

# BULLYING IN PUBLIC SCHOOLS

## KNOW YOUR RIGHTS

### WHAT IS BULLYING?

In Nebraska public schools, bullying can include any physical or verbal or electronic abuse:

- on school grounds
- in a school vehicle (owned, leased, or contracted by the school) used for a school purpose by a school employee or someone designated by the school employee (i.e. school bus), or
- at school-sponsored activities (i.e. pep rallies, school dances, etc.) or athletic events (i.e. soccer games, basketball games, track event, etc.)<sup>1</sup>

Bullying can come from a classmate, teacher, or administration at your school or at or from another school. The reason doesn't matter: whether it's because of your sex, race, ethnicity, sexual orientation, gender identity or expression, disability, religion, immigration status or something entirely different, it's illegal.

### WHAT ARE MY RIGHTS?

You have a right to be safe from bullying at school under both Nebraska and Federal law.

But what about the First Amendment? Sometimes, bullies will try to dodge blame by claiming that you're violating their First Amendment rights. They're wrong. It's true that everyone has the right to free speech under the U.S. Constitution but schools have an obligation to intervene if that speech is legally "obscene" or slanderous (a lie; knowingly untrue in order to harm someone else's reputation), creates an immediate disruption or danger; or causes students to do something that is illegal or against school rules. In the words of our now Supreme Court Justice Samuel Alito in *Saxe v. State College*

*Area School District*.

"Speech that would 'substantially interfere' with student's educational performance is prohibited. The primary function of a public school is to educate its students; conduct that substantially interferes with the mission is, almost by definition, disruptive to the school environment."<sup>2</sup>

### Nebraska Law

Nebraska law requires schools to adopt an anti-bullying policy<sup>3</sup> and calls for long-term suspension, expulsion, or reassignment if a student engages in bullying and threatening or intimidating any other student.<sup>4</sup> The anti-bullying policy must be reviewed by the school district on an annual basis.<sup>5</sup>

### Federal Law

When your school becomes a hostile environment and the harassment is "encouraged, tolerated, not adequately addressed, or ignored by school authorities," the school is violating federal civil rights law."<sup>6</sup>

Specifically, Title VI of the Civil Rights Act of 1964 prohibits schools from excluding a person from participation in, denying a person the benefits of, or subjecting a person to, discrimination in any academic, extracurricular, research, occupational training or other program or activity based on sex, physical or mental disability, national origin or race, or sexual orientation.<sup>7</sup>

Title IX of the Education Amendments of 1972 makes it unlawful for schools to discriminate on the basis of sex and Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990 makes it unlawful for schools to discriminate

on the basis of disability. Lastly, the Supreme Court case *Plyler v. Doe* prohibits schools from discriminating on the basis of immigration status.<sup>8</sup>

Schools must have a clear, public and enforced policy for the prevention of harassment as well as a procedure for complaints<sup>9</sup> and must investigate misconduct "regardless of whether a student has complained, asked the school to take action, or identified the harassment as a form of discrimination."<sup>10</sup>

### WHAT DO I DO IF I'M BEING BULLIED?

If you have been bullied by someone at your school, the first thing you should do is make sure you are safe. After that, you should report the bullying. In many districts, you usually give your report to the principal, teacher, superintendent or (in cases of sexual harassment) the Title IX coordinator. Every public school district in Nebraska has its own policy on how to report harassment, usually contained in the Student Handbook. If you cannot find the original copy, the school may have it online or you can ask for a copy in the school office.

When you report bullying, be sure to keep a written record of each step you take, including copies of anything you give the school, notes on what the harasser did to you, who else saw what happened (including other school employees) and the dates each event happened. If reporting the bullying does not put an end to it, contact the ACLU of Nebraska to ask for help.

### FAQ

#### Is my report private?

Reporting harassment is the only way to be sure your school is legally responsible for

addressing the problem, but if you can't file a report because of privacy concerns, consider sending an anonymous letter to the superintendent so that your school will know harassment is occurring. You can also ask the ACLU of Nebraska to help persuade your school to address harassment more generally.

### What if the person complained about tries to get back at me?

You can be punished if you intentionally make a false report, but school employees may not retaliate against you for honestly reporting harassment. If they do, or if a student you complained about continues harassing you, make another written report to the principal right away. You can also contact the ACLU of Nebraska to ask for help.

### What if the school doesn't believe my report or ignores it?

Some districts allow you to file an appeal through the normal grievance procedure if the school rejects, or fails to respond promptly to your report of harassment/bullying. If your school rejects or ignores your report, contact the ACLU of Nebraska to request help.

### Can I tell my parents or friends that I have reported harassment?

You may talk to others about the harassment report, and it is a good idea to discuss it with a parent or another adult you trust. But be aware that what you say to friends, reporters, or online may be used by your

harasser or your school to discredit your report. Even true statements can be damaging if they are made in anger or can be misinterpreted to sound inconsistent with what you said in your report.

### STRATEGIES FOR PARENTS

**Listen:** Ask your child how children treat each other at school, and how your child is treated.

**Advise:** Let your child know never to ignore bullying or to walk by if you see it happening to someone else; if you can't intervene directly, report it.

**Advocate:** Request to see the school's anti-bullying policy and work with the school to provide an effective, school-wide campaign against bullying.

**Be present:** Be involved at your child's school. Get together and take action with other concerned parents in order to raise expectations about the school's approach to bullying.

### ADVOCACY RESOURCES

#### Nebraska Department of Education

301 Centennial Mall South  
P.O. Box 94987  
Lincoln, NE 68509-4987  
Phone: (402) 471-2295  
Fax: (402) 471-0117  
[education.ne.gov](http://education.ne.gov)

#### Anti-Defamation League

333 South 132nd Street  
Omaha, NE 68154  
Phone: (402) 333-1303  
Fax: (402) 333-5497  
[omaha@adl.org](mailto:omaha@adl.org)

#### Disability Rights Nebraska

134 South 13<sup>th</sup> Street, Suite 600  
Lincoln, NE 68508  
Phone: (402) 474-3183  
Fax: (402) 474-3274  
Toll-free: (800) 422-6691  
[info@disabilityrightsnebraska.org](mailto:info@disabilityrightsnebraska.org)  
[disabilityrightsnebraska.org](http://disabilityrightsnebraska.org)

#### Gay, Lesbian, and Straight Education Network (GLSEN)

P.O. Box 540413  
Omaha, NE 68154  
[omaha@chapters.glsen.org](mailto:omaha@chapters.glsen.org)  
[glsen.org/chapters/omaha](http://glsen.org/chapters/omaha)

### CONTACTING THE ACLU

If you have been bullied and you've informed your school but they are not doing anything, please contact the ACLU of Nebraska.  
[aclunebraska.org/gethelp](http://aclunebraska.org/gethelp)  
[gethelp@aclunebraska.org](mailto:gethelp@aclunebraska.org)  
1.855.557.ACLU (2258)

### THREE THINGS TO KNOW ABOUT BULLYING:

**YOU'RE NOT AT FAULT, YOU'RE NOT ALONE,  
AND EVEN MORE IMPORTANTLY...  
YOU HAVE RIGHTS.**

1 NEB. REV. STAT. § 79-2,137 (2008).

2 *Saxe v. State Coll. Area Sch. Dist.*, 240 F.3d 200 (3d Cir. 2001).

3 NEB. REV. STAT. § 79-2,137 (2008).

4 NEB. REV. STAT. § 79-267 (2010).

5 NEB. REV. STAT. § 79-2,137 (2008).

6 U.S. Dep't of Educ., Off. For Civ. Rts. & U.S. Dep't of Justice, Civ. Rts. Div., "Dear Colleague" Letter: Harassment and Bullying, (Oct. 26, 2010), <https://www2.ed.gov/about/ofces/list/ocr/letters/colleague-201010.pdf>.

7 See 42 U.S.C. § 2000D; 42 U.S.C. § 2000d ("No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."); 29 U.S.C. § 794 (prohibiting discrimination against otherwise qualified person on the basis of disability); 42 U.S.C. § 12131 (same); 20 U.S.C. § 1681(a) ("No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance")

8 *Plyler v. Doe*, 457 U.S. 202, 102 S. Ct. 2382 (1982).

9 28 C.F.R. § 35.107(b); 34 C.F.R. § 104.7(b); 34 C.F.R. § 106.8(b).

10 "Dear Colleague" Letter: Harassment and Bullying at 3.