





RESPONDING TO BIAS-BASED INCIDENTS

Sanghavi Law Office, LLC



Sanghavi Law Office: About Us

Sanghavi Law Office is a group of attorneys experienced in education and civil rights law, dedicated to helping schools address issues of discrimination and harassment. In addition to advising clients, we conduct investigations, serve as hearing officers and advisors, review policies and procedures, conduct audits and climate assessments, and provide trainings.



Today's Agenda

- What is a bias-based incident?
- Mission and values to address bias-based incidents
 - Range of responses to bias-based incidents
 - Case study

What is a bias-based incident?

- “A bias incident is conduct, speech or expression motivated, in whole or in part, by bias or prejudice.
- It differs from a hate crime in that no criminal activity is involved. While hate crimes, if charged and prosecuted, will be dealt with in the court system, schools must handle bias incidents through grievance procedures and educational programs.
- Both hate crimes and bias incidents, however, demand a unified and unflinching denouncement from school leaders.”

- Learning for Justice



RELEVANT SCHOOL MISSION AND VALUES



Mission and Values

What are some of your school's values that might be relevant to responding to bias-based conduct?

School Mission & Values

Values the School Seeks to Inculcate in Students

- Responsibility
- Integrity
- Maturity
- Collaboration
- Compassion
- Resilience
- Empathy

Values Related to the School's Aspirations for Students

- Global Citizenship
- Leadership
- Accountability

Values Related to School Culture

- Supportive
- Accepting
- Inclusive
- Respectful
- Empowering

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SCHOOL RESPONSE



Notice of Bias-Based Incidents

A school might learn of an incident via:

- A student may tell a teacher, guidance counselor, club supervisor, or administrator
- A parent may tell a teacher or administrator
- An employee may observe interactions
- It may be discussed among members of the community or in local media
- Social media posts
- An anonymous report

Formal Investigation Under School Policy


Formal Investigation is a process that results in a determination of whether a school policy has been violated.

Relevant to bias-based incidents, school policies often prohibit harassment:

- Conduct based on a protected category that is severe, persistent or pervasive, and denies or limits an individual's ability to participate in or benefit from the school's programs or activities.
- Conduct takes place on school property, using school technology, or at school-sponsored or school-related events; or the conduct takes place off campus but has derivative effects at the school.

Initial Response by Adults when Bias-Based Conduct is Witnessed, Overheard, or Reported

- Staff should ensure the safety of the involved individuals.
- The type of environment that is tolerated or encouraged by or at a school can send a strong signal to, and serve as an influential lesson for, students.
- The lack of a strong, immediate response by a school staff member who is aware of the conduct may be perceived by students as approval of the conduct.
- In responding to conduct, staff should treat the matter seriously and should avoid any implication that the targeted individual invited or provoked the conduct.



Contact with Reporter or Targeted Individual

- The school should contact the individual who was targeted (or, if a student, the parent or guardian, depending upon the age of the student), affirm that the school takes bias-based conduct seriously, and explain the steps the school could take to address the conduct.
- The school's contact person should be experienced in addressing bias-based conduct and with whom students are likely to feel comfortable.
- The contact person should listen respectfully to the targeted individual's account and find out what actions the individual is seeking in response to the conduct, and should explain avenues for informal and formal action.

Supportive Measures

The school can take action to support and protect the targeted individual, such as by providing counseling and other support services; changing course schedules, assignments, or tests; allowing extensions in schoolwork or leaves of absence; offering escort services; and providing increased monitoring, supervision, or security at the locations or activities where the alleged conduct occurred.



Informal Resolution

Schools may use informal mechanisms for addressing complaints of bias-based conduct (e.g., mediation; restorative justice) if the parties voluntarily agree to do so, and if the allegations are appropriate for such a resolution.

Public Statements

When bias-based incidents become well known within the school community, schools should consider engaging in community-wide discourse addressing bias.

Leadership might, at a minimum, publicly reaffirm the school's values and take steps to ensure all community members can recognize bias-based conduct and know how to respond.

The more widely known an incident, the more transparent a school may need to be in addressing its effects.

If publicly disclosing an incident, weigh the impact on any ongoing investigation, and be careful not to inadvertently disclose personally identifiable information.

Student Outreach and Engagement: Promoting and Facilitating Student Agency and Voice

Offer opportunities for affected student groups to bring their perspectives to school leadership.

Offer ways for students to participate in climate development activities.

Consider addressing issues of inclusion and bias in student engagement activities.

Keep in mind that issues and perspectives can change with time.



Faculty and Staff Engagement

Build issues of inclusion and bias-based conduct into professional development and learning community agendas

Engage faculty/staff in fostering respect and appreciation for inclusion through curriculum and pedagogical strategies



Family Engagement

- Provide periodic community updates regarding prevention and engagement efforts.
- Consider conducting family and community forums.
 - Don't wait for parents to reach out to you.

Training and Moderated Discussions

Whether targeted or school-wide, tailored workshops can reinforce values and expectations while building connections across the school community.

Peer/Bystander/Upstander training can offer students a practical approach to responding to incidents.



Tracking Incidents

Tracking bias-based incidents can reveal a wealth of information about incident trends and hot spots, as well as the effectiveness of reporting pathways and responses, and will help ensure the school can address recurring problems.

Climate Assessment

Surveys

Anonymous questionnaires, such as pulse surveys, can offer a snapshot of concerns, and responses can be disaggregated to assess how specific groups may be affected by climate issues.

Focus Groups

Focus groups can provide perspective on how key issues and practices are viewed across constituent groups, and can reveal emerging issues related to climate, morale, and power dynamics.

Data Review

A review of past investigations and tracking data can reveal a wealth of information about incident trends and hot spots, as well as reporting pathways and effectiveness of response.



Mission Alignment

If called for by an assessment of the incidents your community has experienced, school leadership may want to consider realigning its mission statement or statement of values, or issuing a statement of commitment relevant to issues of inclusion and addressing bias-based conduct.

Review and Modification of Policies and Procedures

If you are not satisfied with the resolution pathways available, consider reviewing policies, procedures, and practices, and implement modifications if necessary.

Policies can be refined to address expectations and values concerning inclusion and bias-based conduct that may not be adequately addressed in existing harassment and conduct policies.

Policy revisions can help ensure the school can respond effectively to bias-based conduct.

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CASE STUDY

Allzrite Academy

In January 2021, Allzrite Academy shifted from all online instruction to a combination of online and in-person instruction. This was a welcome change for students, faculty members, staff and other members of the Allzrite community. Madison, like many of her peers, was looking forward to returning to in-class learning after being stuck in the house for such a long period of time. She especially was looking forward to seeing her friends in person. As a senior, Madison was scheduled for in-class learning on Mondays and Thursdays. While in school students were required to wear facial masks and reminded to wash their hands frequently and to use hand sanitizer located in every classroom and throughout the school. Most students considered the masks to be a nuisance but understood the necessity of wearing them.

One day, after third period, Madison grabbed her lunch from her locker and proceeded to the dining hall to meet up with some of her friends. When Madison arrived to the dining hall, she spotted a couple of her closest friends sitting at a table, but was unable to sit with them because the table was full. Only four students were allowed per table, which were spaced six feet apart. Madison noticed that her friend, Jameson, was sitting at a table with one open seat. Madison hurried over to snag the seat before it was taken. After a quick air fist bump, Madison sat down and began to eat her lunch. Madison was eager to remove her mask as it was starting to irritate her skin. After Madison removed her mask, Alex, one of the students at the table, said to Madison, "Feels good doesn't it." Madison responded, "It sure does." Alex then said, "It's because of you that we have to wear these stupid masks." Madison questioned whether she had heard Alex correctly, and asked him, "What did you say?" Alex responded, "It's because of people like you that we have to wear these stupid masks." Sam, who was also sitting at the table, began to laugh. Jameson, in response, said, "Alex, you're a**hole" and "Sam, you're an a**hole for laughing." Jameson then turned to Madison and said, "Let's get out of here." Madison responded, "No. Why should we leave. It's not like I haven't heard this crap before. I don't expect anything more from a sophomore." Jameson said, "Well I'm leaving. You can stay if you want to. Call me later."

After Jameson left, Madison continued eating, trying her best to ignore Alex and Sam. As Madison opened her water bottle to take a sip, Alex began shaking the table causing the water to spill onto Madison's lap. Madison quickly pushed her chair away from the table and stood up. Students nearby started to stare. Alex began laughing, and Sam joined in. Alex said, "It's just a little water. I'm just kidding." Alex added, "But seriously, what's the big deal. Everyone knows it started in your country." Madison responded, "Jameson was right. You are an a**hole." Madison then grabbed her things and began to walk away. Alex, in a sarcastic tone, said, "I'm sorry. I was just kidding. Come back." Madison continued walking and exited the dining hall. After Alex left, a staff member walked over to Alex and Sam and asked what happened. Alex said, "I don't know. I think she got upset because she spilled water on her clothes."

Later that day, during 5th period, Jameson texted Madison to see how she was doing. The faculty member told Jameson to pay attention and to put her phone away. After class, Jameson apologized to the faculty member and explained that she was texting Madison to see how she was doing. Jameson told the faculty member what occurred in the dining hall. The faculty member asked Jameson how Madison was doing, and Jameson said, "I think she's fine. She reacted more calmly than I did." The faculty member thanked Jameson for sharing. The faculty member told Jameson that she would follow up with Madison. Jameson said, "Please don't tell her I told you." Given that it was the end of the school day, the faculty member decided it was best to follow up with Madison, in person, on Thursday during homeroom.

Later that night, Madison was online doing her homework when she started receiving DMs from her friends asking, “What happened?” “Are you okay?” Madison, at first, had no idea what they were talking about. She then realized that Jameson had posted something on Instagram regarding the incident. Madison sent a DM to Jameson, “Really! Instagram! Why did you do that?” Jameson responded, “I’m sorry! But you shouldn’t have to deal with that crap. Not here. Not anywhere - #stopantiasianbias.” Madison replied, “You should’ve asked me first - #notyourstoshare.”

Much to Madison’s relief, the texts and DMs subsided the next day. She hoped things would blow over by the time she returned to campus that Thursday. However, on Wednesday, Madison again began to receive text messages and DMs from her friends. She also received DMs from students she did not know. Madison went on the Instagram site and was surprised to see the number of posts about the incident. Some students indicated that they were shocked that this happened at Allzrite. Other students indicated that they were not surprised and stated that this was not the first bias incident at Allzrite, and shared other incidents where students have been teased or harassed based on their identities or perceived identities. In addition, some students posted links to news articles and online videos of Asian Americans being harassed or assaulted due to COVID, including a viral video of an Asian man being accosted by a stranger on a bus. There were also a couple of anonymous posts, one included the Chinese flag covered by a mask.

After viewing the posts, Madison decided that she did not want to return to campus the next day. Madison feared being bombarded with questions and wanted time to process everything. Madison also hoped that things would calm down over the weekend. Madison emailed her guidance counselor and asked if she could attend classes remotely tomorrow. When the guidance counselor asked why, Madison said, "Something was posted about me online. I'm fine, but I don't want my physical presence to cause a distraction." The guidance counselor asked Madison for more information, and Madison said that she wasn't ready to talk about it. The guidance counselor said, "Well, let's plan to talk on Tuesday, when you return to school. I'm here if you want to talk before then."



Breakout Session: Group 1

The incident at the table

1. What conduct would you characterize as a bias-based incident?
2. Would a formal investigation of harassment be appropriate? Would the conduct implicate some other provision of your school's code of conduct?
3. What kind of outreach would be appropriate for Alex and Sam? Who should conduct the outreach?



Breakout Session: Group 2

The incident at the table

4. What are some ways in which the incident might have affected Madison's school experience? Jameson's? Sam's?
5. What supportive measures might the school consider offering in response to the situation?
6. What kind of outreach would be appropriate for Madison and Jameson? Who should conduct the outreach?



Breakout Session: Group 3

The incident at the table

7. What adults were aware of the incident, and when?
8. How might the adults have responded differently?



Breakout Session: Group 4

Social media posts

9. Which posts could the school follow up on? How? With whom?
10. Would the school want to make a statement about the posts? In what forum? What would it say?
11. Does the fact that there have been incidents of anti-Asian harassment and violence in the larger community impact the school's response?



Mission and Values

How could the school draw upon its mission and value statements in its response?

When addressing complex issues that might fall outside of – or extend beyond – a school's formal policies, schools can look to core values to frame questions, navigate competing interests, make decisions, and explain the actions taken.

Questions?

Comments?

Concerns?



Thank you!

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