



BureauBrief

A Study of the Readiness of Public Schools in Response to Natural Disasters and Acts of Violence

November 17, 2014

**Prepared for
Senator Linda Chesterfield**

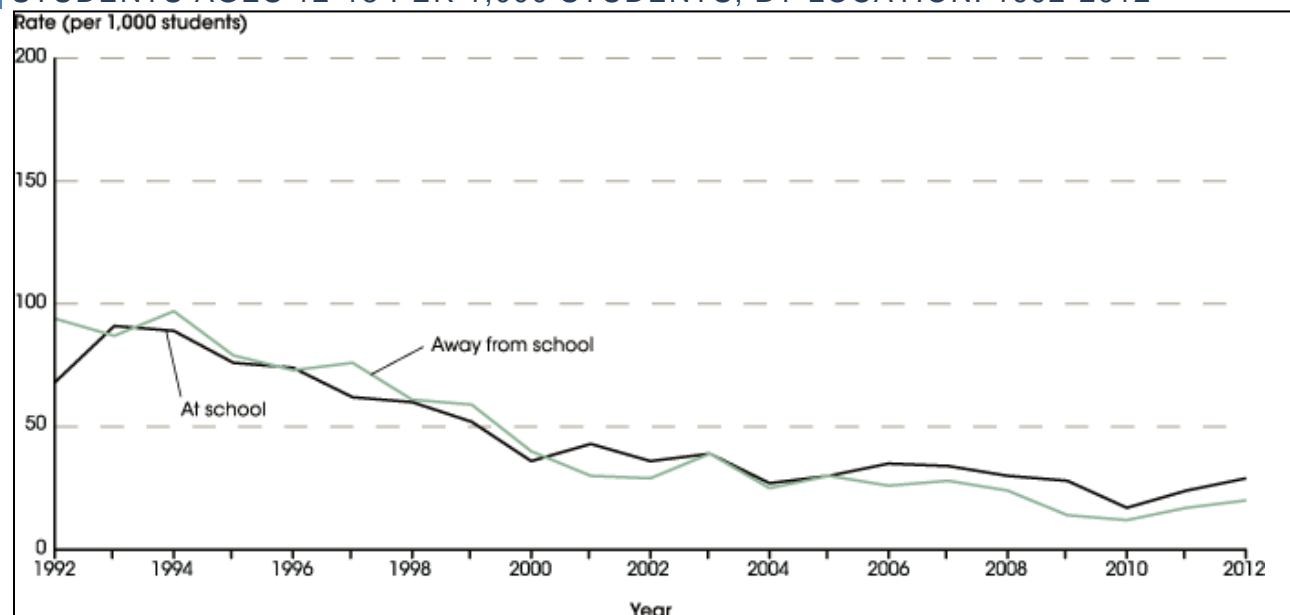
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INTRODUCTION

School safety is an issue of great concern for parents, teachers, and students in Arkansas. National tragedies, such as the 2012 calamity at Sandy Hook Elementary School, and regional tragedies, such as the 1998 Westside Middle School shooting in Jonesboro, have precipitated a closer look at the policies meant to keep students safe. As links between bullying and suicide in school-age children have been drawn, there has also been a heightened awareness of the need to educate our communities on bullying prevention (Centers for Disease Control and Prevention, 2014). These instances of crime and violence on school grounds affect not only the individuals involved but may also disrupt the educational process and affect bystanders, the school itself, and the surrounding community (Henry, 2000). Although the United States has seen an overall decline in the number of violent, nonfatal acts on school campuses over the previous two decades, the presence of any violence on a school campus necessitates that schools are prepared to respond (U.S. Secret Service, 2002).¹

FIGURE 1. NATIONAL RATE OF ALL VIOLENT VICTIMIZATIONS AGAINST STUDENTS AGES 12-18 PER 1,000 STUDENTS, BY LOCATION: 1992-2012



Source: *NCES.ed.gov*

In 1991, the Centers for Disease Control and Prevention (CDC) began conducting the Youth Risk Behavior Survey through the Youth Risk Behavior Surveillance System (YRBSS). Data collected through YRBSS are released biennially and include self-reported information regarding high school students' perception of safety on school campuses.² According to the 2013 report released by YRBSS, 9.6% of Arkansas students (1,540 total respondents) missed 1 or more days of school because of safety concerns compared to 7.1% of students (13,554 total respondents) at the national level. Arkansas students also reported being bullied on school property at a higher rate (25% of the 1,515 respondents) than students at the national level (19.6% of the 13,515 respondents).

¹ Nonfatal victimizations are defined as theft and all violent crime; included in violent crime are serious violent crime (rape, sexual assault, robbery, and aggravated assault) and simple assault (NCES.ed.gov).

² These surveys are administered to a random sample of students.

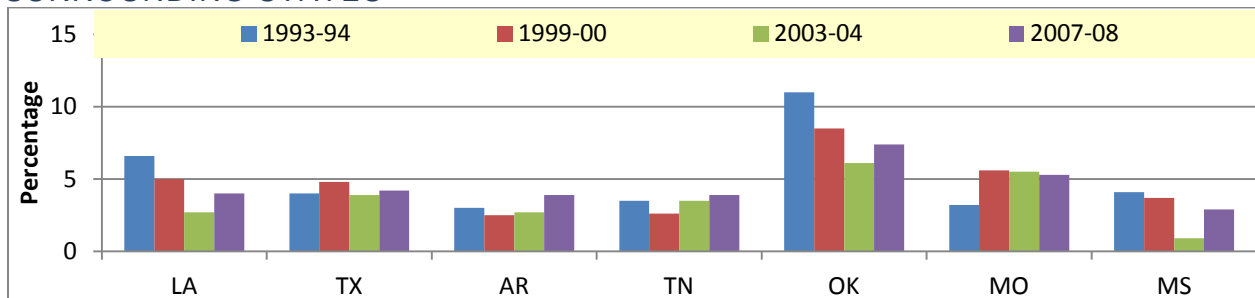
TABLE 1. HIGH SCHOOL RISK BEHAVIOR SURVEY, BY YEAR

	Arkansas				United States			
	2007	2009	2011	2013	2007	2009	2011	2013
Carried a weapon on school property (such as a gun, knife, or club on at least 1 day during the 30 days before the survey)	6.80%	8.40%	6.50%	9.10%	5.90%	5.60%	5.40%	5.20%
	1,591	1,656	1,362	1,515	13,740	16,256	14,926	13,354
Were threatened or injured with a weapon on school property (such as a gun, knife, or club one or more times during the 12 months before the survey)	9.10%	11.90%	6.30%	10.9%	7.80%	7.70%	7.40%	6.90%
	1,600	1,689	1,369	1,537	13,894	16,367	15,344	13,555
Were in a physical fight on school property (one or more times during the 12 months before the survey)	13%	14.80%	11%	11.4%	12.4%	11.1%	12.0%	8.1%
	1,577	1,633	1,333	1,511	13,751	16,089	15,182	13,352
Did not go to school because they felt unsafe at school or on their way to or from school (on at least 1 day during the 30 days before the survey)	7.40%	10.40%	5.70%	9.60%	5.50%	5%	5.90%	7.10%
	1,606	1,682	1,371	1,540	13,894	16,371	15,320	13,554
Were bullied on school property (during the 12 months before the survey)	--	--	21.9%	25%	--	19.9%	20.10%	19.6%
			1,363	1,515	--	15,633	14,695	13,515

Source: Youth Risk Behavior Surveillance System 2014

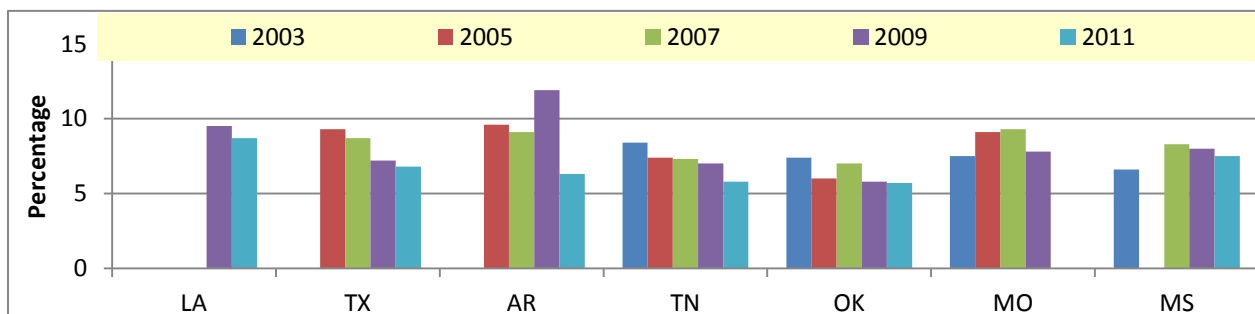
However, Arkansas ranks low in the number of reported violent threats or attacks against teachers and students on school property when compared to both surrounding and Southern Regional Education Board (SREB) states. Using two indicators of school violence from the 2012 Bureau of Justice Statistics Indicators of School Crime and Safety³, Arkansas ties with Tennessee for the second lowest (6th) percentage of physical assaults against teachers in surrounding states and ranks 11th lowest in this category among the 16 SREB states. Arkansas also ranks low in threats and assaults against students, ranking 4th among surrounding states and 14th among SREB states.

FIGURE 2. % OF TEACHERS PHYSICALLY ATTACKED BY A STUDENT, SURROUNDING STATES



Source: BJS 2012

FIGURE 3. % OF STUDENTS THREATENED OR INJURED ON SCHOOL PROPERTY, SURROUNDING STATES



Source: BJS 2012

³ (the percentage of public school teachers physically attacked by a student and the percentage of public school students threatened or injured with a weapon on school property)

Although there is a slight decrease in violent behaviors on school campuses, the need for greater preparedness and awareness in all areas of school safety still exists (U.S. Secret Service, 2002). Arkansas has responded to this need by passing Act 107 of 2013. This act requires a study of the “readiness and capabilities of public schools in this state for adequately preventing and responding to acts of violence against students and school personnel on a school campus.” This act mandates that all public school facilities, personnel, and policies are examined to determine how capable Arkansas schools are of keeping students safe in the potential face of crisis. It also requires the study to include potential best practices for schools and to recommend any needed improvements to the readiness and capabilities of Arkansas schools as they are identified. In compliance with Act 107, this report has been created to highlight the statutes and the available practices and policies of public schools in Arkansas as they pertain to preparedness to prevent and respond to incidences of natural disasters and violence on school grounds.

SCHOOL PREPAREDNESS

In the United States, school safety is often discussed in terms of school ‘climate’. According to the National School Climate Center, “school climate is based on patterns of students’, parents’ and school personnel’s experiences of school life and reflects norms, goals, values, interpersonal relationships, teaching and learning practices and organizational structures” (<http://www.schoolclimate.org/climate/>). Although there is no consensus as to what dimensions are essential to assess school climate, safety is noted as one of the most important features of the quality and character of school life (<http://www.schoolclimate.org/climate/>). In fact, in 2013 61% of Arkansas school administrators surveyed, and 64% of teachers surveyed, reported feeling that school safety was an extremely significant factor in educational success (Editorial Products in Education Research Center, 2013). Additionally, peer-reviewed research has shown that a safe school climate promotes positive youth development, effective risk prevention efforts, and academic achievement (Editorial Products in Education Research Center, 2013).

SCHOOL HEALTH POLICIES AND PRACTICES STUDY (SHPSS)

Schools must be prepared to respond to a variety of safety issues. This includes making preparations for unforeseen natural disasters such as floods or tornadoes, creating procedures for responding to terrorist attacks, and crafting emergency responses in the case of an active shooter. While all 50 states require that school districts adopt some form of school safety policy, there are no federal laws or policies that explicitly deal with school preparedness. It is left to states and localities to draft policies that best fit their particular geographies, demographics, and resources. However, studies show that there are similarities in the topics addressed in school preparedness plans across the United States. For instance, the 2012 School Health Policies and Practices Study (SHPSS)⁴ shows that 83.2% of surveyed U.S. districts required schools to conduct regular emergency drills, other than fire, on a yearly basis. About 85.6% of surveyed districts required schools to include campus lock down plans in preparedness manuals, and 75.3% of surveyed districts required schools to create shelter-in-place plans. School districts across the U.S. also work with similar organizations to develop their response plans including local health departments, local law enforcement agencies, and local hospitals (SHPSS, 2012).

⁴ SHPPS is a national survey conducted periodically to assess school health policies and practices at the state, district, school, and classroom levels.

TABLE 2. PERCENTAGE OF DISTRICTS THAT REQUIRED SCHOOLS TO INCLUDE SPECIFIC TOPICS IN THEIR CRISIS PREPAREDNESS, RESPONSE, AND RECOVERY PLANS, BY TOPIC 2012

Topic	Districts (%)
Establishment of an incident command system	78.6%
Evacuation plans	85.9%
Family reunification procedures	67.8%
Lock down plans	85.6%
Mechanisms for communicating the plan to students' families	80.2%
Mechanisms for communicating with school personnel	84.5%
Plans to resume normal activities after buildings or facilities have been damaged	61.3%
Procedures for implementing unplanned school dismissal or school closure	83.5%
Procedures for responding to media inquiries	81.7%
Procedures for responding to pandemic flu or other infectious disease outbreaks	69.0%
Procedures to control the exterior of the building and school grounds	76.9%
Provisions for students and staff with special needs	79.9%
Provision of mental health services for students, faculty, and staff after a crisis has occurred (ex. To treat post-traumatic stress disorder)	69.3%
Requirements to conduct regular emergency drills, other than fire drills	83.2%
Requirements to periodically review and revise emergency response plans	81.5%
Shelter-in-place plans	75.3%

Source: SHPPS 2013

TABLE 3. PERCENTAGE OF DISTRICTS THAT WORKED WITH GROUPS TO DEVELOP THEIR CRISIS PREPAREDNESS, RESPONSE, AND RECOVERY PLANS, BY GROUP 2012

Topic	Districts (%)
Local emergency medical services	82.8%
Local fire department	91.9%
Local health department	65.6%
Local hospital	41.2%
Local homeland security office or emergency management agency	45.1%
Local law enforcement agency	94.8%
Local mental health or social services agency	46.1%
Local public transportation department	16.6%
Other community members	67.4%
Staff from individual schools within your district	95.4%
Students or their families	42.8%

Source: SHPPS 2013

LAWS FOR STUDENT SAFETY

Arkansas schools and districts are required to create plans that include many of the SHPPS topics listed in Table 2. There are myriad laws, policies and rules aimed at keeping students safe. The majority of these policies are developed and implemented at the district or school, rather than at the state, level. While there are several specific courses of action schools must take (such as the performance of yearly tornado drills or the imposition of a mandatory one-year expulsion for any student caught with a firearm on campus), there is no one, uniform way Arkansas schools and districts must deal with issues of school safety. Instead, planning and drilling requirements have been codified and guidelines have been set to help districts determine when and how to react to problems of violence, natural disasters, and criminal acts. The current policies in place guiding administrators, teachers, and staff are as follows:

- **A.C.A. § 6-15-1005 Safe, Equitable, and Accountable Public Schools** – All public schools in Arkansas must have safe and functional facilities which fulfill all existing state and federal requirements. Each school and district must enforce policies that ensure the safety of all students both during school hours and at school-sponsored events. At a minimum, these policies must include rules on weapons, violence, tobacco, other drugs, gangs, and sexual harassment. Each school district must also enforce a code of behavior for students that addresses classroom disruption and maintains a safe and orderly environment.
- **A.C.A. § 6-15-1301 Creation, Composition, Powers and Duties of Safe Schools Committee** – This statute, established in 1997, requires the Department of Education to create a Safe Schools Committee. This committee must develop policies and procedures that focus on ensuring the security of students and school employees. This includes techniques for prevention, intervention, and conflict resolution. Model drills are also required, to the extent practicable. The Safe Schools Committee convened from March 1998- November 1998 and reviewed a variety of policies, programs, and practices that promote safe schools in Arkansas. At the time, the committee noted that some Arkansas school districts had comprehensive school safety regulations in place but that the enforcement and application of school safety policies and plans was not consistent throughout the state's districts. With this in mind, the committee recommended strategies that schools should use to prevent and respond to school safety issues, including awareness, intervention, and prevention. These are more thoroughly detailed in Appendix A. The committee had not met since 1998 but recently reconvened on October 28, 2014. The next meeting is scheduled for December 2014.
- **A.C.A. § 6-15-1303 The Safe Schools Initiative Act** – In 2013, the Arkansas General Assembly passed the Safe Schools Initiative Act, which requires schools to provide emergency response and prevention training to administrators, teachers, and staff, to the extent practicable for natural disasters (i.e., tornadoes, floods) and man-made crises (i.e., active shooter, terroristic threats). Subject to appropriation, the Criminal Justice Institute (CJI) is to provide the necessary training and education for active shooter drills and individuals who will provide school safety assessments. Under the law, CJI may also train agencies or persons to conduct active shooter drills and school safety site assessments on campuses. However, no appropriations have been awarded to CJI and consequently the Institute has not been involved in the drills or assessments that may have been conducted under the statute.
- **A.C.A. § 6-17-113 Duty to Report and Investigate Criminal Acts** – School leaders must take certain steps when evidence of, or a report of, criminal acts on school property is brought to their attention. For instance, one section states that, “school administrators must report an act of violence/criminal act immediately after it occurs and submit a written report to the school board within 3 business days.” It also provides school leaders with clear rules they must follow in the event of school violence/criminal acts, such as the proper channels for making parental contact and the type(s) of law enforcement that must be notified under particular cases.

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- **A.C.A. § 6-10-121 Tornado Safety Drills** – All public schools, including Arkansas School for Mathematics, Sciences, and the Arts, the Arkansas School for the Deaf, the Arkansas School for the Blind and juvenile detention centers, must conduct tornado safety drills no less than three times per year in September, January, and February. The completion of these drills is reported in the yearly Statewide Information System (SIS) report to the Arkansas Department of Education (ADE), as specified in the SIS handbook. However, there is no penalty for non-compliance with the law or rule. During the 2013-14 school year, 214 schools reported performing fewer than the 3 required tornado safety drills.
 - **A.C.A. § 12-13-109 Fire Drills**

All public and private schools and all educational institutions are to have one fire drill each month and to keep all doors and exits unlocked during school hours. These drills are to be reported by each school in the SIS report, as per the SIS handbook rules. There are no penalties for non-compliance with the law or rule. During the 2013-14 school year, 59 schools reported performing fewer than 3 fire drills.
 - **A.C.A. § 6-10-110 Fire Marshal Program** – ADE must help school districts create an Arkansas school fire marshal program. This program will conduct periodic reviews and inspections of buildings for fire hazards, establish evacuation plans, and promote fire preventive education. If any school district fails to establish and maintain a fire marshal program, the State Board of Education shall withhold 10% of state equalization aid until the deficiency has been corrected.
 - **A.C.A. § 6-15-1302 Emergency Plans for Terrorist Attacks** – As of January 2004, every school district is required to develop plans to, “provide for the safety of employees and students in the event of a war or terrorist attack affecting the school, specifically including contingency plans for attacks using a biological agent or nerve gas or similar chemical agents. To the extent practicable, students should participate in practice drills executing the plans.” These plans are checked by the Standards Assurance Unit of ADE. School districts whose handbooks do not include these plans may be cited for non-compliance. For the 2014 school year, there are no citations for non-compliance.
 - **A.C.A. § 6-15-432 Unsafe School Choice Program** – Students who are victims of a violent criminal offense while in or on the grounds of an Arkansas public school or who are attending a dangerous public school have the right to attend a safe public school within the local educational agency (LEA). There are no promulgated rules or memorandums regarding this program. ADE has reported that the policy was adopted to fulfill the requirements of No Child Left Behind, but no students have been moved under Unsafe School Choice nor have any schools been identified as unsafe.

State law clearly mandates that schools and school districts must create plans that aid in the prevention and management of potential crises. In order to fulfill the above requirements, school districts must include these emergency preparedness plans in student handbooks and follow any regulations for training and drilling either set forth in statute or written into ADE rules. Each public school must meet the minimum requirements set by the Standards for Accreditation. ADE must conduct an On-campus Standards Review (OSR) of each school district no less than once every four years as mandated by A.C.A. §6-15-202 (e)(1). ADE Rules Governing Standards for Accreditation of Arkansas Public Schools and School Districts also require ADE to annually review all reports and investigate suspected deficiencies in meeting standards. If ADE finds that these requirements are not met through the enforcement mechanism particular to each statute or rule, the district may be cited. If any of the necessary plans are completely absent from a district handbook, the school could face probationary penalties.

The **Arkansas School Board Association (ASBA)** offers a subscription-based model policy service to help ensure that school district policies fulfill statutory requirements. The available policy templates are intended to alert districts to what is statutorily required or what is considered to be good practice by ASBA. There are multiple policy templates under each topic

(e.g., tornado safety drills, plans for terrorist attacks) available for guidance but each district must choose its own policy for inclusion in its student handbook. All but 7 school districts currently subscribe to ASBA's service and a brief search of school district websites shows nearly identical emergency preparedness policies in student handbooks across many districts.

In order to comply with Arkansas statute, there are two general types of emergency response plans that schools and districts may choose to adopt: emergency operations plans (EOPs) and continuity of operations plans (COOPs). COOP plans were developed by FEMA and subsequently adapted and applied at the state, local, and private level. These plans are designed to enable an organization to continue the performance of essential functions under a wide range of unforeseen circumstances. COOP plans created by LEAs are broad and theoretical and may include provisions such as how to continue school transportation and to teach classes following a natural disaster. Emergency response plans, in contrast, offer preparedness for a single, particular hazard, rather than a range of hazards, such as a tornado touchdown or a first-person shooter. Both types of plans may be created to best suit the needs of an individual organization, and both are used across all 50 states. More informal emergency preparedness plans may also be adopted. The decentralization of the planning process allows schools and districts to adopt the best policy for its needs (FEMA, 2013). Because local autonomy is an important part of the creation of such plans, myriad resources are available to help guide administrators in the planning process. In Arkansas, these range from free state-sponsored services to private, fee-based training sessions.

In June 2014, ADE, in collaboration with Arkansas State University, applied for a U.S. Department of Education grant to help fund the development and implementation of high-quality school emergency operations plans. The intended purpose, as stated by ADE, was to expand ADE's capacity to guide LEAs in the development, or improvement, of emergency operations plans to improve student safety. This grant application was not approved. However, there are several other resources currently available to aid schools with emergency response and preparedness plans.

ARKANSAS TECH UNIVERSITY: CENTER FOR PREPAREDNESS AND RECOVERY

Through its Department of Emergency Management, The Center for Preparedness and Recovery at Arkansas Tech offers a range of services to schools including assistance with drafting of COOP and emergency response plans⁵.

If an entity chooses to draft a COOP plan or an emergency response plan, Arkansas Tech is available to work with the client by request. Specific scenarios are addressed and Tech provides scripted directives and responses to the hazards included in the COOP plan(s). Arkansas Tech will further assist in exercising the plans in the school or school district twice per year.

With the creation and adoption of either type of plan, a hazard analysis is provided to the school or school district in question. Specifically, Arkansas Tech looks at the individual district's area and the existent range of risks and hazards it may face. They are then able to provide recommendations to the school or school district as to which type of plan may best suit its needs. Arkansas Tech personnel work with school administrators to implement the best response strategy(ies) for each district, taking into account what resources are available and the relationship the district has with the city, county, and state. The planning services at Arkansas Tech are fee-based and are typically grant-funded. Table 4 reports the districts and plans that the center has created for various schools in the state through 2013.

⁵ ATU also offers pre-hazard mitigation planning, incident command training, and homeland security exercise and evaluation program exercise planning/facilitation. For more information please see <http://www.atu.edu/emergencymanagement/cfpr.php>.

TABLE 4. SCHOOL DISTRICT PROJECTS

School District	Type of Project	Year Completed
Arkansas Tech University	Continuity of Operations Plan	2012
Arkansas Tech University	Mitigation Plan	Ongoing
Buffalo Island School District	Continuity of Operations Plan	2012
County Line School District	Continuity of Operations Plan	2012
Danville School District	Continuity of Operations Plan/Update	2012 2013
Dardanelle School District	Continuity of Operations Plan	2010
Greenwood School District	Continuity of Operations Plan	2012
Guy Perkins School District	Continuity of Operations Plan	2012
Lonoke School District	Continuity of Operations Plan	2013
Magazine School District	Continuity of Operations Plan	2010
Mena School District	Continuity of Operations Plan	2011
Mount St. Mary's Academy	Comprehensive Emergency Operations Plan	Ongoing
Nettleton School District	Continuity of Operations Plan	2012
Ozark School District	Continuity of Operations Plan	2013 Ongoing
Quitman School District	Continuity of Operations Plan	2010
Riverside School District	Continuity of Operations Plan	2012
Riverview School District	Continuity of Operations Plan/Update	2012 Ongoing
Russellville School District	Continuity of Operations Plan	2011
Scranton School District	Continuity of Operations Plan/Update	2012 2013
St. John's Catholic Schools	Continuity of Operations Plan	2012
Two Rivers School District	Continuity of Operations Plan	2010
Vilonia School District	Continuity of Operations Plan	2011

ARKANSAS DEPARTMENT OF INFORMATION SERVICES (DIS)

The Arkansas Department of Information Services (DIS) also offers disaster service and contingency programming for all government entities, including schools and school districts, that work with DIS. Services are subsidized by rates paid to DIS for services such as email, UNIX, and Windows and are thus offered free of charge. The cost is allocated to Enterprise Services (non-network services) as an overhead component. The contingency plans provided by DIS include, but are not limited to, technical disasters, cyber events, natural disasters, terroristic threats, and active shooters. According to the out-going program director, "the Arkansas Department of Information Systems hosts the Arkansas Continuity of Operations Program (ACOO) which provides a free service of hosting, consulting and training for plan creation and maintenance. The program is available to all public organizations within the State and our staff members are primarily trained in emergency management. The planning relates to all hazards including physical, cyber or man-made events as they may impact resources. Planning covers initial response (making sure organizations have viable emergency action plans that cover exits, fire escape meeting areas, tornado safe areas, gas main leaks, etc.), alternate locations for information technology (i.e., where will they run payroll if their primary site is down, where are their backups being stored) as well as facility alternate locations and memorandum of agreements with local buildings that the district could use if their facilities were no longer available."

The following table shows the evolution of the program from 2007 through the present:

TABLE 5. DIS PROGRAM PARTICIPATION

Program Participation	2007	2012	Current
Plans	1000	1774	1804
District/Agency Planners	600	1138	1405
State Agencies	100	110	111
K-12 Schools	0	214	224
Counties	0	63	70
Cities	0	62	72
Institutes of Higher Education	0	11	11
Libraries	0	2	40

ARKANSAS CRIMINAL JUSTICE INSTITUTE (CJI)

In addition to the resources discussed above, the **Safe Schools Initiative Division (SSID)** of **CJI** provides programs and resources to law enforcement professionals, school personnel, and students aimed at reducing violence and violence-related behaviors in Arkansas schools. CJI is a campus of the University of Arkansas System located in Little Rock with a mission to increase community safety and improve training and leadership for law enforcement officers. Currently, CJI has delivered over 120 school safety courses and 80 anti-bullying presentations across the state. It has also created tools for school resource officers (SROs) including an online resource library, a model school resource officer program manual, and an SRO desk reference guide. Courses offered to school administration and educators are free of charge and the 2014 course offerings include, but are not limited to:

- Active Killer: Response for Educators
- Planning, Conducting and Analyzing Emergency Crisis Plans: From Tabletop to Full Drill
- School Safety Refresher Online
- Understanding Juvenile Law
- Improvised Explosive Device (IED) Awareness
- Gang Awareness and Prevention

The programs offered by SSID are currently funded through a combination of GIF (General Improvement Fund) money and a 2010 COPS (Community-Oriented Policing Service) grant award. For 2014, SSID received approximately \$82,000 in GIF money and used the remaining COPS grant balance (\$150,000) to fund its safe schools projects.

CJI has also launched an online school site safety assessment which is a three-hour course aimed at building awareness of the process, and stressing the importance, of conducting school site safety assessments. This course addresses the steps needed to conduct a school site safety assessment including, but not limited to, developing a school security system, developing a site assessment checklist, and assembling an assessment team.⁶ Thus far, 66 individuals have completed the course and 35 have registered for the next course, beginning November 6. Like other CJI SSID programs there are no registration fees and the hours may count towards the participant’s professional development. All of the resources provided by the SSID are aimed at proactively addressing issues of violence in Arkansas schools and helping to prepare those responsible for school safety for any potential crisis. In conjunction with the Arkansas Safe Schools Association⁷, the Arkansas Attorney General’s Office, Arkansas Department of Human Services, and ADE, SSID sponsors an annual statewide safe school conference aimed at providing the newest training technology to school administration, law enforcement, school security, or anyone responsible for school safety or emergency response planning (<http://www.cji.edu/programs/safe-schools-initiative/>).

⁶ These assessments are internal audits and not information that is collected, or disseminated, by the institution.

⁷ The Arkansas Safe Schools Association is a non-profit organization comprised of SROs, school safety personnel, school administrators and other community members aimed at creating a positive learning environment. Its stated goal is, “to provide consistent, up-to-date, affordable, quality training that is available to all law enforcement agencies and school districts across the state” (<http://www.arkansassafeschools.org/about.htm>). A number of conferences, lectures, and exhibitions are offered by ASSA throughout the year.

SECURITY SERVICES AND SCHOOL RESOURCE OFFICERS (SROS)

From a physical security standpoint, there are multiple methods schools may employ to ensure student safety. Often, districts employ security guards while others have school resource officers. SROs are distinctly different from security officers. First, SROs are career law enforcement officers with sworn authority, “deployed in community-oriented policing and assigned by the employing police department or agency to work in collaboration with school and community-based organizations” (Title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended in 1998). As sworn law enforcement officers, SROs are also required to receive 480 law enforcement specific training hours and to meet all other law enforcement requirements. This includes at least 40 hours of firearm qualifications with an additional 8 hours of continuing education required every year⁸. Armed security officers are required to take only 10 law enforcement training hours, four of which are firearms related and are not sworn law enforcement officers within the communities they serve. Furthermore, SROs frequently act in mentoring or advisory capacities, whereas security officers strictly enforce rules or policies (CJI,2014).

According to CJI, the number of SROs has increased by roughly 22% since 2010. SSID is the only entity currently collecting statewide information on the number of Arkansas SROs through its yearly census.

TABLE 6. SRO CENSUS, BY YEAR

	Districts	Districts with SROs	Total SROs
SY10/11	239	117 (49%)	207
SY12/13	239	125 (52%)	224
SY13/14	238	142 (60%)	272

Source: Criminal Justice Institute 2014

According to expenditure data districts reported through the Arkansas Public School Computer Network (APSCN), Arkansas school districts reported spending \$21.16 million on total security services. This included \$15.4 million on general security services, \$5.37 million on school resource officers specifically, and about \$390,000 on athletic security. Based on the fact that many of the general security expenditures were payments made to local law enforcement agencies, it’s likely that some districts may have used the general security services expenditure code to indicate spending for school resource officers. Therefore, it’s possible that as much as \$2.4 million of district expenditures coded to general security services may actually be SRO expenditures.

TABLE 7. SCHOOL DISTRICT SECURITY EXPENDITURES

School District Security Expenditures 2014			
Security Services	Resource Officers	Athletic Security	Total Security Expenditures
\$15,401,421.53	\$5,372,639.56	\$389,993.00	\$21,164,054.09

Source: APSCN 2014

ADE rules allow districts to use their National School Lunch (NSL) state categorical funding to employ school resource officers “whose job duties include research-based methods and strategies tied to improving achievement of students at risk” (6.07.14, Rules Governing the Distribution of Student Special Needs Funding and the Determination of Allowable Expenditures of Those Funds). In 2013-14, districts collectively spent about \$3.57 million from NSL funds on security services or school resource officers.

⁸ For a complete list of laws, rules, and regulations pertaining to sworn law enforcement officers, please see the Arkansas Commission on Law Enforcement Standards and Training (<http://www.clest.org/oles/Pages/default.aspx>).

Overall, at least 165 school districts had at least \$1,000 of expenditures for security personnel or school resource officers. Districts with little or no expenditures do not necessarily lack security services or SROs. For example, if a local police department employs a school resource officer and does not charge the district for the services, the district would have no expenditures to record in APSCN for these services.

COMMUNITY ORIENTED POLICING SERVICES (COPS)

COPS is overseen by the Bureau of Justice (BOJ) and aims to advance the practice of community policing in America's state, local, and tribal law enforcement agencies (<http://www.cops.usdoj.gov/Default.asp?Item=2687>). In order to support safe schools, COPS provides grant funds to help install school resource officers through the COPS Hiring Program (CHP), dependent upon the availability of appropriated funds. Special consideration is given to applicants focused on school-based policing through SROs. If a CHP grant is awarded for this purpose, grantees are required to submit the contact information for each school partner where they intend to deploy the SROs and to provide a Memorandum of Understanding between the CHP grantee and the school partner directly to the COPS office. As of 2014, CHP grants will provide up to 75% of the approved entry-level salaries and fringe benefits of full-time officers for a 36-month grant period. There is a minimum local match of 25% and a maximum federal share of \$125,000 per officer. However, the COPS grant office may waive the entire local match requirement if there is demonstration of severe fiscal distress.

Over the past several years, CHP funding has been directly granted to law enforcement agencies and cities across multiple regions of Arkansas. The local law enforcement agency then places a current officer in a school as an SRO or hires a new officer to be used as an SRO. These agencies then pay the SRO's salary through the CHP grant award.

TABLE 8. ARKANSAS SRO CHP FUNDING, BY YEAR

	2011	2012	2013	2014
SRO Funded	10	6	9	8
Total CHP Funding	\$1,307,625.00	\$610,714.00	\$1,043,746.00	\$688,094.00

Source: COPS 2014

ACTIVE SHOOTER TRAINING

ALICE

ALICE is a private organization that provides strategies for responding to an active shooter event. It has been recognized nationally and is included in the school violence task force recommendations for Ohio, Alabama, and Massachusetts as a valuable resource for active-shooter training. The acronym, ALICE, stands for alert, lockdown, inform, counter, and evacuate, highlighting the five steps the organization recommends taking during any active shooter scenario.

According to the U.S. Department of Homeland Security,

An Active Shooter is an individual actively engaged in killing or attempting to kill people in a confined and populated area; in most cases, active shooters use firearms(s) and there is no pattern or method to their selection of victims. Active shooter situations are unpredictable and evolve quickly. Typically, the immediate deployment of law enforcement is required to stop the shooting and mitigate harm to victims. Because active shooter situations are often over within 10 to 15 minutes, before law enforcement arrives on the scene, individuals must be prepared both mentally and physically to deal with an active shooter situation (Active Shooter Booklet, "US Department of Homeland Security Active Shooter Response").

ALICE training is available for a fee and may be undertaken by any interested party. Typically ALICE classes are hosted by a police department, sheriff's office, school, or college. Any community member is welcome to attend for the registration cost of \$595. After completing the course, an individual receives ALICE certification and is granted the authority to train other individuals under his or her jurisdiction. For instance, if a school superintendant receives ALICE certification by attending an ALICE course, he or she is then able to train the staff and students within the individual's school district. Upon completion of a course, individuals are also granted access to online tools used to create and implement active shooter response plans. ALICE also offers contracted courses, with an instructor sent directly to an organization for full- or half-day sessions. Half-day training is four hours of instruction and information at a cost of \$3,000. Full-day, eight-hour training includes education, information, and practical scenarios. The cost for a full day of training is \$6,000. Lastly, large private businesses or public universities may contract with ALICE at a cost of \$12,000 in order to certify anywhere between 25 and 50 individuals.

An e-learning portal was released during the month of October and still remains in its testing phase. This portal will be available for K-12 and higher education training and the cost will vary between \$8 and \$20 per employee per year. Individuals participating in this course will not become ALICE certified but will instead receive information on active shooter and armed intruder response plans. More information on the exact nature of the training offered will be released when the portal is launched.

As of 2014, 114 Arkansas organizations have received some form of ALICE training through either a hosted course or a contracted half or full day. Although more exact data is not available, ALICE sales manager Nick Feyerchak estimates that roughly 50 school districts have representatives that have undergone ALICE training.⁹

ARKANSAS ATTORNEY GENERAL'S OFFICE

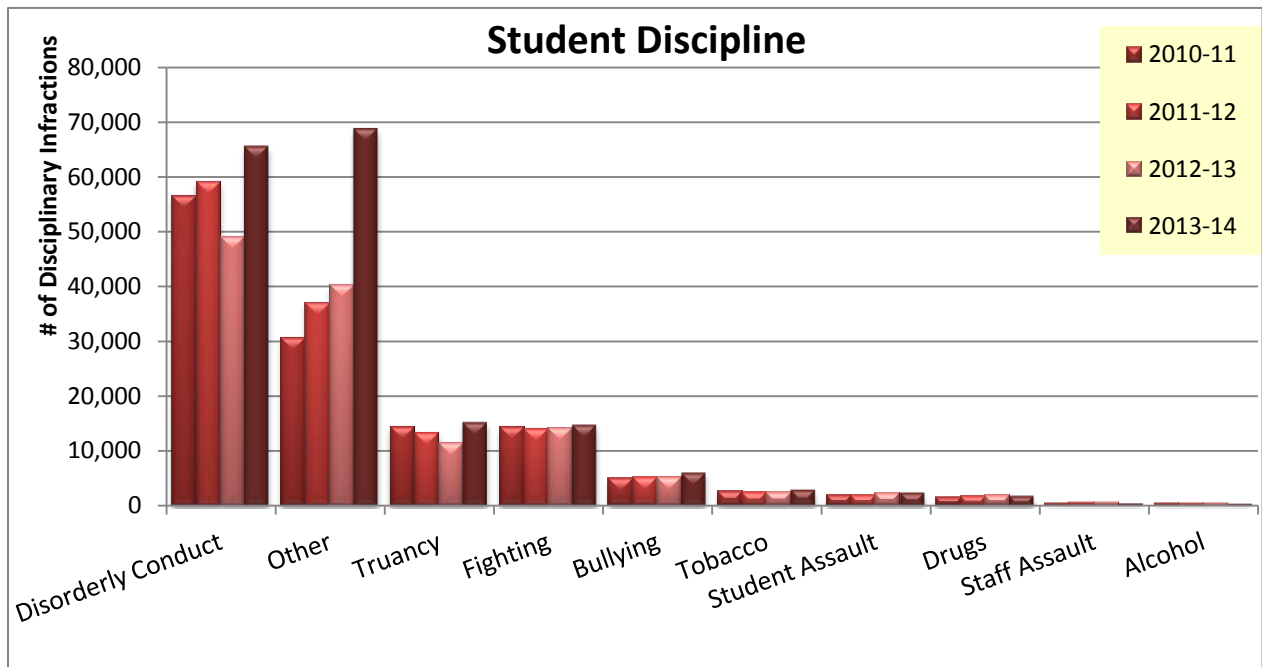
The Arkansas Attorney General's Office has launched a training initiative aimed at preparing schools for the possibility of an active threat on campus. Berryville School District has been the first district to participate in the AG's program. The initiative will train law enforcement officers, educators, and emergency responders to "avoid, deny, and defend" in active-shooter situations. Law enforcement officers and first responders will receive Advanced Law Enforcement Rapid Response Techniques (ALERT) training. This training focuses on engagement with active shooters and victim treatment. Roughly \$101,710 was appropriated under Act 228 of 2013 to the Attorney General's office for two positions (Investigator IV) associated with this school safety program.

⁹ ALICE will not release further information on the districts that have undergone training because of its privacy policy and training services agreement.

SCHOOL DISCIPLINE

School discipline is a critical component of school preparedness (Sacco et al., 2012). Over the past several years, Arkansas has seen a slight increase (net +349 incidents) in student discipline reports and a slight decrease (net -331 incidents) in the reporting of violent acts (staff assault, student assault, and fighting) in the Arkansas Public School Computer Network (APSCN) on Arkansas school campuses.¹⁰ Beginning in 2014, ADE must prepare a report for the State Board of Education that includes, but is not limited to, disciplinary rates by student subgroup, achievement status for school districts, and a survey to determine which districts are currently implementing evidence-based strategies. This report fulfills the requirements of A.C.A. § 6-18-516, and is due by July 1 of each year.

FIGURE 4. ARKANSAS APSCN REPORTING OF SELECTED DISCIPLINARY INFRACTIONS, BY DISTRICT: 2011-14



However, anecdotal evidence suggests that Arkansas public school principals believe there to be a slight increase in the amount of time they spend disciplining students for various offenses, including acts of violence, over the 2012-13 school year.¹¹ This information was collected during the 2014 Educational Adequacy Study. Seventy-four schools were randomly selected throughout the state of Arkansas to be visited by a team from the Bureau of Legislative Research. A survey was administered to each school principal during each site visit. This survey included questions related to school discipline and the time each principal, or principal's representative, spent on discipline-related activities. Specifically, the principals were asked the following question:

¹⁰ It is important to note that there are possible inconsistencies in the use of APSCN reporting codes that could lead to the incorrect categorization of infractions and, possibly, subsequent bias in the reported statistics. Currently, these are the most reliable indicators of incidences of violence and bullying for public schools in Arkansas. Also, the 'other' category contains a significant number of entries across all three years (40,159, 36,915, 30,545). "Other" is defined by the Arkansas Department of Education as "...those items not listed elsewhere." Without more precise classification of the activities reported under this category, we cannot say with certainty that violent acts have decreased in Arkansas schools.

¹¹ The survey is administered to the principals of randomly selected schools across the state of Arkansas biennially.

Over the last several years have you noticed a significant increase in the amount of time spent on student discipline?

Of the seventy-four responses to this question, 28 (37.3%) principals indicated that they saw an increase in the time spent on discipline, 18 (24.3%) principals indicated that they saw an overall decrease in the time spent on discipline, 18 (24.3%) indicated that they saw no change in the time spent on discipline, 5 (6.8%) reported being new administrators, and 5 (6.8%) responses did not fall into any of the preceding categories¹². Of those principals who reported seeing an increase in the time spent on student discipline, the following were the most frequent explanations given as to why they believed this increase to be occurring:

- Students have more emotional and severe mental health needs than in previous years.
- There is a lack of parental involvement; home lives are unstable.
- There is an increase in time spent on discipline due to the new ‘bullying’ classification and social media.
- There are negative social influences/sense of entitlement.

In order to regulate school discipline, there are several laws and rules that Arkansas schools must adhere to. These are¹³:

- **A.C.A. § 6-18-506 School Dismissal Act** Every school board must adopt written policies concerning the violation of school standards such as vandalism and disrespect toward teachers. These policies apply to behavior on school grounds or at any school function or on school property (e.g., school buses). These policies must be filed with ADE. As of October 2014, no districts have been cited for non-compliance.
- **A.C.A. § 6-18-502, A.C.A. § 6-18-503, A.C.A. § 6-18-504 Guidelines for the Development of School District Student Discipline Policies and Written Student Discipline Policies Required** ADE must establish guidelines for student discipline policies that are annually reviewed by the school district’s committee on personnel policies. These disciplinary measures must include a list of offenses, potential penalties, and rules for the promulgation of said policy(ies). These policies must be written and filed with ADE by each school district and must provide provisions for the placement of students with disciplinary problems into an alternative learning environment. They also must include clothing prohibitions and a minimum one-year expulsion for students possessing a gun or other prohibited weapon on school campus.

District compliance is ensured by requiring that all district handbooks are sent to the Equity Assistance Office to be filed with ADE. Additionally, a Statement of Assurances must be signed by the superintendent, attesting to the district’s compliance with a variety of laws. Number 59 on this statement pertains directly to student discipline policies: “The school district is in compliance with Ark. Code § 6-18-501 et seq. concerning guidelines for development of school district student discipline policies and written student discipline policies.” As of October 2014 there were no citations for non-compliance reported by ADE.

- **A.C.A. § 6-18-501 and A.C.A. § 6-18-505 The Duty of Teachers and The School Discipline Act** Teachers shall discipline and are authorized to hold every student accountable for disorderly or disruptive conduct during school hours, on the playground, during intermissions or recesses, and on any school bus going to or from school. If corporal punishment is an allowable disciplinary measure in a school district’s written student discipline policy, the punishment may be administered in accordance with that policy in order to maintain discipline and order within the schools.

¹² These included responses such as n/a or other responses which did not specify an increase, decrease, or maintenance of status quo in time spent on discipline.

¹³ This also includes A.C.A. § 6-18-512, which mandates the removal of hand-held laser pointers from students and A.C.A. § 6-18-515 regulating the use of personal electronic devices.

- **A.C.A. § 6-18-507, A.C.A. § 6-18-510, and A.C.A. § 6-18-511 Suspension and Expulsion and Removal by Teacher** These statutes define both suspension and expulsion and set forth the process for each. A teacher may also remove a student from class and send him or her to a principal's, or principal designee's, office to maintain effective discipline in the classroom. The behaviors for which a student may be removed from a classroom (e.g., disruptive or abusive behavior) and the penalties for removing a student from class at least 2 times during any nine-week, or ADE equivalent, grading period are highlighted. School boards are given explicit permission to authorize a teacher or administrator to suspend a student, subject to appeal. Superintendents are also given the right to recommend a student for expulsion. The appeals process for both disciplinary actions are defined and the process for contacting a student's guardian(s) about such matters is laid out. School boards may also adopt a policy that prohibits a student who has been expelled from one district from enrolling as a student in a subsequent district until the person's expulsion has expired.
- **A.C.A. § 6-18-513 Parental Notification** If a student is under the age of 18 and a school or school district makes any report to law enforcement regarding student behavior, the parent or legal guardian must be notified.
- **ADE Guidelines for the Development, Review and Revision of School District Student Discipline and School Safety Policies** These rules are designed to assist local school districts with the development, review and revision of student discipline and school safety policies. They state that parents, students, and school district personnel, including teachers, should be involved in the development of school district student discipline policies. The rules state that these policies are to be reviewed annually by the school district's committee on personnel policies. They also highlight a list of offenses (such as using or selling illicit drugs or alcohol on campus, possessing a firearm or other prohibited weapon on campus, or willfully damaging or destroying school property) that schools must respond to and the ways in which schools are legally able to respond to these offenses.

POSITIVE DISCIPLINE MODELS

ASBA's policy service provides model disciplinary policies, based upon statute, which many school districts have chosen to adopt. The **National Education Association (NEA)** further recommends positive discipline models that schools and districts may use to combat discipline problems in the classroom. According to the organization, one of the best programs developed is the **LEAST** approach which helps educators determine the appropriate level of involvement for each disciplinary infraction (nea.org/tools/10-approaches-to-better-discipline.html). This prevents escalation of the behavior and, subsequently, of disciplinary action. The goal is to prevent subversive behaviors by maintaining effective classroom discipline and by providing guidance to students without additional stress (nea.org). The LEAST approach includes the following steps:

- **Leave it alone** – If the event is a brief and minor disturbance that is unlikely to occur again, leave it be.
- **End the action indirectly** – When learning is disrupted or someone may get hurt, let the student(s) involved know you are aware of the inappropriate activity with a facial expression, a body gesture, or a quiet action such as walking toward the students or calling the student(s)' name(s).
- **Attend more fully** – Secure more information from the student on who, what, when, where and why. Be objective rather than emotional.
- **Spell out directions** – When a situation threatens to get out of hand, making learning impossible or risking harm to someone, clearly explain to the student(s) involved the consequences of his/her actions and your intent to follow through.
- **Treat student progress** – Record what happened, when, where, who was involved, what you did, and who witnessed the incident.

BULLYING

As an increasingly important issue impacting student discipline, policymakers must look at the potential role of bullying on violent student behavior in American schools. In 2002, the United States Secret Service, in partnership with the U.S. Department of Education, released a final report on the findings of the Safe School Initiative. This initiative was a collaborative effort between the two agencies tasked with examining 37 incidents of targeted school shootings and school attacks (1974-2000). The study focused on the thinking, planning, and behaviors of the students who carried out the violent acts. According to the report, “particular attention was given to identifying pre-attack behaviors and communications that might be detectable—or ‘knowable’—and could help in preventing some future attacks” (2002: ii). Among the Safe School Initiative’s findings was the high self-reported level of bullying suffered by the individual attackers in the violent incidents. Roughly 71% of the 29 perpetrators reported feeling bullied, persecuted, or injured by others prior to the attack. The Initiative further reported that, “in some of these cases the experience of being bullied seemed to have a significant impact on the attacker and appeared to have been a factor in his decision to mount an attack at the school” (2002: 21). Although bullying is only one potential explanation as to why the perpetrators committed their crimes, the connection drawn between bullying and violent acts has been well established by multiple researchers and organizations, making it necessary to address bullying when considering school safety, as both victims of bullying and those who engage in bullying behavior can experience psychological difficulties and social relationship problems (McCallion and Feder, 2013; Nansel et al., 2003; NCES, 2010; Wang et al. 2009; Wang et al., 2011).

Multiple definitions of bullying exist across studies and agencies making it difficult to identify a coherent iteration. Thus, the definition of bullying used in school plans may be chosen by each school or school district and is often subjective. According to [stopbullying.gov](http://www.stopbullying.gov), a popular federal government website managed by the United States Department of Health and Human Services (HHS) bullying is defined as, “unwanted, aggressive behavior among school aged children that involves a real or perceived power imbalance. The behavior is repeated, or has the potential to be repeated, over time” (<http://www.stopbullying.gov/what-is-bullying/definition/index.html>). HHS also identifies three types of bullying including verbal bullying such as teasing or taunting, social bullying such as spreading rumors about someone or embarrassing someone in public, and physical bullying such as hitting, spitting, or making mean or rude hand gestures (<http://www.stopbullying.gov/what-is-bullying/definition/index.html>).¹⁴

While there is consensus that bullying is an important school safety issue, there is no overarching federal law that explicitly addresses bullying. Instead bullying may be deemed discriminatory harassment covered under one or more federal civil rights laws ([stopbullying.gov](http://www.stopbullying.gov)).¹⁵ These laws are:

- Title IV and Title VI of the Civil Rights Act of 1964
- Title IX of the Education Amendments of 1972
- Section 504 of the Rehabilitation Act of 1973
- Titles II and III of the Americans with Disabilities Act
- Individuals with Disabilities Education Act (IDEA)

Under these laws, schools must respond to behavior that:

- Is severe, persistent or pervasive.

¹⁴ When looking at four federal agency-sponsored nationally representative surveys on student bullying, disparate estimates of bullying behavior are obtained. These estimates range from a high of 27% of students reporting being bullied to a low of 20.1%. Additionally, the prevalence of cyberbullying varied from a low of 1.8% to a high of 16.2%. These four studies are the National Youth Risk Behavior Survey (2011, YRBSS), the School Crime Supplement to the National Crime Victimization Survey (2012, SCS/NCVS), Health Behavior in School-aged Children (2005/2006, HBSC) and the National Survey of Children’s Exposure to Violence (2008, NatSCEV).

¹⁵ For a discussion of bullying against students with disabilities please see the Dear Colleague Letter and Fact Sheet in the appendix.

-
- Creates a hostile environment at school that is sufficiently serious that it interferes with or limits a student’s ability to participate in or benefit from the services, activities, or opportunities offered by a school.
 - Based on a student’s race, color, national origin, sex, disability, or religion.

Although no federal oversight for bullying exists there have been multiple strategies proposed at the federal level. Some of these are considered by stopbullying.gov to be particularly useful, comprehensive approaches. While they have not become statute, examples of these proposed laws include:

- **H.R. 83: Bullying Prevention and Intervention Act of 2011**

This bill would amend the Omnibus Crime Control and Safe Streets Act of 1968 to allow the use of juvenile accountability block grants for bullying prevention and intervention programs; require the Attorney General to establish voluntary guidelines for use by states and local governments in developing such programs; and authorize appropriations for FY2012-FY2016 for the juvenile accountability block grant program. The bill would require programs receiving funding to focus on the accountability of juveniles for their actions, provide counseling services for bullies and victims, address behavior and behavior modification, notify parents, and educate students, adult personnel, and law enforcement officers about how to identify occurrences of bullying and how to address such occurrences. It would allow variations “in order to meet the specific needs or circumstances of relevant populations.” The bill does not contain language requiring or encouraging grants to be used for broader preventative educational initiatives that can create a better whole-school environment, such as anti-bullying curricula, character education, and social and emotional learning curricula. It also defines bullying very broadly. Source: <https://www.govtrack.us/congress/bills/112/hr83>

- **H.R.1648, S. 506: Safe Schools Improvement Act of 2011**

This bill would amend the Elementary and Secondary Education Act of 1965 (ESEA) to require states to collect and report information and statistical data on bullying and harassment and to provide technical assistance to local educational agencies related to bullying prevention. Source: <https://www.govtrack.us/congress/bills/112/s506>

- **H.R. 975: Anti-Bullying and Harassment Act of 2011**

This bill would amend the Safe and Drug-Free Schools and Communities Act to require states to use safe and drug-free schools grants to collect and report information on bullying and harassment and require local educational agencies and schools to use sub-grants for prevention and response measures. However, the safe and drug-free school grants program has ended. The proposed legislation includes annual reporting out to parents on prohibited conduct and requires the establishment of complaint procedures. Source: <https://www.govtrack.us/congress/bills/112/hr975>

Like the school safety laws discussed in the preceding section, anti-bullying policies vary widely from state to state. There is a lack of agreement on what constitutes the best preventive practices, or responses to, bullying on school campuses. While some state anti-bullying laws contain provisions modifying criminal laws or creating new crimes aimed at preventing bullying, the majority of anti-bullying laws focus on the responsibilities of schools to address bullying.¹⁶ A minimum of what school district policies must contain, in regards to bullying, is typically prescribed by the state with the remainder of the decisions regarding bullying left to the districts or individual schools (Sacco et al., 2012). However, the vast majority of antibullying laws and policies remain ambiguous and open to interpretation at the local level. For instance, most states broadly use terms like “disciplinary action,” “disciplinary consequences,” “or consequences” in their antibullying policies. Only seven states actually detail specific disciplinary consequences, such as Texas’s recommendation for classroom or campus transfer or Georgia’s mandatory assignment to an alternative school after three bullying offenses within one school year.

¹⁶ For an across-state comparison of antibullying policies, please see the appendix immediately following this report.

TABLE 9. ANTIBULLYING POLICY HIGHLIGHTS

38 states provide some treatment of cyberbullying, or bullying involving electronic acts in their definitions
32 states require, and 3 states encourage, the creation of school procedures for investigating incidents of bullying
17 states require staff to report incidents of bullying they witness or of which they are otherwise aware
2 states (GA and WI) encourage school districts to adopt bullying policies that would require staff to report incidents of bullying they witness or of which they are otherwise aware
11 states require and 1 state (GA) encourages, school procedures that explicitly allow for the anonymous reporting of bullying incidents
9 states require school administrators, in certain circumstances, to report incidents of bullying to law enforcement authorities
Laws in 34 states require, and 2 states encourage, the districts to provide disciplinary consequences for bullying
16 states require, and 6 states encourage, schools or school districts to provide staff training or professional development on bullying prevention
10 states require, and 1 state (AK) encourages, schools or school districts to provide staff training or professional development on the school district's bullying policy

In 2011, the federal education department undertook an analysis of state bullying laws and policies. As a result, it released a memo detailing 11 key components most commonly found in state antibullying laws:

- Purpose statement
- Statement of scope
- Specification of prohibited conduct
- Enumeration of specific characteristics
- Development and implementation of local education agency (LEA) policies
- Components of LEA policies
- Review of local policies
- Communication plan
- Training and preventative education
- Transparency and monitoring
- Statement of rights to other legal recourse

These 11 components may serve as a guide to help lawmakers write anti-bullying legislation. According to the Education Department, Arkansas's anti-bullying laws contain 9 of these 11 components (not including the transparency and monitoring and statement of rights to other legal recourse provisions). Arkansas also scores a 21 out of a possible 32 points on the scale of anti-bullying law expansiveness. The more expansive a law is considered to be, the more facets of the school bullying issue it is considered to address. Arkansas ranks 1st in expansiveness among surrounding states and 5th among the 16 SREB states (<http://www2.ed.gov/rschstat/eval/bullying/state-bullying-laws/state-bullying-laws.pdf>).¹⁷

In response to the increased focus on bullying in schools, Arkansas has mandated that its school districts create policies aimed at preventing and punishing bullying behaviors.

- **A.C.A. § 6-18-514 Concerning the Requirement to Adopt Anti-Bullying Policies**

This statute mandates that each school district adopt policies that keep students in the public school educational environment “reasonably free from substantial intimidation, harassment, or harm or threat of harm by another student”. It provides definitions schools must use in their anti-bullying policies, explicitly categorizing behaviors such as “bullying,” “electronic acts,” and “harassment.”

¹⁷ For a complete overview of anti-bullying legislation across the United States, please see: http://cyber.law.harvard.edu/sites/cyber.law.harvard.edu/files/State_Anti_bullying_Legislation_Overview_0.pdf

It also sets forth certain criteria for accusing a student of bullying and reporting behaviors that constitute bullying, and it mandates that school districts provide training on compliance with the anti-bullying policies each district adopts.

There has also been a policy effort to confront issues of cyberbullying and cyberthreats due to the proliferation of the internet and social media. Nationally, cyberbullying has been defined as, “being cruel to others by sending or posting harmful material or engaging in other forms of social aggression using the Internet or other digital technologies” (Willard 2007:1). Cyberbullying can take different forms including, but not limited to, harassment, denigration, impersonation, trickery, and cyberstalking. Cyberthreats, on the other hand, are either direct threats or distressing material, “general statements that make it sound like the writer is emotionally distraught and may be considering harming someone else, harming himself or herself, or committing suicide” (Willard 2007:2). Arkansas currently has two statutes pertaining to cyberbullying.

- **A.C.A. § 6-18-514 Concerning the Requirement to Adopt Anti-Bullying Policies (Act 905 of 2007: To Include Cyberbullying in Public School District Antibullying Policies)** Subsection (3) requires schools to include ‘Electronic Acts’ in their policies concerning acts of bullying. Electronic acts are defined as a communication or image transmitted by means of an electronic device, including without limitation a telephone, wireless phone or other wireless communications device, computer, or pager”.

- **A.C.A. § 5-71-217 (Act 905 of 2011: To Establish the Crime of Cyberbullying)** This law specifically defines cyberbullying, outlines the criteria that comprise an act of cyberbullying and defines it as a Class B misdemeanor. This law is not specific to education but instead generally names cyberbullying as a crime in the state of Arkansas.

As a further resource on this evolving matter, the Arkansas Department of Education website provides a link to the nationally recognized “Educator’s Guide to Cyberbullying, Cyberthreats, and Sexting.” This source defines all terms in relation to the topic and discusses those students who may be at the highest risk for problems as victims and as bullies. There are guidelines offered to help administrators, teachers, and staff deal with each of the three topics, including how and when to gather evidence, and what to do once the identity(ies) of the individual(s) involved is determined.

The same oversight used to monitor school and school district emergency preparedness plans is used to oversee the implementation of anti-bullying plans. Each district must include its anti-bullying plan on its website, and ADE’s Equity Assistance Unit monitors these plans on a four-year rotation schedule. As of May 2014, no district had been cited for failure to comply with this law. Additionally, school district cyberbullying prevention policies, required by A.C.A. § 6-18-514, must be written into each district’s technology plan and must fulfill all of the requirements set forth by the federal Children’s Internet Protection Act (CIPA).¹⁸ If a district fails to meet these requirements, its technology plan will not be approved by the state Department of Education. Again, no district has been cited for failure to comply.

As with emergency drills and school discipline plans, ASBA provides member school districts with templates for both anti-bullying and cyber-bullying plans. Additionally, many Arkansas resources exist to assist school districts with the creation and implementation of anti-bullying policies and to help prevent and respond to bullying behaviors. The **Arkansas Safe Schools Association** provides myriad resources for the state with workshops presented during a yearly conference specifically designed to provide the tools to combat bullying. These workshops are open to teachers, SROs, school administrators and community youth service providers, among others. Attendance at conference presentations has been approved by ADE as professional development hours for educators. This organization also works with SSID to provide programs aimed at conflict resolution and is sponsored by ADE, CJI, the Arkansas Attorney General’s

¹⁸ Please see the Appendix for a full explanation of CIPA and its requirements.

Office, and Arkansas DHS. CJI offers courses free of charge for educators on bullying prevention. It also offers anti-bullying conferences for students and works with SROs to ensure that schools are bully-free.

There are multiple agencies that provide anti-bullying resources to states. These resources range from anti-bullying policy templates to potential grant funding opportunities. Schools and school districts may choose from a variety of these plans and tools to implement the best practices suited to their local resources and demographics. Below are some of the many resources on bullying prevention and response that are currently available.

- ADE provides resources for anti-bullying strategies on its website at <http://www.arkansased.org/divisions/learning-services/technology-initiatives-and-resources/cyber-safety-resources>. These include, but are not limited to, links to articles on preventing bullying, sample curricula that address bullying behaviors, video resources, psychiatric and psychological resources in Arkansas, and suicide prevention information. These resources are available for use by educators and administrators as well as students, parents and community members. For more information on these resources, individuals may contact Belinda Kittrell with the ADE Division of Learning Services.
- **Stopbullying.gov** provides detailed definitions for both bullying and cyberbullying and also offers myriad resources for preventing, and responding to, acts of bullying on school campuses or at school sponsored events. The site features videos, a comprehensive list of resources, engagement activities, and behavioral models. Its services may be used by anyone, free of charge, and may be accessed 24 hours a day at www.stopbullying.gov. It is a collaborative effort with an editorial board comprised of:
 - The U.S. Department of Education
 - U.S. Department of Health and Human Services
 - Centers for Disease Control and Prevention
 - Health Resources and Services Administration
 - Office of the Assistant Secretary for Planning and Evaluation
 - Substance Abuse and Mental Health Services Administration
 - Department of Justice

FUNDING

Funding for anti-bullying legislation is limited across the U.S. Although all 50 states have adopted some form of anti-bullying law, only 11 states identify a source of funding to help school districts satisfy the statutory requirements. These states are California, Colorado, Delaware, Florida, Indiana, Nevada, New Jersey, New York, Pennsylvania, Tennessee, and Virginia. Of these 11 states, 6 provide for appropriations while 5 rely on private donations.

GUNS IN SCHOOLS

Keeping guns out of the wrong hands on school campuses is an important part of school safety. The federal government has enacted several laws that designate schools as gun-free zones.

GUN-FREE SCHOOL ZONES ACT (GFSZA)

The GFSZA prohibits any person from knowingly possessing a firearm that is in a school zone. The GFSZA defines “school zone” as

- 1) in, or on the grounds of, a public, parochial, or private school; or
- 2) within a distance of 1,000 feet from the grounds of a public, parochial or private school.

The federal prohibition against possessing a gun in a school zone does not apply, however:

- To people licensed by the state or locality to possess the gun. This exception applies to many people licensed to possess firearms or to carry concealed firearms.
- If the firearm is unloaded and “in a locked container, or a locked firearms rack that is on a motor vehicle.”
- If the firearm is possessed for use in a program approved by a school, or in accordance with a contract entered into between a school and the individual or an employer of the individual (<http://smartgunlaws.org/guns-in-schools-policy-summary/>).

THE GUN-FREE SCHOOLS ACT (GFSA)

The GFSA requires that states receiving certain federal funds¹⁹ have laws requiring local educational agencies (LEA) to adopt a policy that expels students for a minimum period of one year for bringing a firearm to school or possessing a firearm at school. “School” is defined as “any setting that is under the control and supervision of the local education agency for the purpose of student activities approved and authorized by the local educational agency.” This includes school-sponsored sporting events and other school-sponsored events that may take place off of the main physical LEA’s campus.

The GFSA allows states to permit the superintendent of a school district to modify an expulsion for a student, in writing, on a case-by-case basis. A state may also allow a local educational agency that has expelled a student to provide an alternative educational setting.

The GFSA also requires that, in order to receive federal funds, each LEA must annually provide:

- An assurance that the LEA is in compliance with the state expulsion law; and
- A description of the circumstances surrounding any expulsions imposed under the state expulsion law.

LEAs must refer any student who brings a firearm to a school served by the agency to the criminal justice or juvenile delinquency system. In this provision, “school” is defined more narrowly to mean “a school that provides elementary or secondary education” pursuant the laws of the state.

The GFSA provides narrow exceptions to these prohibitions, permitting firearm possession where the gun is lawfully stored inside a locked vehicle on school property, or where the gun is possessed for an activity approved and authorized by the local educational agency, if the agency has adopted appropriate safeguards to ensure student safety.

¹⁹ These funds are any funding included in a chapter or subchapter of Title 20, such as federal funding for educating the disabled, career and technical education assistance, and the Elementary and Secondary Education Block Grant. For more information see 20 U.S.C.

Pursuant to these laws, Arkansas prohibits the possession of a firearm, concealed or unconcealed:

- Upon the developed property of the public or private schools, K-12;
- In or upon any school bus; or
- At a designated bus stop as identified on the route lists published by school districts each year.²⁰

In 2014, 11 students were expelled due to gun infractions out of 52 total gun infractions.

TABLE 10. DISCIPLINARY INFRACTIONS BY DISTRICT WITH EXPULSIONS (2013-2014)

LEA	District Description	Handgun	Rifle	Shotgun	#Expelled
0401000	Bentonville School District	1	0	0	1
0405000	Rogers School District	2	0	0	0
0801000	Berryville School District	2	0	0	0
0802000	Eureka Springs School District	0	2	0	1
1611000	Nettleton School District	1	0	0	0
1612000	Valley View School District	2	0	0	0
1613000	Riverside School District	0	0	1	0
1803000	West Memphis School District	2	0	0	2
2705000	Sheridan School District	1	0	0	0
2903000	Hope School District	1	0	0	0
2906000	Spring Hill School District	0	0	1	0
3002000	Glen Rose School District	0	1	0	0
3201000	Batesville School District	1	0	0	0
3505000	Pine Bluff School District	0	0	1	0
4203000	Paris School District	0	0	1	0
4605000	Texarkana School District	1	0	0	0
4702000	Blytheville School District	1	0	0	1
5102000	Jasper School District	0	0	1	0
5204000	Camden Fairview SD	1	0	0	0
5404000	Marvell-Elaine School District	1	0	0	0
5605000	Trumann School District	3	0	0	0
6001000	Little Rock School District	4	0	0	4
6002000	N. Little Rock School District	3	0	1	0
6003000	Pulaski County Special SD	10	0	0	1
6201000	Forrest City School District	1	0	0	0
6302000	Benton School District	2	0	0	0
6303000	Bryant School District	1	0	0	0
7203000	Fayetteville School District	1	0	0	0
7303000	Bradford School District	1	0	0	1
	TOTAL	43	3	6	11

Source: ADE 2014

Nationally, there has been discussion as to whether school personnel should be allowed to carry concealed firearms in order to provide quick response to possible intruder scenarios. In Arkansas, **13** school districts have received approval to arm employees by the Arkansas Board of Private Investigators and Private Security Agencies under A.C.A. §17-40-101 et. seq., A.C.A. §17-40-201 et. seq., and A.C.A. §17-40-301 et. seq. However, the board passed a resolution in 2013 putting a moratorium on issuing additional licenses until 2015. This allows the General Assembly to address the issue during the 2015 legislative session.

²⁰ Ark. Code Ann. § 5-73-119(b)(1).

CONCLUSION

According to the National School Climate Center, school safety is one of the most important features of the quality and character in school life. A safe school climate promotes positive youth development, effective risk prevention efforts, and academic achievement (Editorial Products in Education Research Center, 2013). While all 50 states require that school districts adopt some form of school safety policy, there are no federal laws or policies that explicitly deal with school preparedness. Arkansas requires all public schools to have policies dealing with student discipline, natural disasters, criminal behavior, and terrorist attacks. Drills for active shooter scenarios are also encouraged and will be required beginning in the 2015-16 school year.

The Arkansas School Board Association (ASBA) provides a subscription service to school districts that provides policy templates for district handbooks that are consistent with Arkansas laws, statutes, and rules. There are two types of emergency response plans that districts may choose to adopt: emergency operations plans (EOPs) or continuity of operations plans (COOPs). Schools also have the freedom to create less formal plans, as long as they comply with Arkansas statute. Both Arkansas Tech University and Arkansas Department of Information Services provide emergency plan writing services to school districts. The Arkansas Criminal Justice Institute also provides services to schools that are aimed at reducing violence and violence-related behaviors on school campuses.

Schools may also use security and school resource officer services to help ensure campus safety. In 2013, Arkansas school districts spent \$15.4 million on general security services and \$5.37 million on school resource officers. An additional \$390,000 was spent on athletic security. Additionally, CJI reports that there were 272 SROs in 142 school districts for the 2013-14 school year. These SROs may be employed directly by a school district, may be a volunteer from the local law enforcement agency, may be employed directly by the local law enforcement agency, or may be compensated through a combination of district, city, or local funds. The CHP grant program provided by COPS may also provide districts with school resource officers. During the 2013-14 school year, 8 SROs were granted roughly \$688,000 in funding through the CHP program.

Student discipline is an integral part of school safety. Educators and students in Arkansas are expected to follow laws and guidelines aimed at diminishing potential threats caused by student disruption. Educators may also use positive discipline models, such as the LEAST Approach, to help prevent the escalation of discipline problems within the classroom. ADE's Equity Assistance Unit has the responsibility of making sure that student discipline policies are implemented fairly and in a manner that prevents discrimination.

As with other school safety issues, there are no federal policies regarding bullying, although all 50 states have adopted some form of anti-bullying policy as of 2014. Arkansas has adopted anti-bullying policies, including cyber-bullying policies to combat bullying in public schools. ASBA also provides a model template for anti-bullying policies to member school districts. Funding for anti-bullying legislation is limited across the United States and is not provided in Arkansas at the state level.

Federal laws prohibit the carrying of guns on school property or in school zones. The Gun Free Schools Act also sets a minimum one-year expulsion for any student found to possess a firearm at school. In 2014, 11 Arkansas students were expelled due to gun infractions. Additionally, 13 Arkansas school districts currently allow employees to carry a concealed weapon under A.C.A. §17-40-101 et. seq., A.C.A. §17-40-201 et. seq., and A.C.A. §17-40-301 et. seq. This has been authorized by the Arkansas Board of Private Investigators and Private Security Agencies. However, this board has placed a moratorium on issuing further licenses until the General Assembly addresses the issue during the next legislative session.

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APPENDIX A – FINDINGS OF THE SAFE SCHOOLS COMMITTEE

Recommendations by the Safe Schools Committee--1998

INTRODUCTION

With vision and forethought, the Arkansas General Assembly passed Act 1346 of 1997. This legislation formed a committee of Arkansas educators, school board members, concerned citizens, and legislators to study the issue and send schools meaningful recommendations regarding safe schools. This 12-member committee, which has met since March 1998, reviewed a variety of policies, programs, and practices that promote safe schools in Arkansas.

The Safe Schools Committee recognized that some Arkansas school districts have comprehensive regulations for dealing with school safety. However, enforcement and application of policies and plans concerning school safety are not consistent throughout the state's 310 school districts. The Committee's recommendations will allow districts to focus on awareness, prevention, and intervention. These recommendations seek to ensure that every Arkansas public school student has an opportunity to learn in an emotionally and physically safe place.

In Arkansas, we have continuously attempted to meet the challenge of giving our children safe schools. However, recent events in schools across America have served to re-focus our attention on the need to ensure that our students, teachers, and communities have safe schools. Media accounts would paint a picture of schools filled with unruly, disrespectful, and disorderly children. Incidentally, it is likely that unsafe schools are not as pervasive as is feared. In fact, many school administrators and teachers think that Arkansas schools are among the safest places a child can be each day.

If a strategy is not included on the list it does not necessarily mean that the strategy is not acceptable.

AWARENESS

- To integrate education and discipline with a systemic look at the influences on violence
- To coordinate collaboration between state agencies and local communities
- To create a curriculum that includes: character education with locally determined traits, conflict resolution, problem solving, prejudice reduction, cultural diversity, sexual harassment reduction, gang awareness, negative consequences of gang involvement, activities to foster a sense of belonging at school, interpreting body language and early indicators of anger, practical options of dealing with anger, law and legal consequences of violent behavior, dealing with abuse, relationship of alcohol and drug abuse to violence, media literacy
- To develop instructional strategies that include: multi-age grouping, peer mentoring/tutoring, role playing, individual/group problem solving, current events

INTERVENTION

- To create an awareness of the district and building crisis response plan through staff development prior to the beginning of student attendance
To annually review and update the crisis plan and responsibilities of school personnel
- To conduct drills and/or exercises to examine the effectiveness and responsiveness of the crisis plan
- To identify and coordinate with groups that may be utilized during a time of crisis, such as: community groups, churches, civic clubs, voluntary organizations, local, county and state professional services local, county and state emergency services, Department of Health, Department of Human Services, Department of Education juvenile justice system, court system and personnel, Department of Youth Services, Juvenile Services Agencies
- To develop a relationship with local media and to coordinate the dissemination of crisis information via a media liaison
- To explore the use of alternative education as a means of intervention

PREVENTION

- To develop and implement a violence prevention curriculum that would include: conflict management, conflict resolution, positive self-concept
- To establish a positive school climate where students and adults treat others with respect
- To develop and implement recognition programs that contribute to positive student behavior
- To reinforce positive behavior through a clean, comfortable and well-supervised environment
- To implement mentoring and peer education programs
- To assist students in developing problem solving skills
- To train staff, parents and the community to look for warning signals in student behavior, such as: decline in grades, inappropriate group association, change in friends, withdrawal from others
- To initiate early parental contact and involvement when a problem is identified
- To establish a strong line of open communication with administrators, teachers, students, parents, & community groups
- To create opportunities for student success within the schools
- To encourage extracurricular involvement that promotes positive student behavior
- To create a system of regular monitoring and assessment
- To develop and implement pre-kindergarten programs

APPENDIX B – CHILDREN’S INTERNET PROTECTION ACT (CIPA)

Background

The Children’s Internet Protection Act (CIPA) was enacted by Congress in 2000 to address concerns about children’s access to obscene or harmful content over the Internet. CIPA imposes certain requirements on schools or libraries that receive discounts for Internet access or internal connections through the E-rate program – a program that makes certain communications services and products more affordable for eligible schools and libraries. In early 2001, the FCC issued rules implementing CIPA and provided updates to those rules in 2011.

What CIPA Requires

Schools and libraries subject to CIPA may not receive the discounts offered by the E-rate program unless they certify that they have an Internet safety policy that includes technology protection measures. The protection measures must block or filter Internet access to pictures that are: (a) obscene; (b) child pornography; or (c) harmful to minors. Before adopting this Internet safety policy, schools and libraries must provide reasonable notice and hold at least one public hearing or meeting to address the proposal.

Schools subject to CIPA have two additional certification requirements: 1) their Internet safety policies must include monitoring the online activities of minors; and 2) as required by the Protecting Children in the 21st Century Act, they must provide for educating minors about appropriate online behavior, including interacting with other individuals on social networking websites and in chat rooms, and cyberbullying awareness and response. Schools and libraries subject to CIPA are required to adopt and implement an Internet safety policy addressing:

(a) access by minors to inappropriate matter on the Internet; (b) the safety and security of minors when using electronic mail, chat rooms and other forms of direct electronic communications; (c) unauthorized access, including so-called “hacking,” and other unlawful activities by minors online; (d) unauthorized disclosure, use, and dissemination of personal information regarding minors; and (e) measures designed to restrict minors’ access to material harmful to minors.

Schools and libraries must certify they are in compliance with CIPA before they can receive E-rate funding.

- CIPA does not apply to schools and libraries receiving discounts for telecommunications service only.
- An authorized person may disable the blocking or filtering measure during use by an adult to enable access for bona fide research or other lawful purposes.
- CIPA does not require the tracking of Internet use by minors or adults.

You can find out more about CIPA or apply for E-rate funding by contacting the Universal Service Administrative Company’s (USAC) Schools and Libraries Division (SLD) at www.sl.universalservice.org . SLD also operates a client service bureau to answer questions at 1-888-203-8100 or via email through the SLD website.

Source: <http://www.fcc.gov/guides/childrens-internet-protection-act>



Parent Fact Sheet

**What Are Public Schools Required to Do
When Students with Disabilities Are Bullied?**

What does a school have to do when a child with a disability is being bullied?

- School staff, parents, and other caring adults have a role to play in preventing and responding to all forms of bullying. If a student with a disability is being bullied, federal law requires schools to take immediate and appropriate action to investigate the issue and, as necessary, take steps to stop the bullying and prevent it from recurring.
- *Regardless of whether the student is being bullied based on his or her disability*, schools must remedy the effects of bullying on the services that the student with a disability receives (special education or other disability-related services) to ensure the student continues to receive a free appropriate public education (FAPE). Any remedy should not burden the student who has been bullied.

Does it matter if a child has an Individualized Education Program (IEP) or 504 plan?

- No. Some students with disabilities receive FAPE through an IEP developed under the Individuals with Disabilities Education Act (IDEA) and others receive a plan developed under Section 504. If changes in a student's behavior or academic performance indicate that a student may not be receiving FAPE, the IEP or Section 504 team should meet to determine whether the student's educational needs have changed and the school must provide any needed additional services promptly to ensure the student's ongoing receipt of FAPE.

Where can I go for help?

- Go to www.stopbullying.gov, a federal website that provides helpful information and resources on bullying prevention and remedies.
- Ask to meet with the IEP or 504 team, the principal, or the district's Section 504 or Title II Coordinator if you believe your child is being bullied. Consider using your school's disability grievance procedures to have the school address your concerns.
- The U.S. Department of Education's Office for Civil Rights (OCR) has issued a [Dear Colleague Letter](#) explaining what public schools must do under federal law to respond when students with disabilities are bullied. OCR investigates complaints of disability discrimination at schools. To learn more about federal civil rights laws or how to file a complaint, contact OCR at 800-421-3481 (TDD: 800-877-8339), or ocr@ed.gov. OCR's website is www.ed.gov/ocr. To fill out a complaint form online, go to <http://www.ed.gov/ocr/complaintintro.html>.



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

October 21, 2014

Dear Colleague:

While there is broad consensus that bullying is wrong and cannot be tolerated in our schools, the sad reality is that bullying persists in our schools today, and especially so for students with disabilities.¹ In recent years, the Office for Civil Rights (OCR) in the U.S. Department of Education (Department) has received an ever-increasing number of complaints concerning the bullying of students with disabilities and the effects of that bullying on their education, including on the special education and related services to which they are entitled. This troubling trend highlights the importance of OCR's continuing efforts to protect the rights of students with disabilities through the vigorous enforcement of Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (Title II). It also underscores the need for schools to fully understand their legal obligations to address and prevent disability discrimination in our schools.

Today's guidance follows a long history of guidance issued by the Department in this critical area of disability discrimination. In 2000, OCR and the Office of Special Education and Rehabilitative Services (OSERS) issued joint guidance informing schools that disability-based harassment may deny a student equal educational opportunities under Section 504 and Title II.² The 2000 guidance also noted the responsibilities of schools under Section 504 and the Individuals with Disabilities Education Act (IDEA) to ensure that students receive a free appropriate public education (FAPE),

¹ These students are bullied or harassed more than their nondisabled peers. *See* Office of Special Education and Rehabilitative Services (OSERS) 2013 Dear Colleague Letter on Bullying of Students with Disabilities, <http://www.ed.gov/policy/speced/guid/idea/memosdcltrs/bullyingdcl-8-20-13.doc>, at page 2 ("Students with disabilities are disproportionately affected by bullying."). That letter explains that, "[b]ullying can involve overt physical behavior or verbal, emotional, or social behaviors (e.g., excluding someone from social activities, making threats, withdrawing attention, destroying someone's reputation) and can range from blatant aggression to far more subtle and covert behaviors. Cyberbullying, or bullying through electronic technology (e.g., cell phones, computers, online/social media), can include offensive text messages or e-mails, rumors or embarrassing photos posted on social networking sites, or fake online profiles." *Id.* Throughout this guidance, the terms "bullying" and "harassment" are used interchangeably to refer to these types of conduct. *See* Office for Civil Rights (OCR) 2010 Dear Colleague Letter on Harassment and Bullying, <http://www.ed.gov/ocr/letters/colleague-201010.pdf>, at page 3 ("The label used to describe an incident (e.g., bullying, hazing, teasing) does not determine how a school is obligated to respond. Rather, the nature of the conduct itself must be assessed for civil rights implications.").

² OCR-OSERS 2000 Dear Colleague Letter: Prohibited Disability Harassment, <http://www.ed.gov/ocr/docs/disabharassltr.html>.

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The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

and alerted schools that harassment of a student based on disability may adversely impact the school's provision of FAPE to the student.³ In 2010, OCR issued a Dear Colleague Letter on Harassment and Bullying that provided further guidance concerning when a school's inappropriate response to bullying or harassment of a student based on disability constitutes a disability-based harassment violation under Section 504 and Title II.⁴ In 2013, OSERS issued a Dear Colleague Letter on Bullying of Students with Disabilities that, in turn, provided additional guidance to schools that the bullying of a student with a disability on *any* basis can result in a denial of FAPE under IDEA that must be remedied.⁵

Building on OSERS's 2013 guidance, today's guidance explains that the bullying of a student with a disability on *any* basis can similarly result in a denial of FAPE under Section 504 that must be remedied; it also reiterates schools' obligations to address conduct that may constitute a disability-based harassment violation and explains that a school must also remedy the denial of FAPE resulting from disability-based harassment. Following an overview of the federal protections for students with disabilities in schools, the guidance elaborates on the elements of a disability-based harassment violation and a FAPE violation, discusses how OCR generally analyzes complaints involving bullying of students with disabilities on each of these bases, and then concludes with a series of hypothetical examples that illustrate varying circumstances when conduct may constitute both a disability-based harassment violation and FAPE violation, a FAPE violation, or neither. Although by no means exhaustive, in the context of this discussion, the guidance also offers some insight into what OCR might require of a school to remedy instances of bullying upon a finding of disability discrimination. OCR urges schools to consider these hypothetical resolution agreement provisions in proactively working to ensure a safe school environment, free from discrimination, for all students.⁶

I. Overview of Federal Protections for Students with Disabilities in Schools

OCR enforces Section 504 and Title II, both of which prohibit disability discrimination. Section 504 prohibits disability discrimination by recipients of Federal financial assistance.⁷ OCR enforces Section 504 against entities that receive Federal financial assistance from the Department, including all public schools and school districts as well as all public charter schools and magnet schools. Under Section 504, recipients that operate a public elementary or secondary education program must

³ The terms "school" and "school district" are used interchangeably in this letter and refer to public elementary and secondary schools that receive financial assistance from the Department.

⁴ OCR 2010 Dear Colleague Letter on Harassment and Bullying, <http://www.ed.gov/ocr/letters/colleague-201010.pdf>.

⁵ OSERS 2013 Dear Colleague Letter on Bullying of Students with Disabilities, <http://www.ed.gov/policy/speced/guid/idea/memosdcltrs/bullyingdcl-8-20-13.doc>.

⁶ This guidance addresses only student-on-student bullying and harassment. Under Section 504 and Title II, students with disabilities are also protected from bullying by teachers, other school employees, and third parties. Such bullying can trigger a school's obligation to address disability-based harassment, remedy a denial of FAPE, or both. See 34 C.F.R. §§ 104.4, 104.33; 28 C.F.R. pt. 35. OCR recommends that States and school districts consult with legal counsel regarding their responsibilities and duties in cases of bullying that involve school personnel.

⁷ 29 U.S.C. § 794; 34 C.F.R. pt. 104.

provide students with disabilities equal educational opportunities. Among other things, this means they must ensure that students with disabilities receive FAPE, defined as the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met and that satisfy certain requirements concerning educational setting, evaluation, placement, and procedural safeguards.⁸ Schools also have an obligation under Section 504 to evaluate students who need or are believed to need special education or related services. Further, schools have an obligation to ensure that Section 504 FAPE services are provided in an educational setting with persons who do not have disabilities to the maximum extent appropriate to the needs of the student with a disability.⁹ Schools often document these services in written plans, sometimes referred to as Section 504 plans, or, if the child is receiving IDEA FAPE services, through the required individualized education program (IEP).¹⁰

Title II prohibits disability discrimination by public entities, including all public schools and school districts, as well as all public charter schools and magnet schools, regardless of whether they receive Federal financial assistance.¹¹ OCR, along with the U.S. Department of Justice (DOJ), enforces Title II in public elementary and secondary schools. Title II is generally construed to provide no less protection than Section 504. Therefore, violations of Section 504, including the failure to provide needed regular or special education and related aids and services to students with disabilities, also constitute violations of Title II.¹²

IDEA is another key Federal law addressing the needs of students with disabilities. OSERS, not OCR or DOJ, administers IDEA.¹³ OCR, however, enforces the Section 504 and Title II rights of IDEA-eligible students.¹⁴ Under Part B of IDEA, the Department provides Federal funds to State educational agencies and through them to local educational agencies (school districts), to assist

⁸ For Section 504 and Title II, the term “disability” means a physical or mental impairment that substantially limits one or more major life activities of an individual; a record of such an impairment; or being regarded as having such an impairment. 29 U.S.C. § 705(9)(B), (20)(B); 42 U.S.C. § 12102. The Americans with Disabilities Act Amendments Act (Amendments Act), Pub. Law No. 110-325, amended the disability definition for Section 504 and Title II. Most notably, the Amendments Act required that “disability” under these statutes be interpreted broadly. More information about the Amendments Act is available from OCR’s website at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201109.html> and <http://www.ed.gov/ocr/docs/dcl-504faq-201109.html>.

⁹ In this letter, the term “Section 504 FAPE services” is used to refer to the regular or special education and related aids and services provided to students with disabilities as specified in 34 C.F.R. § 104.33(b). The term “IDEA FAPE services” is used in this letter to refer to the special education and related services provided to students with disabilities that meet the requirements of 34 C.F.R. pt. 300, as specified in 34 C.F.R. §§ 300.17 (FAPE), 300.39 (special education), and 300.34 (related services).

¹⁰ Students with disabilities who are IDEA-eligible also have rights under Section 504 and Title II. The Department’s Section 504 regulations provide that implementation of an IEP developed in accordance with IDEA is one means of providing Section 504 FAPE services. 34 C.F.R. § 104.33(b)(2).

¹¹ 42 U.S.C. §§ 12131-12134; 28 C.F.R. pt. 35.

¹² 42 U.S.C. § 12201(a). To the extent that Title II provides greater protection than Section 504, covered entities must comply with Title II’s requirements.

¹³ For more information about OSERS, please visit <http://www.ed.gov/osers>.

¹⁴ This letter only addresses Federal law; other State or local laws and policies may apply.

school districts in providing FAPE to eligible children with disabilities through the provision of special education and related services.¹⁵ School districts must ensure that IDEA FAPE services in the least restrictive environment are made available to all eligible children with disabilities through a properly developed IEP that provides a meaningful educational benefit to the student. In addition, school districts must locate, identify, and evaluate children suspected of having disabilities who may need special education and related services.

II. Schools' Obligations to Address Disability-Based Harassment

Bullying of a student on the basis of his or her disability may result in a disability-based harassment violation under Section 504 and Title II.¹⁶ As explained in OCR's 2010 Dear Colleague Letter on Harassment and Bullying, when a school knows or should know of bullying conduct based on a student's disability, it must take immediate and appropriate action to investigate or otherwise determine what occurred.¹⁷ If a school's investigation reveals that bullying based on disability created a hostile environment—i.e., the conduct was sufficiently serious to interfere with or limit a student's ability to participate in or benefit from the services, activities, or opportunities offered by a school—the school must take prompt and effective steps reasonably calculated to end the bullying, eliminate the hostile environment, prevent it from recurring, and, as appropriate, remedy its effects. Therefore, OCR would find a disability-based harassment violation under Section 504 and Title II when: (1) a student is bullied based on a disability; (2) the bullying is sufficiently serious to create a hostile environment; (3) school officials know or should know about the bullying; and (4) the school does not respond appropriately.¹⁸

As explained in Section III, below, for the student with a disability who is receiving IDEA FAPE services or Section 504 FAPE services, a school's investigation should include determining whether

¹⁵ 20 U.S.C. §§ 1400-1419; 34 C.F.R. pt. 300. IDEA establishes 13 disability categories: autism, deaf-blindness, deafness, emotional disturbance, hearing impairment, intellectual disability, multiple disabilities, orthopedic impairment, other health impairment, specific learning disability, speech or language impairment, traumatic brain injury, and visual impairment. 34 C.F.R. § 300.8(c).

¹⁶ These legal protections extend to all students with disabilities, including students who are regarded as having a disability or who have a record of a disability and students with disabilities who are not receiving services under Section 504 or IDEA. In addition to being protected from harassment on the basis of disability, students with disabilities, like all students, are entitled to protection from harassment on the basis of race, color, national origin, sex (including sexual violence), and age under the Federal civil rights laws that OCR enforces. For more information about other types of discriminatory harassment, see [OCR's 2010 Dear Colleague Letter](#) referenced in note 4.

¹⁷ Schools know or should know about disability-based harassment when, for example, a teacher or other responsible employee of the school witnesses the conduct. For more information about how to determine when knowledge of such conduct will be imputed to schools, refer to the OCR 2001 Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, <http://www.ed.gov/ocr/docs/shguide.pdf> at page 13; and [OCR 2010 Dear Colleague Letter on Harassment and Bullying](#), at page 3 and note 11.

¹⁸ This is the standard for administrative enforcement of Section 504 and in court cases where plaintiffs are seeking injunctive relief. It is different from the standard in private lawsuits for money damages, which, many courts have held, requires proof of a school's actual knowledge and deliberate indifference. See *Long v. Murray Cnty. Sch. Dist.*, 522 Fed. Appx. 576, 577 & n. 1 (11th Cir. 2013) (applying the test enunciated in *Davis v. Monroe Cnty. Bd. of Ed.*, 526 U.S. 629, 643 (1999)).

that student's receipt of appropriate services may have been affected by the bullying.¹⁹ If the school's investigation reveals that the bullying created a hostile environment and there is reason to believe that the student's IDEA FAPE services or Section 504 FAPE services may have been affected by the bullying, the school has an obligation to remedy those effects on the student's receipt of FAPE.²⁰ Even if the school finds that the bullying did not create a hostile environment, the school would still have an obligation to address any FAPE-related concerns, if, for example, the school's initial investigation revealed that the bullying may have had some impact on the student's receipt of FAPE services.

III. Bullying and the Denial of a Free Appropriate Public Education

The bullying on *any* basis of a student with a disability who is receiving IDEA FAPE services or Section 504 FAPE services can result in the denial of FAPE that must be remedied under Section 504. The OSERS 2013 Dear Colleague Letter clarified that, under IDEA, as part of a school's appropriate response to bullying on any basis, the school should convene the IEP team²¹ to determine whether, as a result of the effects of the bullying, the student's needs have changed such that the IEP is no longer designed to provide a meaningful educational benefit. If the IEP is no longer designed to provide a meaningful educational benefit to the student, the IEP team must determine the extent to which additional or different IDEA FAPE services are needed to address the student's individualized needs and then revise the IEP accordingly. Any decisions made by the IEP team must be consistent with the IDEA provisions addressing parental participation and should keep the student with a disability in the original placement or setting (e.g., the same school and classroom) unless the student can no longer receive FAPE in that placement or setting. Under IDEA, schools have an ongoing obligation to ensure that a student with a disability who is the target of bullying continues to receive FAPE in accordance with his or her IEP—an obligation that exists whether the student is being bullied based on his or her disability or is being bullied based on other reasons.

Similarly, under Section 504, schools have an ongoing obligation to ensure that a qualified student with a disability who receives IDEA FAPE services or Section 504 FAPE services and who is the target of bullying continues to receive FAPE—an obligation that exists regardless of why the student

¹⁹ As stated in [OCR 2010 Dear Colleague Letter on Harassment and Bullying](#) at page 2, "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." When a student with a disability who receives Section 504 FAPE services is being bullied, an appropriate "other factor" is whether that student's receipt of services has been affected by the bullying.

²⁰ When a student with a disability has engaged in misconduct that is caused by his or her disability, the student's own misconduct would not relieve the school of its legal obligation to determine whether that student's civil rights were violated by the bullying conduct of the other student. For example, if a student, for reasons related to his disability, hits another student and other students then call him "crazy" on a daily basis, the school should, of course, address the conduct of the student with a disability. Nonetheless, the school must also consider whether the student with a disability is being bullied on the basis of disability under Section 504 and Title II.

²¹ The IEP team is the group of persons specified in IDEA that determines the appropriate IDEA FAPE services for an IDEA-eligible student. 34 C.F.R. § 300.321(a).

is being bullied.²² Accordingly, under Section 504, as part of a school's appropriate response to bullying on *any* basis, the school should convene the IEP team or the Section 504 team²³ to determine whether, as a result of the effects of the bullying, the student's needs have changed such that the student is no longer receiving FAPE. The effects of bullying could include, for example, adverse changes in the student's academic performance or behavior. If the school suspects the student's needs have changed, the IEP team or the Section 504 team must determine the extent to which additional or different services are needed,²⁴ ensure that any needed changes are made promptly, and safeguard against putting the onus on the student with the disability to avoid or handle the bullying.²⁵ In addition, when considering a change of placement, schools must continue to ensure that Section 504 FAPE services are provided in an educational setting with persons who do not have disabilities to the maximum extent appropriate to the needs of the student with a disability.

Although there are no hard and fast rules regarding how much of a change in academic performance or behavior is necessary to trigger the school's obligation to convene the IEP team or Section 504 team, a sudden decline in grades, the onset of emotional outbursts, an increase in the frequency or intensity of behavioral interruptions, or a rise in missed classes or sessions of Section 504 services would generally be sufficient.²⁶ By contrast, one low grade for an otherwise straight-A student who shows no other changes in academic progress or behavior will generally not, standing alone, trigger the school's obligation to determine whether the student's needs are still being met. Nonetheless, in addition to addressing the bullying under the school's anti-bullying policies, schools should promptly convene the IEP team or Section 504 team to determine whether FAPE is being provided

²² At the elementary and secondary educational level, a "qualified student with a disability" is a student with a disability who is: of an age at which students without disabilities are provided elementary and secondary educational services; of an age at which it is mandatory under State law to provide elementary and secondary educational services to students with disabilities; or a student to whom a State is required to provide FAPE under IDEA. 34 C.F.R. § 104.3(f). In addition to the provision of regular or special education and related aids and services pursuant to 34 C.F.R. § 104.33, FAPE protections extend to educational setting, evaluation and placement, and procedural safeguards. 34 C.F.R. §§ 104.34-36.

²³ The Section 504 team is the group of knowledgeable persons that determines the appropriate Section 504 FAPE services for a qualified student with a disability under Section 504.

²⁴ A reevaluation would not be needed unless there is a reason to believe the student's underlying disability or disabilities have changed or the student has an additional disability.

²⁵ OCR would expect that schools address bullying behavior to ensure that the burden does not fall on the student with a disability. Along these lines, and consistent with the OSERS 2013 Dear Colleague Letter, schools should exercise caution when considering a change in placement, or the location of services (including classroom) provided to the student with a disability who is the target of bullying and should keep the student in the original placement unless the student can no longer receive Section 504 FAPE in that placement. OCR also urges schools to allow for parental participation when considering any change in placement or location of services (including classroom). *See* 34 C.F.R. pt. 104, app. A (discussion of Subpart D).

²⁶ In light of schools' ongoing obligation to ensure that students with disabilities are receiving FAPE, adverse changes in the academic performance or behavior of a student receiving FAPE services could trigger the school's obligation to convene the IEP team or Section 504 team regardless of the school's knowledge of the bullying conduct. *See, e.g.*, Section V, Hypothetical Example B, below. As a best practice, schools should train all staff to report bullying to an administrator or school official who can promptly convene a meeting of knowledgeable people (e.g., the student's Section 504 team or IEP team) to ensure that the student is receiving FAPE and, as necessary, address whether the student's FAPE needs have changed.

to a student with a disability who has been bullied and who is experiencing any adverse changes in academic performance or behavior.

When bullying results in a disability-based harassment violation, it will not always result in a denial of FAPE. Although all students with disabilities are protected from disability-based harassment, the requirement to provide FAPE applies only to those students with disabilities who need or may need FAPE services because of their disability.²⁷ This means that if a student is the target of bullying resulting in a disability-based harassment violation, but that student is not eligible to receive IDEA or Section 504 FAPE services, there could be no FAPE violation.

When a student who receives IDEA FAPE services or Section 504 FAPE services has experienced bullying resulting in a disability-based harassment violation, however, there is a strong likelihood that the student was denied FAPE. This is because when bullying is sufficiently serious to create a hostile environment and the school fails to respond appropriately, there is a strong likelihood both that the effects of the bullying included an impact on the student's receipt of FAPE and that the school's failure to remedy the effects of the bullying included its failure to address these FAPE-related concerns.

Ultimately, unless it is clear from the school's investigation into the bullying conduct that there was no effect on the student with a disability's receipt of FAPE, the school should, as a best practice, promptly convene the IEP team or the Section 504 team to determine whether, and to what extent: (1) the student's educational needs have changed; (2) the bullying impacted the student's receipt of IDEA FAPE services or Section 504 FAPE services; and (3) additional or different services, if any, are needed, and to ensure any needed changes are made promptly. By doing so, the school will be in the best position to ensure the student's ongoing receipt of FAPE.

IV. How OCR Analyzes Complaints Involving Bullying of Students with Disabilities

When OCR evaluates complaints involving bullying and students with disabilities, OCR may open an investigation to determine whether there has been a disability-based harassment violation, a FAPE violation, both, or neither, depending on the facts and circumstances of a given complaint.

²⁷ The FAPE requirement to evaluate applies to all students who are known or believed to need special education or related services, regardless of the nature or severity of the disability. 34 C.F.R. §§ 104.33, -.35. For a student who is suspected of having a disability but who is not yet receiving IDEA or Section 504 services, OCR may consider whether the school met its obligation to evaluate the student. 34 C.F.R. § 104.35. For example, if a student suspected of having a disability was missing school to avoid bullying, OCR may consider whether the student's evaluation was unduly delayed (e.g., if the school knew or should have known of the bullying and failed to act) in determining whether there was a denial of FAPE under the circumstances.

When investigating disability-based harassment, OCR considers several factors, including, but not limited to:

- Was a student with a disability bullied by one or more students based on the student's disability?
- Was the bullying conduct sufficiently serious to create a hostile environment?
- Did the school know or should it have known of the conduct?
- Did the school fail to take prompt and effective steps reasonably calculated to end the conduct, eliminate the hostile environment, prevent it from recurring, and, as appropriate, remedy its effects?

If the answer to each of these questions is "yes," then OCR would find a disability-based harassment violation under Section 504 and, if the student was receiving IDEA FAPE or Section 504 FAPE services, OCR would have a basis for investigating whether there was also a denial of FAPE under Section 504.

Even if the answers to one or more of these questions is "no," for a student who was receiving IDEA FAPE or Section 504 FAPE services, OCR may still consider whether the bullying resulted in a denial of FAPE under Section 504 that must be remedied.

When investigating whether a student receiving IDEA FAPE or Section 504 FAPE services who was bullied was denied FAPE under Section 504, OCR considers several factors, including, but not limited to:

- Did the school know or should it have known that the effects of the bullying may have affected the student's receipt of IDEA FAPE services or Section 504 FAPE services? For example, did the school know or should it have known about adverse changes in the student's academic performance or behavior indicating that the student may not be receiving FAPE?

If the answer is "no," there would be no FAPE violation.²⁸ If the answer is "yes," OCR would then consider:

- Did the school meet its ongoing obligation to ensure FAPE by promptly determining whether the student's educational needs were still being met, and if not, making changes, as necessary, to his or her IEP or Section 504 plan?

If the answer is "no," and the student was not receiving FAPE, OCR would find that the school violated its obligation to provide FAPE.

²⁸ Where a student is suspected of having a disability but is not yet receiving IDEA FAPE services or Section 504 FAPE services, OCR could consider whether the student's evaluation was unduly delayed in determining whether there was a denial of FAPE under the circumstances. See fn. 27, above.

V. Hypothetical Examples

The following hypothetical examples illustrate how OCR would analyze a complaint involving allegations of the bullying of a student with a disability who only receives Section 504 FAPE services.

A. Disability-Based Harassment Violation and FAPE Violation

At the start of the school year, a ten-year-old student with Attention Deficit Hyperactivity Disorder (ADHD) and a speech disability is fully participating in the classroom, interacting with his peers at lunch and recess, and regularly attending speech therapy twice a week. In addition to providing for speech services, the student's Section 504 plan also provides for behavior supports that call for all his teachers and other trained staff to supervise him during transition times, provide constructive feedback, and help him use preventative strategies to anticipate and address problems with peers.

Because of the student's disabilities, he makes impulsive remarks, speaks in a high-pitched voice, and has difficulty reading social cues. Three months into the school year, students in his P.E. class begin to repeatedly taunt him by speaking in an exaggerated, high-pitched tone, calling him names such as "weirdo" and "gay," and setting him up for social embarrassment by directing him to ask other students inappropriate personal questions. The P.E. teacher witnesses the taunting, but neither reports the conduct to the appropriate school official, nor applies the student's behavior supports specified in his 504 plan. Instead, she pulls the student aside and tells him that he needs to start focusing less on what kids have to say and more on getting his head in the game. As the taunting intensifies, the student begins to withdraw from interacting with other kids in P.E. and avoids other students at lunch and recess. As the student continues to withdraw over the course of a few weeks, he misses multiple sessions of speech therapy, but the speech therapist does not report his absences to the Section 504 team or another appropriate school official.

In this example, OCR would find a disability-based harassment violation. The student's peers were making fun of him because of behaviors related to his disability. For OCR's enforcement purposes, the taunting the student experienced, including other students impersonating him and calling him "weirdo" and "gay," was therefore based on his disability.²⁹ The school knew about the bullying because the P.E. teacher witnessed the conduct.³⁰ Yet upon witnessing the taunting, the P.E. teacher not only failed to provide the student behavior supports as required in the student's 504 plan, but also failed to report the conduct to an appropriate school official. Had she taken this step, the school could have conducted an investigation and found that the conduct created a hostile environment because it interfered with the student's ability to benefit from the speech therapy services that he

²⁹ OCR would have also investigated whether a school's inappropriate response to the use of the word "gay" in this context constituted a gender-based harassment violation under Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1688; 34 C.F.R. pt. 106, which prohibits discrimination on the basis of sex. For a discussion of gender-based harassment, see [OCR 2010 Dear Colleague Letter on Harassment and Bullying](#), at pages 7-8.

³⁰ The P.E. teacher in this example is a responsible employee. *See* fn. 17, above.

should have been receiving and negatively affected his ability to participate fully in P.E., lunch, and recess. The school's failure to appropriately respond to the bullying violated Section 504.

OCR would also find FAPE violations under Section 504. First, when the P.E. teacher failed to implement the behavior supports in the student's Section 504 plan, the school denied the student FAPE under Section 504. In addition, and independent of the failure to provide behavior supports, because the bullying impacted the student's receipt of Section 504 FAPE, the school should have addressed the student's changed needs; by failing to do so, the student was denied Section 504 FAPE. The school should have known about the missed Section 504 services and related changes in behavior. The P.E. teacher knew about the bullying but did nothing to report the student's behavioral changes (e.g., the student's increasing efforts to isolate himself from other students) to the Section 504 team members or other appropriate school official. Similarly, the speech therapist knew that the student was missing speech therapy but did not report this to the 504 team or to an appropriate school official. By failing to address the adverse effects of the bullying on FAPE, the school did not make necessary changes to ensure the student was provided FAPE under Section 504. If, upon concluding its investigation, OCR and the district were to enter into a resolution agreement, OCR could require, for example, that the district (1) ensure that FAPE is provided to the student by convening the Section 504 team to determine if the student needs different or additional services (including compensatory services) and, if so, providing them; (2) offer counseling to the student to remedy the harm that the school allowed to persist; (3) monitor whether bullying persists for the student and take corrective action to ensure the bullying ceases; (4) develop and implement a school-wide bullying prevention strategy based on positive behavior supports; (5) devise a voluntary school climate survey for students and parents to assess the presence and effect of bullying based on disability and to respond to issues that arise in the survey; (6) revise the district's anti-bullying policies to develop staff protocols in order to improve the district's response to bullying; (7) train staff and parent volunteers, such as those who monitor lunch and recess or chaperone field trips, on the district's anti-bullying policies, including how to recognize and report instances of bullying on any basis; and (8) provide continuing education to students on the district's anti-bullying policies, including where to get help if a student either witnesses or experiences bullying conduct of any kind.

B. FAPE Violation, No Disability-Based Harassment Violation

A thirteen-year-old student with depression and Post-Traumatic Stress Disorder (PTSD) who receives counseling as part of her Section 504 services is often mocked by her peers for being poor and living in a homeless shelter. Having maintained an A average for the first half of the academic year, she is now getting Bs and Cs, neglecting to turn in her assignments, and regularly missing counseling sessions. When asked by her counselor why she is no longer attending scheduled sessions, she says that she feels that nothing is helping and that no one cares about her. The student tells the counselor that she no longer wants to attend counseling services and misses her next two scheduled sessions. The counselor informs the principal that the student has missed several counseling sessions and that the student feels the sessions are not helping. Around the same time, the student's teachers inform the principal that she has begun to struggle academically. The

principal asks the teachers and counselor to keep her apprised if the student's academic performance worsens, but does not schedule a Section 504 meeting.

In this example, whether or not the school knew or should have known about the bullying, OCR would not find a disability-based harassment violation under Section 504 because the bullying incidents were based on the student's socio-economic status, not her disability.

Independent of the basis for the bullying and regardless of whether school officials knew or should have known about the bullying, the school district still had an ongoing obligation under Section 504 to ensure that this student with a disability was receiving an education appropriate to her needs. Here, the student's sudden decline in grades, coupled with changes in her behavior (missing counseling sessions), should have indicated to the school that her needs were not being met. In this example, OCR would find that these adverse changes were sufficient to put the school on notice of its obligation to promptly convene the Section 504 team to determine the extent of the FAPE-related problems and to make any necessary changes to her services, or, if necessary, reevaluate her, in order to ensure that she continues to receive FAPE. By failing to do more than keep track of the student's academic performance, the school failed to meet this obligation, which violated Section 504.³¹

C. No Disability-Based Harassment Violation, No FAPE Violation

A seven-year-old student with a food allergy to peanuts has a Section 504 plan that provides for meal accommodations, the administration of epinephrine if the student is exposed to peanuts, access to a peanut-free table in the cafeteria, and the prohibition of peanut products in the student's classroom. In advance of the upcoming Halloween party, the teacher reminds the class that candy with peanuts is prohibited in the classroom at all times, including Halloween. That afternoon, while on the bus, a classmate grabs the student's water bottle out of the student's backpack, drinks from it, and says, "I had a peanut butter sandwich for lunch today, and I just finished it." The following day, while having lunch at the peanut-free table in the lunchroom with some friends, a classmate who had been sitting at another table sneaks up behind her and waves an open candy bar with peanuts in front of her face, yelling, "Time to eat peanuts!" Though the candy bar does not touch her, a few other classmates nearby begin chanting, "Time to eat peanuts," and the student leaves the lunchroom crying. When the student goes back to her classroom and tells her teacher what happened at lunch and on the bus, the teacher asks her whether she came into contact with the candy bar and what happened to the water bottle. The student confirms that the candy bar did not touch her and that she never got the water bottle back from the classmate who took it, but says that she is scared to go back into the lunchroom and to ride the bus. The teacher promptly informs the principal of the incidents, and the peers who taunted the student on the bus and in the lunchroom are removed from the lunchroom, interviewed by the assistant principal, and required to meet with the counselor during

³¹ If OCR and the district were to enter into a resolution agreement in this case, such an agreement could include, for example, any of the provisions specified in Hypothetical Example A, above.

recess to discuss the seriousness of their conduct. That same week, the school holds a Section 504 meeting to address whether any changes were needed to the student's services in light of the bullying. The principal also meets with the school counselor, and they decide that a segment on the bullying of students with disabilities, including students with food allergies, would be added to the counselor's presentation to students on the school's anti-bullying policy scheduled in the next two weeks. Furthermore, in light of the young age of the students, the counselor offers to incorporate a puppet show into the segment to help illustrate principles that might otherwise be too abstract for such a young audience. In the weeks that follow, the student shows no adverse changes in academic performance or behavior, and when asked by her teacher and the school counselor about how she is doing, she indicates that the bullying has stopped.

In this example, based on the school's appropriate response to the incidents of bullying, OCR would not find a disability-based harassment violation under Section 504. The bullying of the student on account of her food allergy to peanuts was based on the student's disability. Moreover, the physically threatening and humiliating conduct directed at her was sufficiently serious to create a hostile environment by limiting her ability to participate in and benefit from the school's education program when she was near the classmates who bullied her in the lunchroom and on the bus. School personnel, however, did not tolerate the conduct and acted quickly to investigate the incidents, address the behavior of the classmates involved in the conduct, ensure that there were no residual effects on the student, and coordinate to promote greater awareness among students about the school's anti-bullying policy. By taking prompt and reasonable steps to address the hostile environment, eliminate its effects, and prevent it from recurring, the school met its obligations under Section 504.

OCR also would not find a FAPE violation under Section 504 on these facts. Once the school became aware that the student feared attending lunch and riding the bus as a result of the bullying she was experiencing, the school was on notice that the effects of the bullying may have affected her receipt of FAPE. This was sufficient to trigger the school's additional obligation to determine whether, and to what extent, the bullying affected the student's access to FAPE and take any actions, including addressing the bullying and providing new or different services, required to ensure the student continued receiving FAPE. By promptly holding a Section 504 meeting to assess whether the school should consider any changes to the student's services in light of the bullying, the school met its independent legal obligation to provide FAPE under Section 504.

VI. Conclusion

OCR is committed to working with schools, students, families, community and advocacy organizations, and others to ensure that schools understand and meet their legal obligations under Section 504 and Title II to appropriately address disability-based harassment and to ensure that students with disabilities who are bullied continue to receive FAPE.

OCR also encourages States and school districts to reevaluate their policies and practices in light of this letter, as well as OCR's and OSERS's prior guidance. If you would like to request technical assistance or file a complaint alleging discrimination, please contact the OCR enforcement office that serves your area. Contact information is posted on OCR's website at:

<http://www.ed.gov/ocr/complaintintro.html> or please contact OCR's customer service team at 1-800-421-3481 (TDD 1-800-877-8339).

I look forward to continuing our work together to address and reduce incidents of bullying in our schools so that no student is limited in his or her ability to participate in and benefit from all that our educational programs have to offer.

Sincerely,

/s/

Catherine E. Lhamon
Assistant Secretary for Civil Rights