

BRIAN SANDOVAL
Governor

STATE OF NEVADA

SOUTHERN NEVADA OFFICE
9890 S. Maryland Parkway, Suite 221

Las Vegas, Nevada 89183

(702) 486-6458

Fax: (702)486-6450

http://www.doe.nv.gov/Educator_Licensure

DALE A.R. ERQUIAGA
Superintendent of Public Instruction



DEPARTMENT OF EDUCATION
700 E. Fifth Street
Carson City, Nevada 89701-5096
(775) 687 - 9200 · Fax: (775) 687 - 9101
<http://www.doe.nv.gov>

July 17, 2015

GUIDANCE MEMORANDUM #15-13

TO: All School Districts and Charter Schools

FROM: Dale A.R. Erquiaga
Superintendent of Public Instruction

SUBJECT: Safe and Respectful Learning Environments (SB 504; SB 515; AB 112)

This memorandum serves to give general guidance as to the implementation of these bills as well as to answer questions raised during a June 11, 2015 meeting of representatives from ten school districts, and questions addressed to the Department of Education through a letter dated June 10, 2015 from the Clark County School District (attached). This guidance memorandum is issued pursuant to the authority provided in NRS 385.175(5), directing the Superintendent of Public Instruction to enforce the observance of Title 34 of Nevada's statutes and all other statutes and regulations governing public education.

Senate Bill 504 (SB 504) of the 78th Regular Session amends certain existing provisions and provides new provisions to state law governing Safe and Respectful Learning Environments (NRS 388.121—388.145) and establishes the Office for a Safe and Respectful Learning Environment within the Nevada Department of Education (NDE). Senate Bill 515 (SB 515), Section 23, includes funding to school districts and charter schools to provide for contract social workers or other licensed mental health workers in schools with identified needs related to school climate. Finally, Assembly Bill 112 (AB 112) ensures that teachers, administrators, and other school personnel are included in Nevada's statutory scheme addressing Safe and Respectful Learning Environments.

Establishment of the Office

The Office for a Safe and Respectful Learning Environment now exists within NDE. The Office is required to maintain a 24-hour hotline and website by which anyone can report bullying and/or cyber-bullying. The website is already accessible through the Nevada Department of Education home page. A hotline phone number will be forthcoming, pending State procurement and financing processes. All districts have the right to advertise this website as well as the hotline number (when available) rather than maintaining a website and/or hotline for themselves; however, districts **may** choose to maintain their own hotlines and websites. NDE will make every effort to seamlessly link constituents between the online and phone environments in order minimize confusion.

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Information received from online and phone reports will be forwarded to the appropriate local official. Should information be forwarded to a school administrator or designee, upon receipt from NDE that administrator or designee shall consider a report as having been made and begin following the procedures as outlined in SB 504 for responding to a report, including the relevant timelines.

Complaints to the State

The Office for a Safe and Respectful Learning Environment shall establish procedures for receiving reports and complaints regarding violations of the laws governing Safe and Respectful Learning Environments. In general, the Office is required to respond to two types of reports or complaints:

- (1) If a student has been found to have been the aggressor in a reported violation of NRS 388.135, the parent or guardian may appeal any disciplinary decisions made by the district, according to local board-adopted policies. Not later than 30 days after receiving the resolution from that appeal, the parent or guardian may submit a complaint asking to appeal the disciplinary decision to the Office for a Safe and Respectful Learning Environment.
- (2) If a teacher, administrator, principal, coach, or other staff member or member of a board of trustees has violated a provision of NRS 388.121 to 388.145, the Office for a Safe and Respectful Learning Environment may receive and shall investigate a complaint **after** the matter has first been addressed at the school and local district levels. Procedures similar to the student discipline appeals described above will apply at the State level.

These procedures will be prescribed as regulations; that process will begin with a workshop on August 13. Until such time as the regulations are adopted, the Office has provided Interim Complaint Procedures (see attachment). During the regulation development process, NDE would appreciate advice from the districts on when and how to provide investigation/complaint reporting and other matters.

Pursuant to NRS 388.133, NDE is also required to provide through regulation a policy, representing the changes to NRS 388.121-388.145 (SB 504 and AB112). The regulation workshop on August 13 will begin this process and districts and charter schools are encourage to attend.

Definitions and Terms

Professional judgment, training, and context must continue to be a part of any bullying and reporting analysis. What constitutes a “single severe and willful act” may encompass an intentional and observable physical act that results in harm to a student, but may also occur if it results in a reasonable fear of harm or substantially interferes with a student’s learning. NRS 388.122 provides specific guidance to illustrate what acts may constitute bullying.

While an act of bullying is not in itself a crime in Nevada, it may in certain severe situations encompass behaviors that are crimes and carry criminal penalties. Such behaviors may include harassment (NRS 200.571), battery (NRS 200.481), stalking (NRS 200.575), and cyber bullying (NRS 200.900). In those instances, the assistance of trained law enforcement professionals may become necessary.

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Schools are encouraged to work in conjunction with their law enforcement agencies to handle these cases; however, they are to consider these offenses bullying when they fit within the parameters of the definition. Thus, administrators should immediately take action to stop the bullying or cyber-bullying, ensure the proper notification, and perform an investigation. This does not mean that law enforcement will not be doing an investigation as well, so districts and administrators should work with their local law enforcement agencies to determine the proper procedures in these instances. Districts and charter schools should consult local legal counsel if you are interested in more clarification on this or other points regarding the interpretation of SB 504.

Timelines in SB 504 are specific to reporting, notifying parents, and investigating student bullying incidents. The policy should establish an alternate contact if students feel they are bullied by an administrator, since the law requires that individual to conduct an investigation. Complaints cannot come to the NDE Office until they have run their local course, however. Instances of adult-on-adult bullying should be treated as disciplinary issues and dealt with according to local policy and employment; they are not subject to appeal or investigation by the Office for a Safe and Respectful Learning Environment.

NDE will provide additional information in future training but districts are not absolved from a common application of the law and a plain reading of statutes in consultation with their legal counsel. A careful reading of AB 112 is also in order to ensure that adults as well as students are being treated fairly under the provisions of these statutes. The Office for a Safe and Respectful Learning Environment is not intended to replace or supersede any polices, laws, or remedies for redress of school employee, human resource, or other workplace issues. Questions concerning mandatory versus discretionary discipline and the purview of the Nevada Equal Rights Commission or any federal agency should be directed to local legal counsel.

Social Worker Grants

SB 515 will provide funding for contracts for licensed school social workers or other mental health professionals for schools with identified needs in the area of school climate. A School Climate/Social and Emotional Learning survey will be administered to students in the fall of 2015 to help identify priority needs/schools. An "intent to apply" memorandum will soon be sent to all districts to determine interest in applying for the Fiscal Year 2015-2106 grant allocations, which are expected to be issued in January 2016. **Districts wishing to apply should respond to that memorandum and will then be included in the first pilot survey.** This will allow NDE to distribute funds to high need schools and to gather necessary baseline data to be used to monitor this program. Further procedures for applying for the block grant will be issued at a future date.

A handwritten signature in blue ink, appearing to read "Tara A. Squiggs".

June 10, 2015

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Dale A.R. Erquiaga
Superintendent of Public Instruction
Nevada Department of Education
700 E. Fifth Street
Carson City, NV 89701

Dear Mr. Erquiaga:

The Clark County School District is ready to implement the work the Department of Education was able to accomplish during this legislative session. At this time, we are requesting a guidance memo related to legislation recently passed and signed into law. As the state superintendent of instruction, you were instrumental in the passage of these new programs, and we seek your guidance as we implement the new requirements. Many of the newly passed bills become effective on July 1, 2015. This requires immediate action by school districts across the state, given the current date and unclear scope of work and expectations in each bill.

Senate Bill 504 Questions:

1. SB504: Is discipline mandatory or discretionary for noncompliance that is not willful with the bullying reporting requirements?
2. What will be the process and accountability for the Office of Safe and Respectful Learning Environments to share initial allegations/reports with districts?
3. Why were criminal offenses included? (i.e., extortion) Is the expectation that districts handle accordingly, involve law enforcement, and follow bullying procedures and reporting timelines?
4. (Section 4) Employees are protected from harassment ("Bullying") under existing state (NRS 613) or Federal (Title VII of the Civil Rights Act of 1964) employment laws, and the Nevada Equal Rights Commission and/or the federal Equal Employment Opportunity Commission; are agencies responsible for investigating employee allegations of "harassment/bullying"? With that, should employees who allege harassment/bullying now file their unresolved complaints with the State Office for a Safe and Respectful Learning Environment instead of the State of Nevada's Nevada Equal Rights Commission or federal EEOC?
5. (Section 6) In the definition of bullying, how is "single severe" defined and/or who determines whether or not a single act is severe enough to be considered bullying – the principal, the complainant, or someone else?

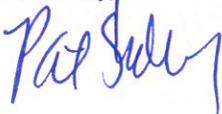
Mr. Erquiaga
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6. (Section 6) The majority of the language in the "bullying" definition is specific to pupils/students, so will there be a separate definition that defines bullying in the adult employee context, and also to parents, visitors, etc., on school grounds?
7. (Section 12, No. 7) If an employee is found to have "bullied" another employee, would that employee have the right to "appeal" the finding/decision of the district to the State Office for a Safe and Respectful Learning Environment?
8. (Section 12, No. 1) This section speaks to the "reporting" and indicates that staff "who witness a violation of NRS 388.135 or receives information that a violation of NRS 388.135 has occurred "shall report the violation to the principal or his or her designee as soon as practicable, but not later than a time during the same day on which the teacher... witnessed the violation or received information regarding the occurrence of a violation." If the alleged violation is against the principal and/or the principal's designee, does the employee who is alleging that they are being bullied report that alleged violation to the State Office for a Safe and Respectful Learning Environment, the Nevada Equal Rights Commission, or EEOC?
9. Will the notification requirements outlined in this section apply to employees? If so, who is notified and of what are they notified?
10. Are the timelines to complete an investigation as outlined in this section applicable to investigations involving employees, or is this meant for students?

A response to the questions above, related to Senate Bill 504, is requested by seven (7) days from receipt of this letter in order to ensure compliance, as well as a consistent and successful implementation. Without this vital information and clarification of these questions, it will be extremely difficult to be ready for full implementation.

We appreciate your immediate attention to this request. Our team is ready and willing to meet with individuals or teams from the Department to work through these questions. I cannot overstate the sense of urgency that the diligent staff of the Clark County School District feels at this critical time.

Sincerely,



Pat Skorkowsky

Superintendent of Schools

"Every student in every classroom, without exceptions, without excuses"

cc: Clark County School District Board of Trustees
Elaine Wynn, president, Nevada State Board of Education
Members, Nevada State Board of Education
Nevada Association of School Superintendents

NEVADA DEPARTMENT OF EDUCATION

Interim Complaint Procedures: Office for a Safe and Respectful Learning Environment

The following standards and procedures will apply until such time as regulations can be adopted:

1. Complaints regarding disciplinary actions taken against pupils can only be submitted to the Department after a final report at the local level is provided to the parent. Parents have 30 days following receipt of the local report to file a complaint.
2. Complaints must be in writing and must include contact information and as much information about the incident as can be provided.
3. A complaint to the Department must include any written report prepared by or at the direction of the local district or school regarding the alleged violation. If no report was made in writing, the parent or guardian may submit his or her own narrative summation and must provide the name(s) of the person(s) who provided the local report so that the Department can verify the report as restated.
4. If the complaint alleges that a teacher, administrator, principal, coach or other staff member or a member of a board of trustees has violated a provision of NRS 388.121 to 388.145, inclusive, a citation for what statute is alleged to have been violated must be provided. This office cannot provide legal advice.
5. If the complaint alleges that a teacher, administrator, principal, coach or other staff member or a member of a board of trustees has engaged in criminal conduct, a citation for the criminal conduct must be provided. This office cannot provide legal advice.
6. If the complaint does not allege a violation of state law or criminal conduct, but the nature of the complaint is dissatisfaction with the outcome of a local investigation or the remedy provided, the complaint must state this fact and suggest an acceptable outcome or remedy. The Department may be able to provide certain remedies; but in the event a remedy is beyond the scope of the Department's authority, the Superintendent of Public Instruction may be able to refer the matter back to the local jurisdiction for further review and action.
7. The Department may request additional information if a complaint is deemed insufficient for an investigation to be conducted. Such requests will be made within 48 hours of receipt of the initial complaint and the parent will be advised when the complaint filed is deemed "complete" for purposes of a preliminary determination.
8. A Preliminary Report, determining whether to conduct an additional or further investigation will be issued within five working days of receipt of the final complaint. The Department may consult with legal counsel and the Investigation Division of the Department of Public Safety in making its Preliminary Report. If the Department considers the complaint to be invalid or finds that it cannot conduct an investigation, the parent will be notified.
9. A Final Report will be issued within 30 days of the Preliminary Report. If the Investigation Division requests additional time for its work, the Department will notify the parent.
10. The Department may request a plan of corrective action with suggested changes to be made by the local district pursuant to the Superintendent of Public Instruction's authority under state law. The request for a corrective action plan and any local response would be made public, allowing for the redaction of personally identifiable information about the student(s) involved.
11. Timelines may be adjusted if school is not in session.