

PENNSYLVANIA HUMAN RELATIONS COMMISSION
"HARASSMENT IN EDUCATIONAL SETTINGS"
GUIDANCE ON EVALUATING CLAIMS OF BULLYING AND HARASSMENT
UNDER THE PENNSYLVANIA HUMAN RELATIONS ACT
2025

1. AUTHORITY

This Guidance is an exercise of the authority granted to the Pennsylvania Human Relations Commission ("Commission") to formulate policies to effectuate the purposes of the Pennsylvania Human Relations Act ("PHRA").¹ Further, it is an exercise of the Commission's legislative mandate to construe the provisions of the PHRA liberally for the accomplishment of the purposes thereof.²

2. SCOPE

This guidance applies to all schools in Pennsylvania that are "open to, accepts or solicits the patronage of the general public, including but not limited to kindergartens, primary and secondary schools, high schools, academies, colleges and universities, extension courses and all educational institutions under the supervision of this Commonwealth."³ This guidance also applies to charter schools and cyber schools, but it does not apply to schools which are "in their nature distinctly private."⁴

Schools that are excluded from coverage under the distinctly private exemption are encouraged to follow this guidance to avoid discriminatory practices which may violate other laws or otherwise harm students.

This Guidance shall apply to discrimination that is based on "race, color, sex, religious creed, ancestry, national origin or handicap or disability, or to any person due to use of a guide or support animal because of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals."⁵

¹ The Commission has the power and the duty "[t]o formulate policies to effectuate the purposes of [the Pennsylvania Human Relations Act] and make recommendations to agencies and officers of the Commonwealth or political subdivisions of government or board, department, commission or school district thereof to effectuate such policies." 43 P.S. § 957(e). This guidance applies equally to cases analyzed pursuant to the commercial property provisions of 43 P.S. § 955(h), where also applicable, and the Pennsylvania Fair Educational Opportunities Act, 24 P.S. § 5001, *et seq.*

² "The provisions of [the Pennsylvania Human Relations Act] shall be construed liberally for the accomplishment of the purposes thereof . . ." 43 P.S. § 962(a).

³ 43 P.S. § 954(l).

⁴ *Id.*

⁵ 43 P.S. § 955(i).

In issuing this Guidance, the Commission reiterates its longstanding position that this Guidance is not intended to impose hard and fast rules that must be absolutely applied without regard to the specific facts involved. Nothing in this Guidance shall affect statutory or other regulatory requirements.

This Guidance may not be cited as binding legal authority for any Commission ruling, adjudication, or other legally binding action. The rationales set forth in this Guidance may be cited as the basis for Commission action only to the extent the Commission believes the rationale is valid in the context of a specific proceeding.

This Guidance is intended to demonstrate the way the Commission will exercise its administrative discretion in adjudicating cases unless it is convinced otherwise during a specific proceeding. The Commission, as in the past, remains committed to ensuring that its adjudicative determinations are made on a case-by-case basis after consideration of all evidence of record. To this end, this Guidance may be deviated from when the Commission believes that any statute or regulation requires it, or that it is otherwise appropriate to do so.

3. PURPOSE

The purpose of this Guidance is to provide clarity to all Pennsylvanians regarding how the Commission will evaluate harassment and bullying cases resulting from discrimination in the educational context pursuant to 43 P.S. § 955(i).

Incidents occurring on school property may include the physical premises of the school, including buildings and surrounding areas. Incidents may also occur at school sponsored activities and conveyances providing transportation. 24 P.S. § 13-1301-A. Additionally, there may be instances where the incident may not have occurred on school property but is still jurisdictional under the PHRA (see section 9 of this guidance).

4. NECESSITY

The PHRA recognizes the grave injury to public health and welfare that discrimination causes. 43 P.S. § 952(a). Harassment and bullying disrupt the educational environment resulting in children not living up to their full potential and having a lasting negative impact on a child's life.

GUIDANCE

5. LEGAL REQUIREMENTS FOR SCHOOLS

The PHRA makes it unlawful to discriminate against an individual "because of [their] race, color, sex, religious creed, ancestry, national origin or handicap or disability, or to any person due to use of a guide or support animal because

of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals, **either directly or indirectly**, any of the accommodations, advantages, facilities or privileges of such public accommodation, resort or amusement".⁶

In 2023, the Commission promulgated regulations that explained sex, race and religion. "Sex" includes pregnancy, childbirth, breastfeeding, sex assigned at birth, gender identity or expression, affectual or sexual orientation, and differences in sex development. "Race" includes traits associated with race, including hair texture and protective hairstyles. "Religion" includes all aspects of religious observance and practice, as well as belief.⁷

Pennsylvania law also mandates that all public schools in Pennsylvania adopt a policy relating to bullying and incorporate the policy into the school's code of student conduct.⁸ The policy must set forth disciplinary consequences for bullying and identify the appropriate school staff person to receive reports of incidents of alleged bullying.⁹ The policy may also provide for prevention, intervention and education programs.¹⁰

The Commission encourages schools to develop proactive measures including educational programs and resources, to review their policies to ensure compliance with the PHRA, and to seek the advice of counsel with respect to compliance with laws the Commission does not enforce.

6. BULLYING AND HARASSMENT GENERALLY

Educational providers should seek to remedy and prevent all forms of bullying and harassment, to protect students from the physical and emotional harm that it may cause. While the terms bullying and harassment are often used interchangeably, the PHRA prohibits harassment which relates to a "protected class."¹¹

The Pennsylvania School Code defines bullying as an intentional electronic, written, verbal or physical act, or a series of acts: (1) directed at another student or students; (2) which occurs in a school setting; (3) that is severe, persistent or pervasive; and (4) that has the effect of doing any of the

⁶ 43 P.S. §955(i). Schools, unless distinctly private, are public accommodations. 43 P.S. §954(l).

⁷ 16 Pa. Code 41.201-41.207.

⁸ 24 P.S. § 13-1303.1-A(a).

⁹ Id.

¹⁰ Id.

¹¹ The protected classes are "race, color, sex, religious creed, ancestry, national origin or handicap or disability, or to any person due to use of a guide or support animal because of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals." 43 P.S. § 955(i).

following: (i) substantially interfering with a student's education; (ii) creating a threatening environment; or (iii) substantially disrupting the orderly operation of the school.¹²

Examples of bullying include:

- Verbal bullying: teasing, name-calling, taunting, threatening to cause harm
- Social bullying: excluding someone on purpose, telling other children not to be friends with someone, spreading rumors about someone, embarrassing someone in public
- Physical bullying: hitting, kicking, pinching, spitting, tripping, pushing, taking or breaking someone's things, mean or rude hand gestures
- Cyber bullying: sending, posting, or sharing negative, harmful, false, or mean content about someone else via SMS, text, e-mail, apps, social media, or online forums.

When the conduct is based on one or more protected classes, it may constitute unlawful harassment under the PHRA. The examples below are illustrative:

1. Student A makes fun of Student B because of the clothing he wears. Student A taunts Student B every day in class, calling him a loser and saying that he is poor and shops at consignment stores. Student A tells the rest of the class that they shouldn't hang out with Student B. Student B started finding it harder to focus during class and sometimes didn't go to class at all, to avoid the constant taunting. As a result, Student B's grades started to suffer. While this could be an example of bullying and/or harassment generally, it would not be discriminatory because it is not based on the student's race, sex, religion, disability or other protected class.
2. Student C makes fun of Student D for being the only African American student in the class. Student C uses racial slurs such as "monkey" when talking to or about Student D during class. Student C encourages others in the class to join them in taunting Student D. Soon, more students begin calling Student D a "monkey." The teacher has witnessed this on several occasions but has not reprimanded any of the students nor reported the incidents to her superiors. Student D starts feeling depressed, skipping class and getting lower grades than usual. Although Student C and the others may not have intended for Student D to become depressed and get lower grades, they did intend to use the racial slurs that resulted in the harm. This would constitute unlawful discrimination under the PHRA. Furthermore, the school and/or school district could be held liable because the teacher was aware of what was going on but took

¹² 24 P.S. § 13-1303.1-A(a).

no action to stop it. This is discussed in more detail in the following section.

7. WHEN DOES HARASSMENT AND BULLYING CONSTITUTE UNLAWFUL DISCRIMINATION?

All students have the right to obtain an education in an environment that is free from unlawful discrimination. Bullying and/or harassment constitutes unlawful discrimination when it is based on one or more protected classes and creates a hostile environment that has the effect of refusing, withholding from, or denying to a student, either directly or indirectly, any of the accommodations, advantages, facilities or privileges provided by the school.¹³

The PHRA does not require a showing of intent to discriminate. Rather, the PHRA prohibits the discriminatory refusal, withholding or denial of a school's accommodations, advantages, facilities or privileges "either directly or indirectly."¹⁴ Nonetheless, if a showing of intent is required, the Commission will look to general intent—i.e., the intent to perform the act in question, not a specific consequence or result.

Courts have articulated several tests to determine liability for harassment in the educational context. For example, under Title IX of the Education Amendments of 1972,¹⁵ educational institutions may be liable for their deliberate indifference to known acts of peer sexual harassment.¹⁶ The deliberate indifference standard requires actual knowledge of discrimination and a failure to adequately respond.¹⁷ The U.S. Supreme Court established these principles in part because Title IX is a spending statute—recipients agree to comply with federally imposed conditions in return for federal funds.¹⁸ Federal courts have applied this same standard to actions arising under Title VI of the Civil Rights Act of 1964.¹⁹

¹³ 43 P.S. § 955(i).

¹⁴ 43 P.S. §955(i)(1).

¹⁵ 20 U.S.C. § 1681 *et seq.*

¹⁶ See Davis ex rel. LaShonda D. v. Monroe Cnty. Bd. of Educ., 526 U.S. 629, 648 (1999); see also Williams v. Pennridge Sch. Dist., 782 F. App'x 120, 127 (3d Cir. 2019).

¹⁷ See Gebser v. Lago Vista Indep. Sch. Dist., 524 U.S. 274, 290 (1998).

¹⁸ See Davis, 526 U.S. at 640 ("Because we have repeatedly treated Title IX as legislation enacted pursuant to Congress' authority under the Spending Clause. . . private damages actions are available only where recipients of federal funding had adequate notice that they could be liable for the conduct at issue").

¹⁹ See L. L. v. Evesham Twp. Bd. of Educ., 710 F. App'x 545, 549 (3d Cir. 2017); 42 U.S.C. § 2000d *et seq.*

The PHRA is not a federal spending statute. Rather, it is an exercise of the Commonwealth's police power for the protection of public welfare, prosperity, health and peace of the people of the Commonwealth.²⁰ At the present time, no state appellate courts in Pennsylvania have decided whether claims of harassment in education under the PHRA must be interpreted consistent with Title VI or Title IX. However, other states have adopted a less onerous standard in education cases, requiring constructive knowledge rather than actual knowledge (essentially, a negligence standard of liability).²¹ Furthermore, Pennsylvania courts have adopted a negligence standard in employment harassment cases under Title VII of the Civil Rights Act of 1964²² and the PHRA.²³

Thus, the Commission finds it more appropriate to apply the negligence standard of liability that is used by Pennsylvania courts in employment cases and by other state courts in education cases. The Commission determines that the less onerous standard of negligence is consistent with the plain language of section 5(i) the PHRA, which makes it unlawful to discriminate directly or indirectly, and is aligned with the policy goals articulated in the PHRA.

Accordingly, the Commission may use the following standard to determine whether harassment and/or bullying constitutes unlawful discrimination:

- 1) a student or students suffered discrimination because of their protected class or classes;
- 2) the harassment was severe or pervasive and regular;²⁴
- 3) the harassment detrimentally affected the student or students;
- 4) the harassment would detrimentally affect a reasonable person of the same protected class; and
- 5) a basis for liability.

A basis for liability may be found where a school district or educational institution knew or should have known of the harassment but failed to take actions reasonably calculated to end the mistreatment and offensive conduct.²⁵

²⁰ 43 P.S. § 952(c).

²¹ See, e.g., Doe v. Kansas City, Mo. Sch. Dist., 372 S.W.3d 43, 54 (Mo. Ct. App. 2012); L.W. ex rel. L.G. v. Toms River Reg'l Sch. Bd. of Educ., 915 A.2d 535, 547 (N.J. 2007).

²² 42 U.S.C. § 2000e *et. seq.*

²³ See Huston v. Procter & Gamble Paper Prods. Corp., 568 F.3d 100, 104 (3d Cir. 2009); see also Hoy v. Angelone, 691 A.2d 476, 480 (Pa. Super. Ct. 1997), *aff'd*, 720 A.2d 745 (Pa. 1998).

²⁴ "To be actionable under the PHRA, the harassing behavior complained of must be sufficiently severe or pervasive to alter the conditions of [the complainant's] employment and create an abusive working environment. Harassment is pervasive and regular when incidents of harassment occur either in concert or with regularity." Infinity Broad. Corp. v. Pennsylvania Hum. Rels. Comm'n, 893 A.2d 151, 158 (Pa. Commw. Ct. 2006) (internal citations and quotations omitted).

²⁵ See L.W. ex rel. L.G., 915 A.2d at 547.

8. EDUCATIONAL BEST PRACTICES

The Commission finds the following approaches to constitute best practices.

A. Anti-Harassment & Bullying Policy Development & Distribution

Pennsylvania law requires that all K-12 educational institutions adopt policies specifically addressing bullying.²⁶ These policies are to be incorporated into the school entity's code of student conduct, as required under 22 Pa. Code § 12.3(c) (relating to school rules).²⁷ The Commission recommends that these policies be in writing and clearly describe what behavior constitutes unlawful harassment based on a protected class. The policies should be re-evaluated on an annual basis to ensure the educational institution is accounting for the ways in which bullying and harassment evolve in the school environment.

The policies should be written in a manner which is appropriate for the students' educational level, so that they are understandable to them. The policies should be easily accessible and widely distributed to students, parents/guardians, and faculty at least once per year, using multiple communication methods (e.g., email, website, in-service training). Educational institutions should also evaluate whether this level of distribution is sufficient to properly communicate the policies in the particular environment.

It may be necessary to have annual in-person meetings for students and/or faculty. Records should be kept demonstrating these efforts.

B. Reporting of Harassment & Bullying

The Pennsylvania Department of Education (PDE) utilizes the Safe Schools Initiative to help local school districts develop and implement safety plans, including measures for preventing bullying. It includes resources and programs designed to reduce violence, bullying, and harassment in schools. Schools are required to report incidents of violence, bullying, and harassment to the PDE, and this information is used to assess the effectiveness of anti-bullying policies. Educational institutions with access to these resources should utilize them.

The use of the Safe2Say hotline as a means of reporting incidents of harassment and bullying is strongly encouraged. The use of Safe2Say alone, however, is not sufficient. The Commission recommends that educational providers have multiple avenues to report harassment and bullying, including, but not limited to: in writing, electronically, telephonically, and in person. Reports should be able to be filed with

²⁶ 24 P.S. § 13-1303.1-A(a).

²⁷ Id.

multiple members of the educational institution's administration. Consistent with the Safe2Say hotline, the Commission recommends that educational institutions accept reports anonymously.

Notices to students informing them of their rights and methods for reporting incidents of bullying and harassment should be widely distributed and posted in conspicuous locations that are easily accessible to students. This includes frequently accessed areas such as entryways, bathrooms, and on the educational institution's website.

C. Investigation of Complaints

Once an educational institution is aware of an allegation of discriminatory harassment it must take prompt action to investigate the allegations. Staff must be trained to investigate and remediate discrimination.²⁸ Staff are required to report any conduct that may reasonably constitute discriminatory harassment that the staff witnesses, overhears, or otherwise learns about to the appropriate education administrator.

The label used to describe an incident (e.g., bullying, hazing, teasing) has no bearing on an educational institution's obligation to respond.²⁹ Rather, the nature of the alleged conduct itself must be assessed. If the conduct is based on race, color, sex, religious creed, ancestry, national origin or disability, and creates a hostile environment, a prompt and thorough investigation is required.³⁰

The investigation must address all allegations raised by the student. If the educational institution learns of other impacted students during the investigation, it must broaden its investigation to include those impacted. The educational institution should keep copies of the investigative materials.

The educational institution should take steps to protect the victim of harassment while this investigation is occurring.³¹ The educational institution should also keep the victim informed of the status of the investigation and the steps taken to end the harassment. The victim of harassment should not be impacted by any transfer or change in status.

²⁸ See 34 C.F.R. § 106.8(d)(4)(1).

²⁹ *Dear Colleague Letter: Harassment and Bullying*, U.S. Department of Education, Office of Civil Rights (Oct. 26, 2010), <https://www.mass.gov/doc/commission-to-review-statutes-relative-to-implementation-of-the-school-bullying-law-testimony-6/download>.

³⁰ See 34 C.F.R. § 104.7(b); 34 C.F.R. § 106.8(b)(2).

³¹ See *Doe v. Pennridge Sch. Dist.*, 413 F. Supp. 3d 393, 405 (E.D. Pa. 2019) (discussing 2010 Department of Education guidance).

D. Corrective Action

If discriminatory harassment is found to have occurred, an educational provider is required to take reasonable steps to correct it and prevent it from recurring.³² The Commission may look at the following factors to determine whether the corrective action was reasonable. This is not an exhaustive list:

- a) The steps the educational provider previously took to combat harassment and bullying generally (effective policies, procedures, anti-discrimination programs, other inclusive initiatives);
- b) The immediate steps taken to correct or remedy the specific incident of alleged harassment;
- c) The promptness and thoroughness of the investigation;
- d) The ability to identify the perpetrator or group of perpetrators;
- e) Whether adequate counseling or disciplinary action was taken towards the perpetrator or group of perpetrators to deter further harassment;
- f) Whether the steps taken were actually effective;
- g) Whether the policies and practices implemented previously are regularly evaluated for effectiveness;
- h) The extent to which the educational provider monitors the school environment generally;
- i) The extent to which the educational provider monitors and controls areas where harassment has occurred;
- j) The extent to which the educational provider has control over the perpetrator or perpetrators;
- k) Prior occurrences involving the same parties or the same type of conduct;
- l) Previous remedial efforts to address the same or similar conduct;
- m) The extent to which outside resources have been accessed to prevent or remedy discrimination, such as those provided by government agencies or other experts.
- n) Whether the educational provider has a standardized disciplinary policy relating to harassment and bullying that is applied consistently by all faculty with disciplinary responsibility.

9. WHAT ABOUT HARASSMENT & BULLYING THAT OCCURS ONLINE OR OFF SCHOOL GROUNDS?

Educational institutions may have an obligation to address bullying or harassment that occurs online, off school grounds or outside of school hours. Liability for off-campus conduct generally turns on whether the educational institution exercises substantial control over both the harasser and the context in which the known harassment occurs.³³ Pennsylvania law expressly prohibits

³² See 34 C.F.R. § 106.44(f).

³³ See *Davis*, 526 U.S. at 645.

an educational institution from refusing, withholding from, or denying to any person because of his race, color, sex, religious creed, ancestry, national origin or handicap or disability, or to any person due to use of a guide or support animal because of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals, either directly or indirectly, any of its accommodations, advantages, facilities or privileges.³⁴

Schools may be responsible for acts that occur on the bus ride to school, while walking home from school, at an “away” game off campus, or even online. Thus, an educational institution may be held liable for discriminatory harassment that occurs off the school’s grounds if it had substantial control over the harasser and the context in which the harassment occurred, it knew or should have known about the harassment, and failed to correct it.

10. FIRST AMENDMENT CONSIDERATIONS

The Commission recognizes that certain educational institutions are governmental entities. Government action may be constrained by First Amendment protections, which prohibit the regulation of speech. However, not all speech is protected by the First Amendment and may be properly addressed to prevent or remedy illegal harassment. Whether the First Amendment applies is extremely fact dependent. Educational institutions are encouraged to consult with their attorneys for legal advice. Some general considerations apply.

A. General Rule for Evaluating Free Speech

Students do not “shed their rights at the schoolhouse gates.”³⁵ However, speech that substantially disturbs school activities or infringes upon the rights of other students can be restricted. Likewise, schools can regulate speech that is reasonably forecasted to be disruptive. To be a substantial disruption, the student’s speech needs “a strong nexus” with the school, such that “the offending speech is shown to have been clearly targeted at a member of the school community or clearly pertained to school activities.”³⁶

B. Cyberbullying

Discriminatory cyberbullying may fall within the purview of the general rule, in that it may be regulated if it is reasonably forecasted to be disruptive and interferes with the rights of other students. However, to be actionable under the PHRA, the speech would likely have to be made in school or

³⁴ 43 P.S. §955(i).

³⁵ See Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 506 (1969).

³⁶ See Appeal of G.S. by and through Snyder, 269 A.3d 718, 734 (Pa. Commw. Ct. 2022) (citing Mahanoy Area Sch. Dist. v. B.L. by and through Levy, 594 U.S. 180, 190 (2021)).

clearly directed at or intended for an audience within the school community, as opposed to small, private friend groups outside of school grounds or off-campus school functions.³⁷ For additional discussion of cyberbullying, refer to section 6 above.

C. Direct Threats

The First Amendment may not protect speech that is a direct threat to another individual. The subjective intent of the speaker is important in determining if speech is a direct threat. A court may consider the content of the speech, and then relevant contextual factors, like the language employed, whether the statement was "political hyperbole," the presence of inexact and abusive language, if the threat was conditional, if it was communicated directly to the victim, if the victim believed the speaker had a propensity for violence, and the listener's reaction.³⁸

D. Fighting Words

Schools can regulate speech that disrupts the educational process, and this includes speech that could be considered "fighting words" if it is likely to provoke violence or significant disorder.³⁹

11. RESOURCES AVAILABLE

The Commission offers training and education on discrimination and associated topics to educational entities who need assistance meeting its obligations under the law.

In addition, below is a list of state and federal agencies who have helpful resources to assist institutions in creating environments that are free from discrimination and harassment.

- A. Pennsylvania Department of Education, Office for Safe Schools
<https://www.education.pa.gov/Schools/safeschools/bullying/Pages/default.aspx>
- B. United States Department of Education, Office for Civil Rights
<https://www2.ed.gov/about/offices/list/ocr/aboutocr.html>
- C. Safe 2 Say Program
<https://www.safe2saypa.org/>
- D. Pennsylvania Office of Attorney General, Civil Rights Enforcement Section
<https://www.attorneygeneral.gov/protect-yourself/civil-rights/>

³⁷ See J.S. v. Blue Mountain School District, 650 F.3d 915 (3d Cir. 2011).

³⁸ See id. at 303.

³⁹ See Chaplinsky v. State of New Hampshire, 315 U.S. 568, 574 (1942).

E. Pennsylvania Training and Assistance Network
<https://www.pattan.net/>

F. United States Department of Justice, Civil Rights Division
<https://www.justice.gov/crt>

To request assistance from the Commission, please call 717-787-4410. Complaints must be filed within 180 days of the alleged act of discrimination.⁴⁰

⁴⁰ The PHRA's limitations period may be tolled during a child's period of minority. See Nicole B. v. School District of Philadelphia, 237 A.3d 986 (2020).