

Wisconsin School Districts Reminded of Nondiscrimination Obligations

Harassment and discrimination involving students continues to receive attention by school districts, parents, and students. Of course, such actions by students not only impact the educational culture and experience for all students, but they also expose districts to potential legal liability from lawsuits brought by victims of such conduct. Recently, the American Civil Liberties Union of Wisconsin (ACLU-WI) issued letters to school district officials and legal counsel for school districts to remind them of state and federal legal requirements to protect students from harassment and other discrimination. This FYI summarizes the letter issued by ACLU-WI and discusses next steps for districts based on this letter.

ACLU-WI LETTER

In its letter, the ACLU-WI stated that it was writing to districts “because of persistent reports of racial and sexual harassment in school districts across the state of Wisconsin.” ACLU-WI stated that it had represented several families with children of color who were being harassed by peers in non-diverse school districts and that some school districts ignore behaviors like the use of racial slurs or other forms of harassment, or fail to implement adequate measures to ensure that such problems do not recur. ACLU-WI issued the letter to remind districts to consider their obligations under state and federal law.

The letter reminded Wisconsin public school districts that, as recipients of federal funding, they are subject to the non-discrimination requirements of Title VI of the Civil Rights Act (which prohibits discrimination on the basis of race, color, or national origin) and to the non-discrimination requirements of Title IX of the Education Amendments of 1972 (which prohibits discrimination on the basis of sex). The letter also emphasized that such recipient schools “may be liable for subjecting students to discrimination where the school is deliberately indifferent to known acts of student-on-student harassment and the harasser is under the school’s disciplinary authority.”

ACLU-WI also referred to two U.S. Department of Education guidance documents which specifically addressed racial harassment: [Investigative Guidance on “Racial Incidents and Harassment Against Students at Educational Institutions”](#) and a [2010 Dear Colleague Letter \(DCL\) - Harassment and Bullying](#). ACLU-WI emphasized that the 2010 DCL provides important suggestions on how districts can respond to racial and sexual harassment and may be useful as districts work on addressing any race or equity issues. Both documents are available through the links below:

The letter also discussed fair discipline. In this respect, ACLU-WI reminded districts that they “must ensure that discipline policies and practices – as written but also as implemented – do not have the effect of discriminating on the basis of a protected characteristic, something that would be prohibited by federal law.” The letter stated that many districts in Wisconsin have racially disparate discipline outcomes and noted that zero-tolerance policies may have negative effects on students of color. ACLU-WI emphasized that alternative strategies to school discipline (such as social-emotional learning) may reduce harassment and that school-wide behavioral and discipline plans may create consistent discipline throughout the school.

ACLU-WI suggested that districts review policies that address harassment and bullying in the district to ensure compliance with federal and local law. In addition, it asked districts to notify ACLU-WI of the steps that districts will

take to end racial and sexual harassment, which may include training of staff and students.

NEXT STEPS

There is no obligation for districts to respond directly to ACLU-WI's letter. However, the letter is a helpful reminder that districts have myriad obligations under both state and federal law with respect to bullying and harassment based on a protected class, including race, sex, and disability. In Wisconsin, the state's pupil nondiscrimination law prohibits discriminatory activities, including harassment, on the basis of sex, race, religion, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation, or disability status. Districts are required to adopt policies related to bullying and harassment and must identify at least one employee to coordinate the district's efforts to comply with these policies. That person should be trained on the law and his/her duties as a coordinator.

School districts should take steps to review their policies to ensure compliance with the law and should consistently adhere to such policies when addressing bullying and harassment. Failure to follow such policies can result in a complaint to the Wisconsin Department of Public Instruction or the Office for Civil Rights in the U.S. Department of Education, or a lawsuit in state or federal court. To avoid liability, districts must continue to investigate alleged harassment, and if it is found to have occurred, stop it, prevent its recurrence, and remedy its effects. Districts should also continue to monitor their compliance with the law and provide training as necessary for staff in the district.

The Department of Education has also recently proposed new Title IX regulations related to sexual harassment. The new regulations, once finalized, are also likely to require school districts to revisit and revise their sexual harassment policies and procedures to ensure compliance with the federal law. Additional information on the proposed regulations can be found in our December 2018 FYI.

At this time, districts should take note that state and federal agencies, as well as civil rights organizations, are giving heightened attention to harassment of students based on a protected class. Districts must continue to be attentive to these issues and respond appropriately when situations arise. Such practices will not only protect districts from liability, but will also help foster a positive school climate for students, staff, and the greater school community.

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