

What's Going On In The Back Of That Bus? Hazing and Bullying Revisited

2016 NMSBA School Law Conference

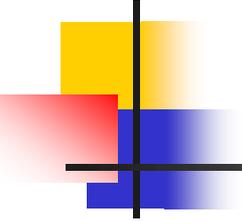
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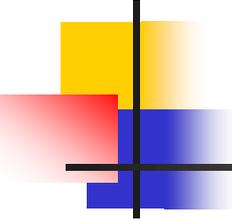
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PED's Standards of Professional Conduct – Duty to the Student

- “We endeavor to stimulate students to think and learn while at the same time we seek to protect them from any harm. To satisfy this obligation, we . . .
 - *shall not permit students within our control or responsibility to discriminate against any other student on the basis of race, color, national origin, ethnicity, sex, sexual orientation, disability, religion, or serious medical condition*



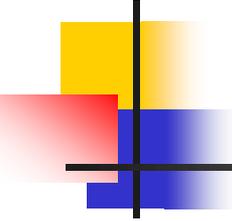
PED's Standards of Professional Conduct – Duty to the Student (cont'd)

- shall not interfere with a student's right to a public education by sexually harassing a student *or permitting students within our control, supervision or responsibility* to sexually harass any other student" 6.60.9.9(B)(2) and (8) NMAC (emphasis added).



PED's Standards of Professional Conduct – Duty to the Student (cont'd)

Thus, licensed New Mexico educators are *required* to manage the conduct of students within the educators' control, supervision, or responsibility, including during after-school activities and on out-of-town trips. Bullying, hazing, roughhousing, or any potentially dangerous behavior should not be permitted.

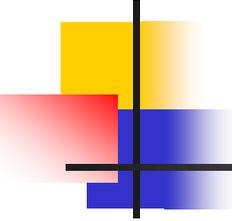


What is bullying?

NMAC 6.12.7.7 DEFINITIONS:

"Bullying" means any repeated and pervasive written, verbal or electronic expression, physical act or gesture, or a pattern thereof, that is intended to cause distress upon one or more students in the school, on school grounds, in school vehicles, at a designated bus stop, or at school activities or sanctioned events.

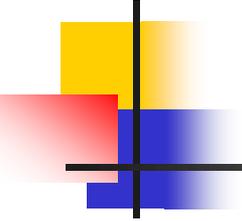
Bullying includes, but is not limited to, hazing, harassment, intimidation or menacing acts of a student which may, but need not be based on the student's race, color, sex, ethnicity, national origin, religion, disability, age or sexual orientation.



PED Requirements for Schools

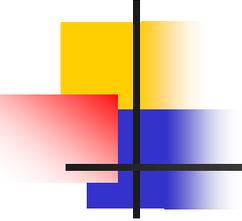
Since 2007, PED has required Districts to have an anti-bullying policy which includes, but is not limited to:

- (1) definitions;
- (2) an absolute prohibition against bullying;
- (3) a method to ensure initial and annual dissemination of the anti-bullying policy to all students, parents, teachers, administrators and all other school or district employees;
- (4) procedures for reporting incidents of bullying which ensure confidentiality to those reporting bullying incidents and protection from reprisal, retaliation or false accusation against victims, witnesses or others with information regarding a bullying incident;



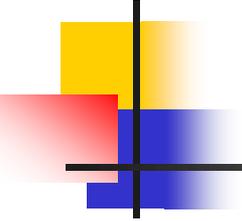
More PED Requirements

- (5) consequences for bullying which include consideration of compliance with state and federal IDEA requirements;
- (6) consequences for knowingly making false reports pursuant to the anti-bullying policy;
- (7) procedures for investigation by the administration of incidents reported pursuant to the anti-bullying policy;
- (8) a requirement that teachers and other school staff report any incidents of bullying; and
- (9) a requirement that anti-bullying is included as part of the health education curriculum as set forth in 6.30.2.19 NMAC ("content standards - health education").



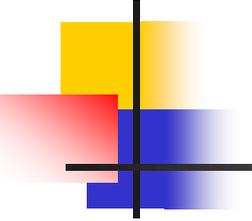
Federal Requirements

- Title VI of the Civil Rights Act of 1964 (Title VI), prohibits discrimination on the basis of race, color, or national origin;
- Title IX of the Education Amendments of 1972 (Title IX), prohibits discrimination on the basis of sex;
- Section 504 of the Rehabilitation Act of 1973 (Section 504); and Title II of the Americans with Disabilities Act of 1990 (Title II) prohibit discrimination on the basis of disability;
- A school is responsible for addressing harassment incidents that it knows or reasonably should have known have occurred;
- The specific steps in a school's investigation will vary depending upon the nature of the allegations, the source of the complaint, the age of the student or students involved, the size and administrative structure of the school, and other factors (OCR Dear Colleague Letter, Oct. 21, 2014).



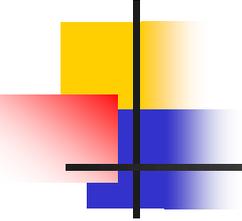
Who Bullies?

- **Some indicators of students who bully:**
 - They may be larger/stronger than classmates.
 - Enjoy control/domination.
 - Lack of empathy or compassion for others.
 - Feel they have more power than others.
 - They lack emotion or remorse for bad acts.
 - Enjoy conflict and refuse to take responsibility for negative behavior.
 - Problems in school – discipline, academically, or may be popular or seek followers by using above tactics.



Common Myths About Bullies

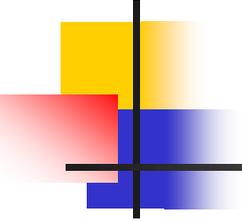
- Students who bully are loners.
- Students who bully have low self-esteem and are insecure.
- Students bully others because they want attention.
- Bullying behavior is a normal part of children being children.
- Only boys bully others.



Who gets bullied?

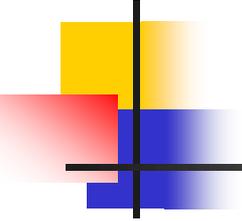
Indicators of students most likely to be bullied:

- Appearance and body size
- Perception that student is gay, lesbian, transgendered, etc.
- Degree to which the student is or is not masculine or feminine
- Performance in school (whether good or bad).
- Poverty
- Disabilities (protected by Office of Civil Rights)
- New to community



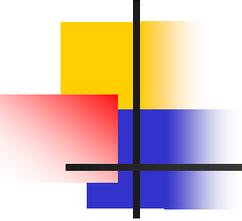
During the trip or after-school activity

- Have enough staff members present to supervise the student participants actively and effectively. Staff members supervising students during a trip or after-school activity should not sit or stand together, but should spread out among the students.
- When supervising students on a bus, at least one staff member should **sit in the back of the bus** in order to supervise what is happening on the entire bus.



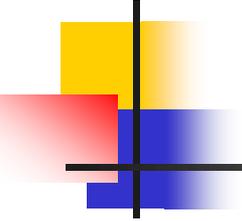
During the trip or after-school activity (cont'd)

- Staff members should know that they are ***on duty*** when they are with students after school or on a school trip. Staff members must watch and listen to the students they are supervising. Make sure the students know that the staff members are watching and listening to them.
- During late evening or nighttime bus rides, coaches must **remain awake** and attentive to student activity **throughout the bus!** No napping or listening to music with earbuds!



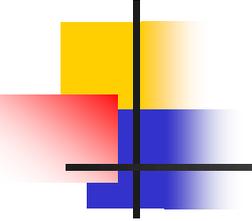
During the trip or after-school activity (cont'd)

- Do not ignore student misconduct while it is occurring. Intervene and make the misconduct stop immediately.
- Take prompt and appropriate action in response to any loud, boisterous, violent or potentially dangerous activity.
- Do not allow students or staff members to treat such conduct as a joke.



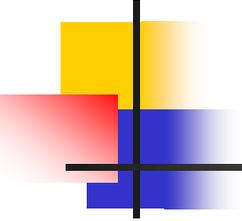
Reacting to a Bullying/Hazing Incident

- Intervene immediately and stop the abusive conduct. Separate the students involved. If there are injuries, obtain the needed treatment immediately.
- Do not immediately ask about or discuss the reason for the bullying or try to sort out the facts.
- De-escalate – Maintain Control of your Emotions.



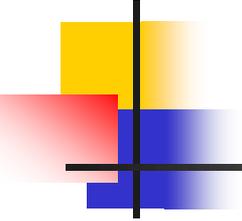
Reacting to a Bullying/Hazing Incident (cont'd)

- **DO:** Appear calm, centered, and self-assured; use a modulated low tone of voice. Be aware of options. Be respectful, even when firmly setting limits or calling for help. If you feel you are losing control, call on a colleague, an administrator, security, or (in serious cases) your school resource officer or the police for support.
- **DON'T:** Be defensive, even if the comments or insults are directed at you



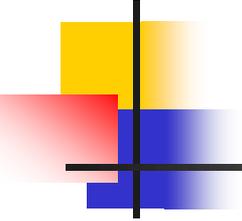
Reacting to a Bullying/Hazing Incident (cont'd)

- When the incident is contained and it is possible to begin investigating what occurred, request more information. Get the facts. Speak to students involved (participants and observers) in the incident separately and ask what happened.
- Communicate Effectively, both Verbally and Nonverbally.



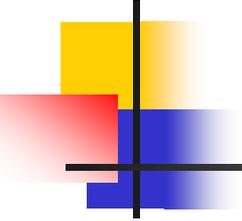
Reacting to a Bullying/Hazing Incident (cont'd)

- **DO:** Allow extra physical space between you and the aggressor, get to the same eye level (kneel, sit, or stoop as needed), keep your hands out of your pockets to protect yourself, and stand at an angle to the student.
- **DON'T:** turn your back, confront the aggressor student unless necessary for restraint, point or shake your finger, yell, smile sarcastically, argue or use labels, swear or curse.



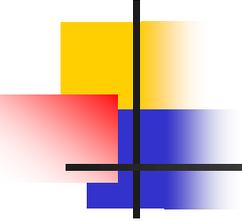
Reacting to a Bullying/Hazing Incident (cont'd)

- Contact administrative supervisor as soon as practical to do so.
- Evaluate need for Outside Intervention
 - Medical assistance, if there are physical injuries
 - Police, if there are weapons
- Contact Parents



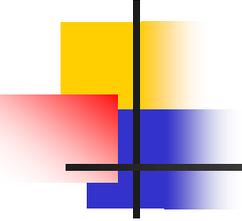
Document

- Fill out reports completely and legibly.
- Report only what you are certain occurred.
- Avoid editorial comments.
- In cases where you observed the bullying behavior, report what you saw as accurately and in as much detail as possible.
- Unless school policy forbids, it is best to write down the actual words a student said, including curse words, so that the principal and the parents understand exactly what happened.



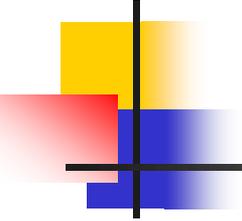
For the Victim

- Check in regularly with the student who was bullied.
- Determine whether the bullying still continues.
- Provide a supportive environment.
- Review the school rules and policies with the student to ensure they are aware of their rights and protection.
- Consider referring them for professional or other services as appropriate.



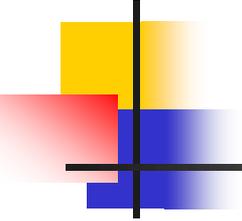
For the Bully

- Identify the behavior.
- Review the school rules and policies with the student.
- Ask for positive change in future behavior.
- Consider referring them for professional or other services as appropriate.
- Consider appropriate graduated consequences.
- Encourage the student to channel their influence and behavior into positive leadership roles.
- Monitor and check in frequently.



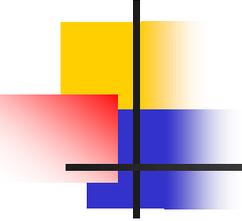
For the Witnesses

- Encourage them to talk with you.
- Review the school rules and policies with the students.
- Discuss with bystanders how they might intervene and/or get help next time.
- Acknowledge students who took action to stop the bullying.



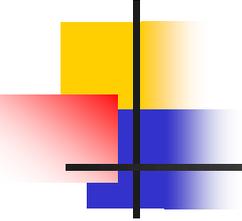
For the Parents of the Students Involved

- Describe the incident.
- Review the school rules and policies with the parents.
- Describe the intervention measures taken as appropriate.
- Develop a plan to follow up.



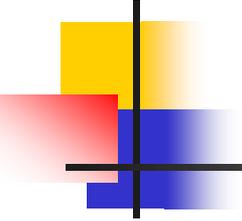
Confidentiality

- The law limits your ability as an educator to discuss disciplinary actions taken against other students.
- Remember not to use student names when discussing consequences with parents.
- If discipline is imposed, state that the conduct of the students involved has been addressed according to District policies.
- Treat reports of bullying as you would any part of a student's record. Maintain confidentiality and privacy of such reports as required in policy and law.



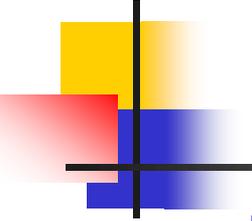
Signs of being bullied

- Physical signs like torn, damaged, or soiled clothing; unexplained cuts, bruises, and scratches; missing or damaged personal items like books, homework, electronics, clothing, or jewelry, without a credible explanation.
- Socially isolated, loses interest in visiting or talking with friends.
- Truancy or frequent claims of physical ailments, in order to be allowed to go home.
- Doing poorly in school, receiving declining grades.



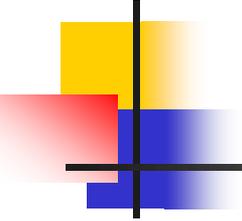
Signs of being bullied (cont'd)

- Unexplained injuries, complains frequently of headaches, stomach aches, or feeling sick.
- Trouble sleeping or frequent bad dreams.
- Sad, moody, angry, anxious or depressed when they come home.
- Changes in eating habits, such as very hungry after school from not eating lunch.
- Avoids certain places.
- Hurts themselves.
- Runs away from home.
- Threats or attempts of suicide.



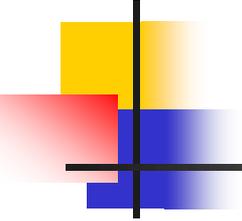
Other impacts of bullying on School Community

- Teacher morale declines amid harmful social dynamics in the classroom that interfere with discipline and learning.
- Student onlookers become desensitized, model bullying behavior; the group becomes an audience for students who bully to brag about their exploits.
- Group members can serve as negative role models for each other.
- Members of group can learn how and who to bully.
- Adult-student relationships suffer. Students who witness bullying can become fearful and develop the belief that the adults are not in control or are uncaring.
- Parent confidence and trust in the school erodes when students experience bullying or are accused of bullying others.



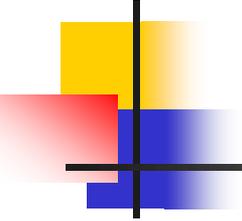
Recent federal lawsuit: *B.G. v. Raton Public Schools*

Mothers of two students are suing the school district, its Superintendent, its Assistant Superintendent, the head coach and assistant coach of the district's high school varsity and JV basketball teams, and a teacher. Their lawsuit is based on events that allegedly occurred on a school bus trip taking students back from an off-campus basketball game.



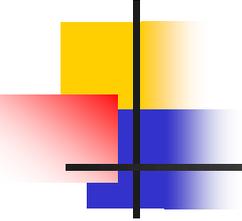
Recent federal lawsuit: *B.G. v. Raton Public Schools* (cont'd)

The Complaint alleges that while the interior lights of the school bus were dimmed and the coaches were “inattentive with headphones in their ears,” two of the varsity basketball players sexually assaulted two of the junior varsity basketball players, by “teabagging” and “dry-humping” them.



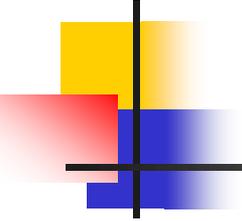
Recent federal lawsuit: *B.G. v. Raton Public Schools* (cont'd)

The Complaint alleges that even though the other students on the bus laughed loudly and made a lot of noise, and even though one of the victims hid underneath the seat of one of the coaches, the coaches did not attempt to stop the varsity players until after multiple assaults took place, and that the coach who intervened simply told the students to “stop messing around.”



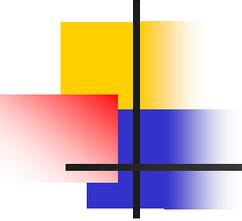
Recent federal lawsuit: *B.G. v. Raton Public Schools* (cont'd)

The Complaint alleges that after “multiple sexual assaults and attempted sexual assaults had occurred,” the head coach “yelled at the teams” and told “the varsity players to turn in their uniforms the next day because ‘their season was over.’” According to the Complaint, the coaches did not end the basketball season for the varsity team, and the coaches only made the alleged perpetrators do more running and push-ups than the rest of the team during practice the next day.



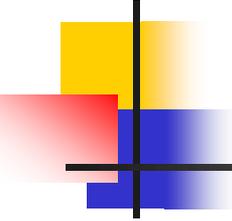
Recent federal lawsuit: *B.G. v. Raton Public Schools* (cont'd)

The Complaint alleges that the two varsity players who sexually assaulted the two JV players were suspended from school for only two days, suspended from the varsity basketball team for only two games, and then were allowed to continue on the varsity basketball team and to compete in the state championship. The Complaint alleges further that the lenient sanctions against the two varsity basketball players “demonstrates the District’s indifference” toward the two younger, smaller and less athletically talented JV players.



Recent federal lawsuit: *B.G. v. Raton Public Schools* (cont'd)

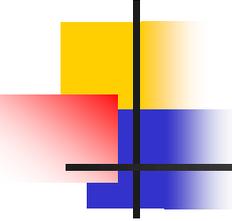
The Complaint alleges that because the assaults against the two JV players “came on the heels of another highly-publicized, damaging hazing incident only a few years earlier at a football camp sponsored by the Las Vegas City School District,” the Raton staff members knew or should have known about “the danger of and potential for student-on-student hazing and sexual abuse in high school athletic programs.”



State-court lawsuit: *Encinias v. Whitener* *Law Firm*

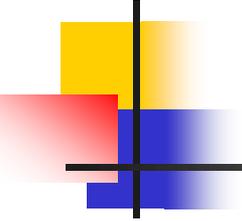
Student alleged that in 2004, he was badly beaten by one or more classmates from Robertson High School off campus on a street the school had cordoned off so students could patronize food truck vendors there. Lawsuit was filed in 2008; ultimately went to the New Mexico Supreme Court.

This case does not involve student conduct after school or on a school trip, but it shows how the NM Supreme Court views a school's duty to keep students safe.



State-court lawsuit: *Encinias v. Whitener Law Firm* (cont'd)

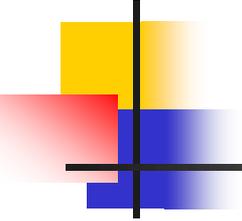
NM Supreme Court said the school principal “was in a position to know the location and frequency of student fights,” and that if the student could “demonstrate that there was a history of student violence in the area by the food trucks, the lack of security measures could indicate that the school failed to address the problem.” *Encinias v. Whitener Law Firm, P.A.*, 2013-NMSC-045, ¶ 18.



Another federal lawsuit: *C.H. v. Los Lunas Schools Board of Education*

High-school student's mother sued school board, school administrators, and school football coaches, alleging that her child was physically and sexually battered by other football team members in a hazing incident.

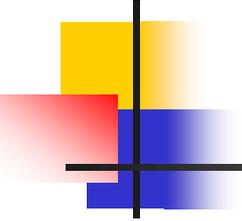
Mother alleged that the defendants' "systematic failure to address the foreseeable danger of hazing led to the attack" on her son and put a class of students – younger football players – at risk.



Another federal lawsuit: *C.H. v. Los Lunas Schools Board of Education* (cont'd)

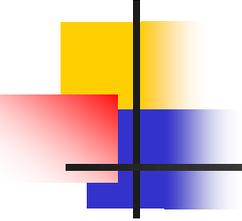
Mother alleged that because other hazing incidents of a sexual nature between members of a high school football teams elsewhere in New Mexico and been “highly publicized,” the Los Lunas Schools defendants “knew of the dangerous condition of student-on-student hazing.”

Court said that the defendants knew or should have known that football players alone in a locker room presented a danger, based on the publicized incidents elsewhere in the state.



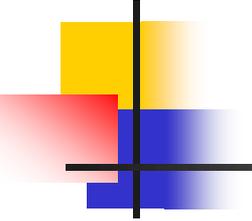
Another federal lawsuit: *C.H. v. Los Lunas Schools Board of Education* (cont'd)

Court said that when coaches hear of a widely publicized incident at another school, “it is not reasonable for coaches to assume that it cannot happen on their team. . . . If players hear of hazing at another school, and their coaches say nothing, upperclassmen may begin hazing younger players, because they have no reason to think that their coaches discourage it. Silence with young men – rather than coaching and mentoring – increases the risk of hazing.”



Another federal lawsuit: *C.H. v. Los Lunas Schools Board of Education* (cont'd)

Court also said that because of the significant difference in strength between upperclassmen and younger students, coaches must make certain that the environment is safe for the young players, and “coaches have to be in the face of older players to get them to accept younger players without threats to younger players’ safety.” *C.H. v. Los Lunas Schools Board of Education*, 852 F.Supp.2d 1344, 1362 (D.N.M. 2012).



Some red-flag words regarding management of student conduct

“Deliberate indifference”

“Failure to supervise”

“Reckless disregard”

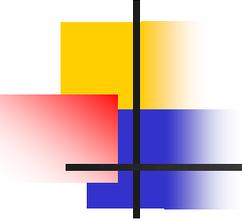
“Unreasonably dangerous practices”

“Awareness of the risk”

“Inadequate training”

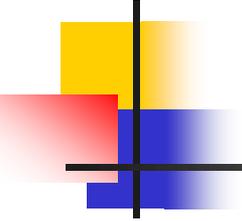
“Knew or should have known”

“Pattern or practice of acquiescence”



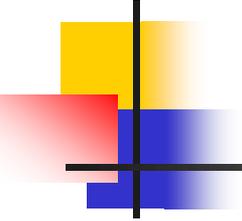
Strategies for Success

- Bullying behavior is never tolerated, but a strategy fails if it does not recognize that bullying behavior is not a permanent characteristic of the student who did the bullying.
- Because bullying is a behavior, it can be changed and replaced with more positive prosocial behavior.
- Nearly 20 percent of students are involved in bullying other students—it is not realistic to suspend or expel 20 percent of any student body.
- Students who are involved in bullying behavior are suspended or expelled when they are the students who may benefit most from continued exposure to positive prosocial role models and a caring school climate. Look at exclusionary discipline as the last resort.



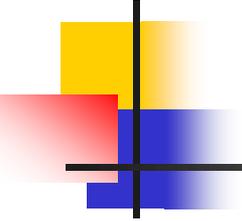
Strategies to Avoid

- Group treatment.
- The group becomes an audience for students who bully to brag about their exploits.
- Group members can serve as negative role models for each other.
- Members can learn from each other who to bully.
- Bullying is a form of peer abuse—not conflict between peers of equal power and control.
- The strategies may further victimize the student who has been bullied and inadvertently give the student a message that he or she did something to provoke the bullying behavior and is partly to blame.
- Such strategies incorrectly expect the student who has been bullied to solve his or her own abuse.
- The session can become another opportunity for the bullying behavior to be repeated.



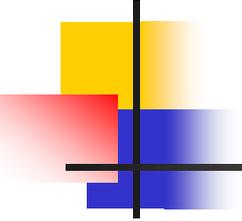
Community Involvement

- Bullying is learned behavior and can be unlearned
- Bullying is a family and community problem
- Bullying may be taught within a family or tolerated in outside community sports or activities
- Get other community leaders and programs involved to create common goals for prevention
- Get students involved in identifying behaviors that will not be accepted in the school setting-positive peer pressure



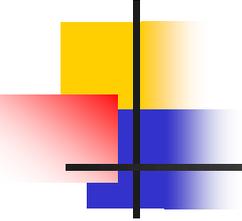
Reduce the Bullying Continuum

- Bullying takes place on a continuum of behavior.
- Small isolated acts of teasing or misbehavior can become bullying if they are not stopped.
- District's goal should be to educate, intervene and correct behavior to reduce instances of bullying and provide effective remedies to student victims.



QUESTIONS?

Thank you!



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