

**UNFINISHED BUSINESS: IMPLEMENTATION BY DELAWARE
PUBLIC SCHOOLS OF THE STATE'S 2012 ANTI-BULLYING
LAWS**

LT. GOVERNOR MATT DENN AND ATTORNEY GENERAL JOSEPH R. BIDEN, III

PRESENTED FEBRUARY 19, 2014

DELAWARE MAKES CHANGES TO ITS BULLYING LAWS IN 2012 AND 2013

In 2012, the General Assembly passed two new laws related to bullying in the state's public schools. The laws were drafted after the Lieutenant Governor and Attorney General held a series of hearings throughout the state to allow school administrators, teachers, parents, students, and other community members opportunities to speak on the prevalence and impact of bullying.

Senate Bill 193 required the Delaware Department of Education to promulgate a uniform cyberbullying policy, based on a model prepared by the Delaware Department of Justice and after an opportunity for public comment. The state's public school districts and charter schools were required by SB 193 to adopt the state's uniform cyberbullying policy within 90 days after its implementation. After months of public comment and revision, the Department of Education formally promulgated this policy on March 1, 2013 as Department of Education Regulation 624. The regulation provided a detailed definition of cyberbullying, made clear that schools could punish cyberbullying that originated outside school property, and provided a list of social media sites where posts would be considered cyberbullying if they otherwise met the regulation's definition. The regulation required schools to notify students and parents/guardians at the beginning of the 2013-2014 school year of the cyberbullying policy itself and of social media sites where posts would be considered to have been publicly posted.

House Bill 268 made a number of changes to the state's bullying law to remedy deficiencies that were noted during the public hearing process. First, it required that schools report all reported incidents of bullying to the state Department of Education – both substantiated and unsubstantiated – and required the Department of Education to randomly audit schools each year to ensure that reports required to be made to the state and to parents were being made. Second, it required more prominent placement of contact information for the Attorney General's ombudsman, who assists parents and students unsatisfied with their school's resolution of bullying issues, including posting of the ombudsman's phone number on each charter school and school district web site. Third, it required schools to report to the state if a bullying incident was the result of a student being targeted for a particular identifiable reason, including but not limited to race, religion, and sexual orientation. The purpose of this change was to help the state determine if particular groups of students were disproportionately subject to bullying, so that steps could be taken to intervene.

SUMMARY OF CONCLUSIONS

- Public school districts, with few exceptions, have complied with the provisions of the state's new cyberbullying laws and regulations. The majority of charter schools are not yet in compliance.
- There remains significant variation in the diligence with which schools make reports to the parents of victims and perpetrators in bullying incidents.

- Most public school districts are now in compliance with the state’s requirement that they list contact information for the Attorney General’s bullying ombudsman on their web sites, but most charter schools are still not in compliance.
- The most prevalent reported causes of bullying in Delaware public schools are students’ physical appearance, student disability, and student gender identity.
- We strongly recommend that schools that are out of compliance with state law as noted in this report take immediate steps to come into compliance. We also recommend, given the wide variation in how diligent schools are about reporting bullying incidents to parents, that district and charter administrators communicate more clearly the absolute legal requirement that substantiated bullying incidents be reported to the parents of all students involved. Finally, we recommend that schools be conscious of the prevalence of bullying based on physical appearance, disability, and gender identity when considering anti-bullying programs for their schools.

WHY A FOCUS ON BULLYING?

First and foremost, we have dedicated significant attention to bullying because our front-line school personnel in Delaware tell us that it is a serious problem which has a real impact on students’ ability to learn. The national statistics support these firsthand observations from our school professionals. In a recent comprehensive study, the Journal of Adolescent Health surveyed the research on bullying and found that bullying was a significant public health problem, affecting between 20% and 56% of young people annually; that specific sub-groups such as gay and lesbian youth were far more likely to be victims; that bullying was associated with poor mental and physical health and other risky behaviors; and even that there was an association between bullying and depression and suicide related behaviors.¹

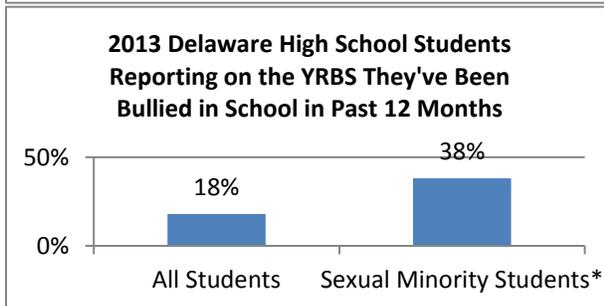
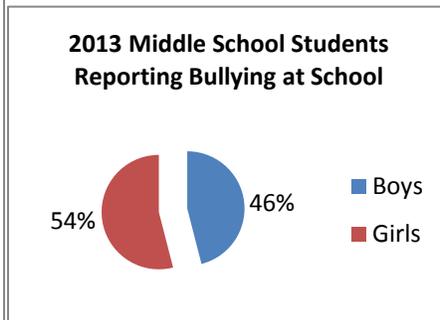
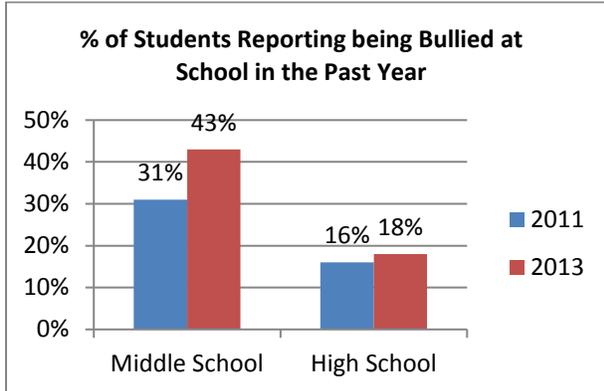
Other studies have also concluded that bullying is widespread in U.S. schools: the National Center for Education Statistics has concluded that 28% of middle school aged children are bullied.²

In Delaware, results from the 2013 Youth Risk Behavior Survey indicate that 18 percent of high school students report that they have been bullied on school property during the past 12 months (24% in 9th grade, 20% in 10th grade, 14% in 11th grade, and 14% in 12th grade). The YRBS is a Delaware version of the CDC survey done in more than 40 states every other year in odd numbered years. According to the 2013 Delaware School Survey, administered annually in non-self-contained classes in the 5th, 8th, and 11th grades (using age-appropriate surveys), the analyses of the 5th grade DSS indicated 23% of Delaware 5th graders (8260 surveyed) report they were bullied at school in the past 30 days.³

¹ 53 *Journal of Adolescent Health* Issue 1 (July, 2013)

² *Student Victimization in U.S. Schools*, National Center for Education Statistics, 2011.

³ *2013 Middle School and High School Youth Risk Behavior Survey and the 2013 Delaware School Survey*, University of Delaware Center for Drug and Alcohol Studies, 2013.



Delaware middle school students are more likely than high school students to report they have been bullied in the past year. This may be due to the fact that students who bully may also engage in other inappropriate behaviors and may no longer be attending school; the same may be true for the most victimized students – they may no longer be attending. More students saying they have been “bullied” in 2013 than in 2011 may be due to bullying education in the schools leading to more students recognizing specific behaviors as bullying. Girls are slightly more likely to report having been bullied, as are certain sub-populations, such as sexual minority students (those reporting homosexual or bisexual as their sexual orientation) and students reporting they have some kind of disability. Bullying does, however, affect students of all academic levels—those who excel as well as those who are struggling academically.⁴

According to the same 2013 reports, 14% of Delaware high school students reported being the victims of electronic bullying – through email, chat rooms, instant messaging, websites, or texting – in the past 12 months. Cyberbullying victimization was reported by 18% of high school girls and 9% of boys. Like in-person bullying, it is reported by students of all academic levels, with the strongest association being with students who are academically failing. Of the students who reported being bullied in person, almost half – 46% - also reported having been victims of cyberbullying in the past 12 months.

⁴ 2011 and 2013 Delaware Youth Risk Behavior Surveys and Delaware School Surveys, University of Delaware Center for Drug & Alcohol Studies.

A problem this widespread, with demonstrated consequences for students' academic achievement and overall well-being, deserves to be taken seriously by the state and by our schools.

COMPLIANCE OF SCHOOL DISTRICTS AND CHARTER SCHOOLS WITH CYBERBULLYING LAW

As noted above, school districts and charter schools had two distinct responsibilities with respect to cyberbullying in 2013: first, to formally adopt the cyberbullying policy promulgated by the Department of Education (written by our offices), and second, to inform students and parents/guardians in writing at the beginning of the 2013-2014 school year of the new policy and of the social media sites where publication of statements about other students would be presumed to be published to the entire school population. The latter requirement was an important one: the new cyberbullying policy was, for most schools and districts, a material change from the way that cyberbullying had been treated in the past. For legal reasons, for purposes of basic fairness, and to ensure the maximum effectiveness of the new policy, it was important that students clearly understand the policy.

According to the University of Delaware report from the Youth Risk Behavior Survey, 14% of high school students reported being victims of cyberbullying, while 19% of 8th graders did. Of high school students who were bullied at school, 46% were also cyberbullied. Among 8th graders, 36% of those who were bullied at school were also victims of cyberbullying, possibly reflecting fewer students at this grade level having access to electronics.⁵

Most of the state's public school districts appear to have formally adopted the DOE's cyberbullying policy. Only the Polytech and Sussex Vo-Tech districts had not done so when they were contacted for purposes of this report, and Polytech immediately took steps to adopt the proper policy when contacted. Among those districts that did adopt the cyberbullying policy, only two—Seaford and Woodbridge – failed to respond to inquiries seeking to determine how they had communicated the new cyberbullying policy to students.

Compliance by charter schools with the new cyberbullying policy was not nearly as consistent as that of the public school districts. More than half of the state's charter schools did not appear – at the time they were contacted for purposes of this report – to have adopted the cyberbullying policy required by the state: Academy of Dover Charter School, Cab Calloway Charter School, Delaware Academy of Public Safety and Security, Delaware Military Academy, East Side Charter School, Thomas A. Edison Charter School, Gateway Lab School, Kuumba Academy, Las Americas Aspira Charter School, Maurice Moyer Academy, Odyssey Charter School, and Positive Outcomes Charter School. (*Note:* East Side, Odyssey, and Thomas A. Edison Charter Schools immediately updated their policies). Among those charter schools that had adopted the state's required cyberbullying policy, a number did not respond to inquiries asking how that policy had been communicated to students: Delaware College Preparatory Academy, Family Foundations Academy, Newark Charter School, Prestige Academy, and Providence Creek Academy.

⁵ 2013 *Middle School and High School Youth Risk Behavior Surveys*, University of Delaware Center for Drug and Alcohol Studies, 2013.

In sum, compliance by school districts with the state's new cyberbullying law and regulation has been, with few exceptions, consistent with the law. Compliance by charter schools still leaves much to be desired, and we encourage those charter schools that are not protecting their students from cyberbullying to the extent required by Delaware law to take immediate steps to begin doing so.

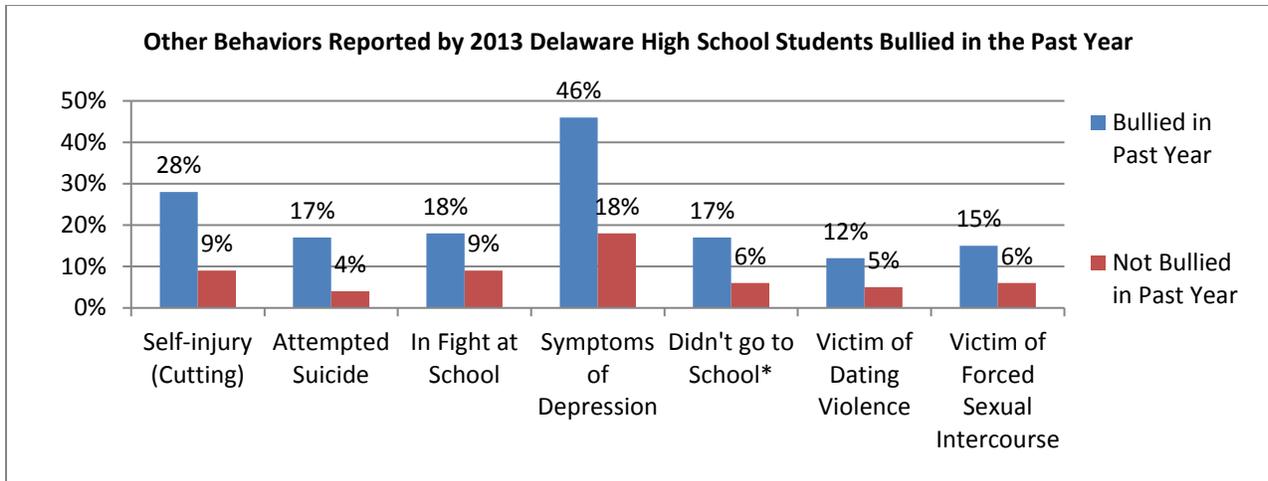
DILIGENCE OF SCHOOLS IN REPORTING BULLYING INCIDENTS TO PARENTS

One of the primary purposes of the 2012 legislation was to afford the state more information about how bullying was occurring in schools and how schools were addressing it, so that other steps could be taken if necessary.

The primary new piece of information derived from the new information created by the 2012 legislation is that some schools are being far more diligent than others in reporting bullying incidents to the parents of students who are victims *and* perpetrators of bullying. Our concern about this issue was one of the primary motivations behind the 2012 revisions to the state's bullying statute. Parents and guardians have a key role to play in reducing and mitigating incidents of bullying in our schools. The parents and guardians of students who have bullied other children need to know what their children are doing in order to take appropriate disciplinary action at home, and the parents of children who have been bullied need to be able to talk to their children and advocate for them. Because of that, there is a clear, unequivocal requirement in Delaware law that "a parent, guardian or relative caregiver...of any target of bullying or person who bullies another as defined herein, be notified." 14 Del.C. § 4112D(b)(2)(j). Unlike schools' reporting obligations to the Department of Education, reports to parents and guardians are made only when bullying is substantiated by the school. Very simply, this is information that parents need to know.

The audits performed for the first time in 2013 by the Department of Education, pursuant to House Bill 268, found that some schools were not reporting many bullying incidents to parents. Of the 10 schools audited, Eisenberg Elementary School, Milford Middle School, Delcastle High School, Seaford High School, and Glasgow High School were all identified by the Department of Education as having reported fewer than 70% of the bullying incidents to parents that they were required to report by law. Conversely, Middletown High School, North Dover Elementary School, Shortlidge Elementary School, Marbrook Elementary School, and Sussex Academy all reported at least 80% of bullying incidents reported to parents.

Reporting to parents/guardians is also important because it could help them keep an eye out for other behaviors reported by students who have been victims of bullying, below, according to the UD study.



LISTING OF CONTACT INFORMATION FOR ATTORNEY GENERAL’S OMBUDSMAN

House Bill 268 required all school districts and charter schools to list the telephone number for the Attorney General’s bullying ombudsman on their websites, so that students & parents/guardians would know that they had additional options if they had bullying concerns that they did not feel were being properly addressed by their schools. All of the state’s school districts *with the exception* of the New Castle County Vo-Tech School District and Woodbridge School District were in compliance with this provision of HB 268 at the time their web sites were surveyed for this report. Conversely, fewer than half of the state’s charter schools were in compliance with this requirement of Delaware law. Of the state’s charter schools, only Cab Calloway, Family Foundations Academy, Las Americas Aspira, MOT Charter School, Newark Charter School, Prestige Academy Charter School, Providence Creek Academy, Thomas Edison Charter, and Sussex Academy listed the ombudsman’s phone number at the time their websites were surveyed for this report. We are hopeful that those school districts and charter schools that have not listed contact information for the Attorney General’s ombudsman on their websites will do so immediately (800-220-5414).

STATISTICS ON UNDERLYING CAUSES OF BULLYING

As noted above, the 2012 amendments to the state’s bullying law created a new obligation for schools and districts to report if a substantiated bullying incident was the result of a student being targeted for a particular identifiable reason. Although the results of this new requirement are far from scientific, they do provide some insight into some of the causes of bullying in our schools. Just over half of the 713 reported bullying incidents from the 2012-2013 school year were reported as having “no reason” or “other.”

Among the bullying incidents for which a reason was identified, approximately 57% were reported as having been based on “physical appearance.” The next most prevalent reported cause of bullying was “disability,” with just under 10% of the incidents for which a reason was reported being so classified. Approximately 8% of the bullying incidents for which a reason was reported were based on gender identity, making it the third most often reported reason for bullying. Other areas which made up more than 5% of incidents for which reasons were cited were “age” and “race/color.” “Sexual orientation” made up just under 5% of incidents for which reasons were cited. Obviously, the “physical appearance” category may encompass incidents which could have been included in one of the other categories.

This data, though unscientific, can provide some guidance for school districts and schools as they try to determine how to customize bullying prevention programs.