he knew his remedial measures were inadequate supports a finding of deliberate indifference."). In addition, school districts and their staff are prohibited from retaliating against or taking adverse action against students who have exercised their right to file a complaint about bullying, harassment, or intimidation. *Doe v. Los Angeles Unified Sch. Dist.*, No. 216CV00305CASJEMX, 2016 WL 4238636, at *6-7 (C.D. Cal. Aug. 8, 2016).

The U.S. Department of Education's Office for Civil Rights has provided guidance to help school districts and educators develop practices and procedures to prevent, recognize, and address cases of bullying, harassment, and intimidation. This guidance is available online and includes:

- U.S. Dept. of Education, Office for Civil Rights October 21, 2014 Dear Colleague Letter concerning harassment based on disability:
<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-bullying-201410.pdf>
- U.S. Dept. of Education, Office for Civil Rights August 20, 2013 Dear Colleague Letter and enclosure on "Effective Evidence-Based Practices for Preventing and Addressing Bullying": <http://www.ed.gov/policy/speced/guid/idea/memosdcltrs/bullyingdcl-8-20-13.doc>
<http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/bullyingdcl-enclosure-8-20-13.pdf>
- U.S. Dept. of Education, Office for Civil Rights October 26, 2010 Dear Colleague Letter concerning harassment based on race, color, national origin, gender, sex, or disability:
<http://www.ed.gov/ocr/letters/colleague-201010.pdf>
- U.S. Dept. of Education, Office for Civil Rights July 25, 2000 Dear Colleague Letter concerning prohibited disability harassment:
<http://www2.ed.gov/about/offices/list/ocr/docs/disabharassltr.html>

³ Some of the most important civil rights laws related to student harassment and bullying include Titles IV and VI of the Civil Rights Act of 1964, Title IX of the Education Amendments Act of 1972, Section 504 of the Rehabilitation Act of 1973, Titles II and II of the Americans with Disabilities Act (ADA), and the Individuals with Disabilities Education Act (IDEA).

The Arizona Department of Education also has resources on its website for educators concerning how to prevent cyberbullying, how to create social media guidelines for schools, and how to adopt a “protective school model” to prevent and address bullying.⁴ In addition, a number of Arizona school districts have been proactive in passing anti-hate resolutions. Districts should also provide ongoing professional development to build staff members’ skills in preventing, identifying, and responding to harassment, intimidation, and bullying based on students’ race, color, religion, sex, gender identity, sexual orientation, national origin, immigration status, or disability.⁵

We hope you will use this opportunity to review your district’s obligations, policies, and practices around bullying, intimidation, and harassment, and use the resources referenced in this letter to reinforce your efforts to maintain a safe and healthy school climate. Please let us know if you believe we may assist you in this endeavor in any way.

Respectfully,



Alessandra Soler
Executive Director, ACLU of Arizona



Kathleen Brody
Legal Director, ACLU of Arizona

CC: Diane Douglas, Superintendent, Arizona Department of Education
Kathy Senseman, Arizona State Board for Charter Schools
Dr. Timothy L. Ogle, Arizona School Boards Association
Martin Quezada, Arizona Latino School Board Association
Dr. Mark Joraanstad, Arizona School Administrators
Eileen B. Sigmund, Arizona Charter Schools Association
Joe Thomas, Arizona Education Association

⁴ <http://www.azed.gov/prevention-programs/resources-for-bullying-prevention/>.

⁵ For instance, school districts may want to draw from the curriculum offered by Teaching Tolerance, a project of the Southern Poverty Law Center: <http://www.tolerance.org/>.