



October 25, 2017

Ron Hanson, Superintendent
North Platte Public Schools
301 West F, Box 1557
North Platte, NE 69103-1557

RE: Racist Taunts and Incidents at School-Sponsored Athletic Events

Dear Superintendent:

During the last few weeks, the ACLU of Nebraska has received reports regarding racist taunts and incidents occurring at school-sponsored athletic events in which schools are using and unfortunately twisting the “Americana” theme, a normally wonderful way to demonstrate our patriotism, against largely minority-populated schools. The occurrence of these racist taunts and incidents at school-sponsored events presents an opportunity for school districts to review their obligations to maintain a safe school environment and to prevent and protect students against such harassment, intimidation, and bullying.

The ACLU of Nebraska is a non-profit, non-partisan organization that works to defend and strengthen the individual rights and liberties guaranteed in the United States and Nebraska Constitutions through policy advocacy, litigation and education. For over fifty years, the ACLU of Nebraska has been a constant guardian for freedom and liberty fighting for the civil rights and civil liberties of all Nebraskans. The ACLU of Nebraska works with teachers, parents, students, community members, and legislators to ensure equality and dignity for all students in Nebraska schools, regardless of their religious affiliation, immigration status, gender identity, or sexual orientation.

The State Department of Education provides links to model policies prohibiting harassment, intimidation, and bullying. The model policy sets out reporting requirements and requires prompt investigation of any allegations of harassment, intimidation, or bullying. Model policies, along with related resources, are available at https://www.education.ne.gov/safety/bullying-prevention/resources/#Definitions_Policy.

School districts and their staff and other agents have obligations under federal law, state law, and district policies to prevent and protect against bullying, intimidation, and harassment. Under all of these laws, a district’s indifference to bullying, intimidation, or harassment taking place in its schools or among its students can expose the district and its officials and employees to liability. Some of the most important of these laws include:

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- Title VI of the federal Civil Rights Act, which prohibits discrimination on the basis of race, color, or national origin in any program or activity receiving federal financial assistance.
- Title IV of the federal Civil Rights Act of 1964, which prohibits discrimination on the basis of religion or sex, in addition to race, color, or national origin in public elementary and secondary schools.
- Title IX of the federal Education Amendments Act of 1972, which prohibits discrimination on the basis of sex, including on the basis of sex stereotypes, in education programs and activities.
- The Individuals with Disabilities Education Act (IDEA), Americans with Disabilities Act (ADA), and Section 504 of the Rehabilitation Act of 1973, which prohibit discrimination on the basis of disability or perceived disability.
- The Supreme Court of the United States has held in *Plyler v. Doe*, 457 U.S. 202 (1982), that a state may not deny access to public education to any child residing in the State, whether documented or undocumented.
- Nebraska Revised Statute § 79-267 which calls for long-term suspension, expulsion, or mandatory reassignment when a student engages in bullying. Bullying is defined in Neb. Rev. Stat. § 79-2,137 as “any ongoing pattern of physical, verbal, or electronic abuse on school grounds, in a vehicle owned, leased, or contracted by a school being used for a school purpose by a school employee or his or her designee, or at school-sponsored activities or *school-sponsored athletic events*.”

Under these laws, discrimination can include bullying, intimidation, or harassment, failing to adequately investigate allegations of it, or failing to protect students from ongoing bullying, intimidation, or harassment when it is obvious or school staff become aware of it. Additional guidance from the United States Department of Education’s Office for Civil Rights elaborates on potential violations of the federal laws listed above when bullying, intimidation, or harassment in school is based on race, color, religion, sex, immigration status, national origin or disability or perceived disability. This guidance is available online and includes:

- October 21, 2014, “Dear Colleague Letter”:
<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-bullying-201410.pdf>
- May 8, 2014, “Dear Colleague Letter”:
<https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201405.pdf>

- August 20, 2013, Dear Colleague Letter and enclosure on “Effective Evidence-Based Practices for Preventing and Addressing Bullying”:
<http://www.ed.gov/policy/speced/guid/idea/memosdcltrs/bullyingdcl-8-20-13.doc>
 - <http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/bullyingdcl-enclosure-8-20-13.pdf>
- October 26, 2010, Dear Colleague Letter:
<http://www.ed.gov/ocr/letters/colleague-201010.pdf>
- July 25, 2000, Dear Colleague Letter:
<http://www2.ed.gov/about/offices/list/ocr/docs/disabharassltr.html>

Additionally, Nebraska law requires school districts to review their policy annually concerning bullying prevention and education for all students. Neb. Rev. Stat § 79-2,137.

Of course, school districts can and must prevent bullying, intimidation, and harassment as well as respect students’ First Amendment rights. Schools must respect the free expression rights of their students, even if the student is expressing an unpopular view. Students also have certain rights under the Due Process Clause, the Fourth Amendment, and the Fifth Amendment of the United States Constitution when they are subject to school discipline. However, when speech interferes with another student’s educational opportunity or rights or encourages unlawful treatment of students, this is *not* protected speech and must be addressed. *Saxe v. State Coll. Area Sch. Dist.*, 240 F.3d 200 (3d Cir. 2001).

Please use this opportunity to review your district’s obligations, policies, and practices around bullying, intimidation, and harassment, and use the resources listed above to reinforce your efforts to maintain a safe and healthy school climate the rest of this school year and school years to come.

Please contact us if we can be of any additional assistance with this matter.

Sincerely,



Rose Godinez, J.D.
Legal and Policy Counsel

cc: Nebraska Public School Superintendents,

Nebraska School Activities Association,
Nebraska Department of Education's Commissioner of Education,
Department of Education- Office for Civil Rights local office,
Nebraska Board of Education,
Nebraska Legislature's Education Committee,
Nebraska Association of School Boards,
Nebraska State Education Association.

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