

North Carolina Law on Bullying / NC School Violence Prevention Act

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009
SESSION LAW 2009-212
SENATE BILL 526

AN ACT TO ENACT THE SCHOOL VIOLENCE PREVENTION ACT AND TO DEFINE BULLYING OR HARASSING BEHAVIOR AS USED IN THE ACT AS ANY PATTERN OF GESTURES OR WRITTEN, ELECTRONIC, OR VERBAL COMMUNICATIONS, OR ANY PHYSICAL ACT OR ANY THREATENING COMMUNICATION, THAT TAKES PLACE ON SCHOOL PROPERTY, AT ANY SCHOOL-SPONSORED FUNCTION, OR ON A SCHOOL BUS, AND THAT PLACES A STUDENT OR SCHOOL EMPLOYEE IN ACTUAL AND REASONABLE FEAR OF HARM TO HIS OR HER PERSON OR DAMAGE TO HIS OR HER PROPERTY; OR CREATES OR IS CERTAIN TO CREATE A HOSTILE ENVIRONMENT BY SUBSTANTIALLY INTERFERING WITH OR IMPAIRING A STUDENT'S EDUCATIONAL PERFORMANCE, OPPORTUNITIES, OR BENEFITS; TO DEFINE HOSTILE ENVIRONMENT AS USED IN THE ACT AS MEANING THE VICTIM SUBJECTIVELY VIEWS THE CONDUCT AS BULLYING OR HARASSING BEHAVIOR AND THE CONDUCT IS OBJECTIVELY SEVERE OR PERVASIVE ENOUGH THAT A REASONABLE PERSON WOULD AGREE THAT IT IS BULLYING OR HARASSING BEHAVIOR; TO PROVIDE THAT BULLYING OR HARASSING BEHAVIOR INCLUDES, BUT IS NOT LIMITED TO, ACTS REASONABLY PERCEIVED AS BEING MOTIVATED BY ANY ACTUAL OR PERCEIVED DIFFERENTIATING CHARACTERISTIC, SUCH AS RACE, COLOR, RELIGION, ANCESTRY, NATIONAL ORIGIN, GENDER, SOCIOECONOMIC STATUS, ACADEMIC STATUS, GENDER IDENTITY, PHYSICAL APPEARANCE, SEXUAL ORIENTATION, OR MENTAL, PHYSICAL, DEVELOPMENTAL, OR SENSORY DISABILITY, OR BY ASSOCIATION WITH A PERSON WHO HAS OR IS PERCEIVED TO HAVE ONE OR MORE OF THESE CHARACTERISTICS; AND TO REQUIRE ALL LOCAL SCHOOL ADMINISTRATIVE UNITS TO ADOPT A POLICY PROHIBITING BULLYING AND HARASSING BEHAVIOR AS REQUIRED BY THE ACT.

- Whereas, the General Assembly of North Carolina finds that a safe and civil environment in school is necessary in order for students to learn and achieve high academic standards; and
- Whereas, bullying and harassment, like other disruptive or violent behaviors, is conduct that disrupts both a student's ability to learn and a school's ability to educate its students in a safe environment; and
- Whereas, bullying and harassing behaviors create a climate that fosters violence in our schools; and
- Whereas, it is essential to enact a law that seeks to protect the health and welfare of North Carolina students and improve the learning environment for North Carolina students; and
- Whereas, to do so, State and national data and anecdotal evidence have established the need to identify the most vulnerable targets and potential victims of bullying and harassment; and
- Whereas, the sole purpose of this law is to protect all children from bullying and harassment, and no other legislative purpose is intended nor should any other intent be construed from passage of this law; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Subchapter VI of Chapter 115C of the General Statutes is amended by adding a new Article to read:

"Article 29B.

"School Violence Prevention.

"§ 115C-407.5. Bullying and harassing behavior.

(a) As used in this Article, "bullying or harassing behavior" is any pattern of gestures or written, electronic, or verbal communications, or any physical act or any threatening communication, that takes place on school property, at any school-sponsored function, or on a school bus, and that:

- (1) Places a student or school employee in actual and reasonable fear of harm to his or her person or damage to his or her property; or
- (2) Creates or is certain to create a hostile environment by substantially interfering with or impairing a student's educational performance, opportunities, or benefits. For purposes of this section, "hostile

environment" means that the victim subjectively views the conduct as bullying or harassing behavior and the conduct is objectively severe or pervasive enough that a reasonable person would agree that it is bullying or harassing behavior.

Bullying or harassing behavior includes, but is not limited to, acts reasonably perceived as being motivated by any actual or perceived differentiating characteristic, such as race, color religion, ancestry, national origin, gender, socioeconomic status, academic status, gender identity, physical appearance, sexual orientation, or mental, physical, developmental, or sensory disability, or by association with a person who has or is perceived to have one or more of these characteristics.

- (b) No student or school employee shall be subjected to bullying or harassing behavior by school employees or students.
- (c) No person shall engage in any act of reprisal or retaliation against a victim, witness, or a person with reliable information about an act of bullying or harassing behavior.
- (d) A school employee who has witnessed or has reliable information that a student or school employee has been subject to any act of bullying or harassing behavior shall report the incident to the appropriate school official.
- (e) A student or volunteer who has witnessed or has reliable information that a student or school employee has been subject to any act of bullying or harassing behavior should report the incident to the appropriate school official.

"§ 115C-407.6. Policy against bullying or harassing behavior.

- (a) Before December 31, 2009, each local school administrative unit shall adopt a policy prohibiting bullying or harassing behavior.
- (b) The policy shall contain, at a minimum, the following components:
 - (1) A statement prohibiting bullying or harassing behavior.
 - (2) A definition of bullying or harassing behavior no less inclusive than that set forth in this Article.
 - (3) A description of the type of behavior expected for each student and school employee.
 - (4) Consequences and appropriate remedial action for a person who commits an act of bullying or harassment.
 - (5) A procedure for reporting an act of bullying or harassment, including a provision that permits a person to report such an act anonymously. This shall not be construed to permit formal disciplinary action solely on the basis of an anonymous report.
 - (6) A procedure for prompt investigation of reports of serious violations and complaints of any act of bullying or harassment, identifying either the principal or the principal's designee as the person responsible for the investigation.
 - (7) A statement that prohibits reprisal or retaliation against any person who reports an act of bullying or harassment, and the consequence and appropriate remedial action for a person who engages in reprisal or retaliation.
 - (8) A statement of how the policy is to be disseminated and publicized, including notice that the policy applies to participation in school-sponsored functions.
- (c) Nothing in this Article shall prohibit a local school administrative unit from adopting a policy that includes components beyond the minimum components provided in this section or that is more inclusive than the requirements of this Article.
- (d) Notice of the local policy shall appear in any school unit publication that sets forth the comprehensive rules, procedures, and standards of conduct for schools within the school unit and in any student and school employee handbook.
- (e) Information regarding the local policy against bullying or harassing behavior shall be incorporated into a school's employee training program.

(f) To the extent funds are appropriated for these purposes, a local school administrative unit shall, by March 1, 2010, provide training on the local policy to school employees and volunteers who have significant contact with students.

"§ 115C-407.7. Prevention of school violence.

Schools shall develop and implement methods and strategies for promoting school environments that are free of bullying or harassing behavior.

"§ 115C-407.8. Construction of this Article.

- (a) This Article shall not be construed to permit school officials to punish student expression or speech based on an undifferentiated fear or apprehension of disturbance or out of a desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint.
- (b) This Article shall not be interpreted to prevent a victim of bullying or harassing behavior from seeking redress under any other available law, either civil or criminal.
- (c) Nothing in this Article shall be construed to require an exhaustion of the administrative complaint process before civil or criminal law remedies may be pursued regarding bullying or harassing behavior.
- (d) The provisions of this Article are severable, and if any provision of this Article is held invalid by a court of competent jurisdiction, the invalidity shall not affect other provisions of this Article which can be given effect without the invalid provision.
- (e) The provisions of this Article shall be liberally construed to give effect to its purposes.
- (f) Nothing in this act shall be construed to create any classification, protected class, suspect category, or preference beyond those existing in present statute or case law."

14-458.1. Cyber-bullying; penalty.

- (a) Except as otherwise made unlawful by this Article, it shall be unlawful for any person to use a computer or computer network to do any of the following:
 - (1) With the intent to intimidate or torment a minor:
 - a. Build a fake profile or Web site;
 - b. Pose as a minor in:
 - 1. An Internet chat room;
 - 2. An electronic mail message; or
 - 3. An instant message;
 - c. Follow a minor online or into an Internet chat room; or
 - d. Post or encourage others to post on the Internet private, personal, or sexual information pertaining to a minor.
 - (2) With the intent to intimidate or torment a minor or the minor's parent or guardian:
 - a. Post a real or doctored image of a minor on the Internet;
 - b. Access, alter, or erase any computer network, computer data, computer program, or computer software, including breaking into a password protected account or stealing or otherwise accessing passwords; or
 - c. Use a computer system for repeated, continuing, or sustained electronic communications, including electronic mail or other transmissions, to a minor.
 - (3) Make any statement, whether true or false, intending to immediately provoke, and that is likely to provoke, any third party to stalk or harass a minor.
 - (4) Copy and disseminate, or cause to be made, an unauthorized copy of any data pertaining to a minor for the purpose of intimidating or tormenting that minor (in any form, including, but not limited to, any printed or electronic form of computer data, computer programs, or computer software residing in, communicated by, or produced by a computer or computer network).
 - (5) Sign up a minor for a pornographic Internet site with the intent to intimidate or torment the minor.

(6) Without authorization of the minor or the minor's parent or guardian, sign up a minor for electronic mailing lists or to receive junk electronic messages and instant messages, with the intent to intimidate or torment the minor.

(b) Any person who violates this section shall be guilty of cyber-bullying, which offense shall be punishable as a Class 1 misdemeanor if the defendant is 18 years of age or older at the time the offense is committed. If the defendant is under the age of 18 at the time the offense is committed, the offense shall be punishable as a Class 2 misdemeanor.

(c) Whenever any person pleads guilty to or is guilty of an offense under this section, and the offense was committed before the person attained the age of 18 years, the court may, without entering a judgment of guilt and with the consent of the defendant, defer further proceedings and place the defendant on probation upon such reasonable terms and conditions as the court may require. Upon fulfillment of the terms and conditions of the probation provided for in this subsection, the court shall discharge the defendant and dismiss the proceedings against the defendant. Discharge and dismissal under this subsection shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. Upon discharge and dismissal pursuant to this subsection, the person may apply for an order to expunge the complete record of the proceedings resulting in the dismissal and discharge, pursuant to the procedures and requirements set forth in G.S. 15A-146. (2009-551, s. 1; 2012-149, s. 3.)

SECTION 2. This act is effective when it becomes law and applies, unless otherwise provided in G.S. 115C-407.6, as enacted by Section 1 of this act, beginning with the 2009-2010 school year.

In the General Assembly read three times and ratified this the 23rd day of June, 2009.

Walter H. Dalton
President of the Senate

Joe Hackney
Speaker of the House of Representatives

Beverly E. Perdue
Governor

Approved 5:27 p.m. this 30th day of June, 2009

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