

Committee member issue raised: MSBA 6-18-12

1. I am unsure of the intent of the inclusion of the “other” students found in many places including: Bullying definition para (a), first, second, third, fourth and sixth bullet points, and para (b)? I would suggest striking that language.
2. Bullet three found under the bullying definition related to deliberate exclusion will be enormously challenging for school principals and teachers to implement and enforce. While I don’t deny this occurs, laws rarely punish people for inaction.

Broader statements of effect that sharpen the bullying definition, as found in the MSBA’s model policy, ND’s bullying definition, and/or other state mandated policies, achieve the same goal and are more easily understood by those who will be required to adopt and enforce (see item f below).

- a. Harming a student or a group of students.
- b. Damaging a student’s or a group of students’ property.
- c. Creating a hostile education environment for a student or a group of students
- d. Intimidating a student or a group of students.
- e. Placing a student or group of student’s in reasonable fear of harm to person or property.
- f. Interfering with the student’s academic performance or ability to participate in or benefit from the services, activities or privileges provided by a district (Maine).

3. Without school district staff being in every location in the district’s buildings, maintaining a right to a safe and supportive environment would be nearly impossible. This does not mean, in any way, that districts don’t want to provide a safe, supporting and nurturing environment, but school districts may be exposed to legal claims if they are unable to meet this standard unless districts hired additional staff to ensure each part of each school building was safe at all times during the school day – including after-school and extracurricular events. School districts cannot monitor the behavior of students at all times and eliminate all incidents of bullying behavior particularly when students are not under direct supervision of school district personnel. Other state mandated policy requirements have been able to clearly define bullying and/or harassment without getting into the issue of educational rights.

4. I think the co-chair of the committee summarized the challenges with the issues surrounding the balance of power very nicely (Bullying definition, (a), bullet five). It seems that this is an inherent condition that is a part of any or all bully/victim relationship(s). More importantly, what is this provision trying to prohibit? School districts should strive for creating an environment that is free from such behavior. But situations like this happen each day. Take the simple, yet important, role of clothing in our student’s lives. Think how the labels on these clothes create a perceived imbalance of power in any social setting within the school-setting – classroom, pep-fest, or extracurricular event, etc... Unaware of the proposed consequences, is a student who wears a more expensive pair of sneakers or jeans creating a perceived socioeconomic imbalance of power between students? Or, are the students who are placed on the academic honor role creating a perceived imbalance of power due to the fact that the district is rewarding students for their hard work and academic success. It is important to remember that principals, teachers, paras, custodians, bus drivers, etc. must understand the definitions and be able to enforce the policy on a day –to-day basis. Uncertainty leads to inactivity.

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5. The language in the Bullying definition para (b) as it relates to “electronic forums” may be too limiting. MSBA’s model policy under the General Statement of Policy states...

”...the misuse of technology including, but not limited to, teasing, intimidating, defaming, threatening, or terrorizing another student, teacher, administrator, volunteer, contractor, or other employee of the school district by sending or posting email messages, instant messages, text messages, digital pictures or images, or website postings, including blogs, also may constitute an act of bullying regardless of whether such acts are committed on or off school district property and/or without the use of school district resources.”

6. I would like to understand the reason for inserting “actual or perceived” within the harassment definition? How can a school district determine when behavior is “relating to an individual’s or group of individuals...perceived characteristic? If harassment is reported, how would a school district disprove an alleged perpetrator’s denial that the perception existed?

A second point to consider is that the definition of “sexual orientation” is the only term defined within Minnesota Human Rights Act (see below) that uses “having or being perceived.” By placing “actual or perceived” in front of all of the protected categories this will create two different standards of protection for Minnesota’s citizens - one for Minnesota’s public school students, and another for those categories within the general population. I would suggest that the definitions be consistent or cross-referenced within the definition.

M.S. 363A.03 Subd. 44. Sexual orientation.

"Sexual orientation" means having or being perceived as having an emotional, physical, or sexual attachment to another person without regard to the sex of that person or having or being perceived as having an orientation for such attachment, or having or being perceived as having a self-image or identity not traditionally associated with one's biological maleness or femaleness. "Sexual orientation" does not include a physical or sexual attachment to children by an adult.

7. Changing “academic” to “educational” makes sense in both bullying and harassment definitions.

8. Within the Bullying definition, the term “materially” should be replaced with “substantially”.

9. Within the Harassment definition, item c, the terms “substantially and” should be inserted after “otherwise”.

10. In the Bullying definition, the addition of “including students who *observe* the conduct” does raise some issues. Under current law, it would seem that an observer who was negatively impacted by observing a bullying incident could make a complaint to the administration that such an incident has and will interfere with the educational performance of this student. Or, the student may legitimately feel that they will be next to be harmed. If that is the case, is the language needed?

The verb “observe” is very broad. At a minimum, the student should have to be substantially impacted by seeing the event(s).