

R277-613 received final approval by the Utah State Board of Education on March 19, 2020. R277-613 is published in the April 15, 2020 Utah State Bulletin, subject to a 30-day comment period, with a first possible effective date of May 22, 2020.

R277. Education, Administration.

R277-613. LEA ~~[Disruptive Student Behavior,]~~ Polices and Training Regarding Bullying, Cyber-bullying, Hazing, Retaliation, and Abusive Conduct ~~[Policies and Training]~~.

R277-613-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Section 53G-9-606, which directs the board to monitor LEA development and implementation of bullying and hazing policies;

(b) Section 53G-9-607, which directs the board to make rules that establish standards for high quality training related to bullying, cyber-bullying, hazing, and abusive conduct, and retaliation;

(c) Section 53E-3-501, which directs the Board to establish rules and minimum standards for the public schools governing discipline and control;

(d) Section 53G-8-209, which requires the Board, when making rules regarding student participation in cocurricular or extracurricular activities, to include:

(i) prohibitions against the use of foul, abusive, or profane language while in the classroom, on school property, or during a school sponsored activity; and

(ii) prohibitions against hazing, demeaning, or assaultive behavior, whether consensual or not;

~~[(a)]~~ (e) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board; and

~~[(b)]~~ (f) Subsection 53E-3-401(4)(a), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of the rule is to:

(a) require LEAs to develop, update, and implement bullying, cyber-bullying, hazing, retaliation, and abusive conduct policies at the school district and school level;

(b) provide for regular and meaningful training of school employees and students;

(c) provide for enforcement of the policies in schools, at the state level and in public school athletic programs; and

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(d) require an LEA to review allegations of bullying, cyber-bullying, hazing, retaliation, and abusive conduct.

R277-613-2. Definitions.

(1) "Abusive conduct" means the same as that term is defined in Subsection 53G-9-601(1).

(2)(a) "Bullying" means the same as that term is defined in Subsection 53G-9-601(2).

~~[(b) "Bullying" includes relational aggression or indirect, covert, or social aggression, including rumor spreading, intimidation, enlisting a friend to assault a child, and social isolation.]~~

~~[(c)]~~ (b) The conduct described in Subsection 53G-9-601(2) constitutes bullying, regardless of whether the person against whom the conduct is committed directed, consented to, or acquiesced in, the conduct.

(3) "Civil rights violation" means bullying, cyber-bullying, harassment, or hazing that is targeted at a student based upon the students' or employees' identification as part of any group protected from discrimination under the following federal laws:

(a) Title VI of the Civil Rights Act of 1964;

(b) Title IX of the Education Amendments of 1972; ~~[or]~~

(c) Section 504 of the Rehabilitation Act of 1973; ~~[and]~~ or

(d) Title II of the Americans with Disabilities Act of 1990.

(4) "Cyber-bullying" means the same as that term is defined in Subsection 53G-9-601(4).

(5) "Disruptive student behavior" means the same as that term is defined in Subsection 53G-8-210(1)(a).

(6) "Hazing" means the same as that term is defined in Subsection 53G-9-601(5).

(7)(a) "Incident" means one or more infractions committed by a student or group of students acting in concert, at the same time and place.

(b) A single incident may involve one or more victims and one or more offenders.

(8) "Infraction" means an act of prohibited behavior.

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~~[(7)]~~(9) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

~~[(8)]~~(10) "Participant" means any student, employee or volunteer coach participating in a public school sponsored athletic program or activity, including a curricular, co-curricular, or extracurricular club or activity.

~~[(9)]~~(11) "Policy" means standards and procedures that:

- (a) are required in Section 53G-9-605;
- (b) include the provisions of Section 53G-8-202; and
- (c) provide additional standards, procedures, and training adopted in an open meeting by an LEA board that:
 - (i) define bullying, cyber-bullying, hazing, retaliation, and abusive conduct;
 - (ii) prohibit bullying, cyber-bullying, hazing, retaliation, and abusive conduct;
 - (iii) require regular annual discussion and training designed to prevent bullying, cyber-bullying, hazing, and retaliation among school employees and students; and
 - (iv) provide for enforcement through employment action or student discipline.

~~[(10)]~~(12) "Restorative justice practice" means a discipline practice that brings together students, school personnel, families, and community members to resolve conflicts, address disruptive behaviors, promote positive relationships, and healing.

~~[(11)]~~(13) "Retaliate" or "retaliation" means the same as that term is defined in Subsection 53G-9-601(7).

~~[(12)]~~(14) "School employee" means the same as that term is defined in Subsection 53G-9-601(10).

~~[(13)]~~(15) "Trauma-Informed Care" means a strengths-based service delivery approach that is grounded in an understanding of and responsiveness to the impact of trauma, that emphasizes physical, psychological, and emotional safety for both the alleged victim and the individual who is alleged to have engaged in prohibited conduct, and that creates opportunities for targets to rebuild a sense of control and empowerment.

R277-613-3. Superintendent Responsibilities.

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(1) ~~[Subject to availability of funds,]~~ [t]The Superintendent shall provide:

(a) a model policy on bullying, cyber-bullying, hazing, and retaliation as required in Section 53G-9-606;

(b) subject to availability of funds, model training and training opportunities on:

(i) the prevention and identification of bullying, cyber-bullying, hazing, and retaliation, that an LEA may use to train the LEA's employees, contract employees, and volunteers, including coaches; and

(ii) the reporting and review requirements in Section R277-613-5;

(c) subject to availability of funds, evidence based practices and policies related to the prevention of bullying, cyber-bullying, hazing, and retaliation.

(2) Although an LEA is required to have a policy on bullying, cyber-bullying, hazing, retaliation and abusive conduct as described in Section 53G-9-605 and this rule and provide training as described in Section 53G-9-607 and this rule, the LEA is not required to use the model policy or model training developed by the Superintendent described in Subsection (1).

(3) The Board may interrupt disbursements of funds consistent with Subsection 53E-3-401(8) and Rule R277-114 for failure of an LEA to comply with:

(a) Title 53G, Chapter 9, Bullying and Hazing; and

(b) this rule.

(4) In addition to the requirements of Title 53G, Chapter 9, Bullying and Hazing and this R277-613, LEAs are required to comply with applicable federal requirements.

R277-613-4. LEA Responsibility to Create or Update Bullying Policies.

(1) In addition to the requirements of Subsection 53G-9-605(3), an LEA shall:

(a) develop, update, and implement policies as required by Section 53G-9-605 and this rule, which shall include a prohibition on:

(i) bullying;

(ii) cyber-bullying;

(iii) hazing;

(iv) retaliation; and

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- (v) making a false report.
- (b) post a copy of the LEA's policy on the LEA website;
- (c) develop an action plan to address a reported incident of bullying, cyber-bullying, hazing, or retaliation; and
- (d) provide a requirement for a signed statement that meets the requirements of Subsection 53G-9-605(3)(h) annually.

(2)(a) As required by Section 53G-9-605, an LEA shall notify a parent of:

- (i) a parent's student's threat to commit suicide; or
- (ii) an incident of bullying, cyber-bullying, hazing, or retaliation involving the parent's student as a victim or an individual who is alleged to have engaged in prohibited conduct.

(b) An LEA shall:

- (i) notify a parent described in Subsection (2)(a) in a timely manner;
- (ii) designate the appropriate school employee to provide parental notification; and
- (iii) designate the format in which notification is provided to parents and maintained by the LEA.

(3) Subject to the parental consent requirements of Section 53E-9-203, if applicable, an LEA shall assess students about the prevalence of bullying, cyber-bullying, hazing, and retaliation in LEAs and schools, specifically locations where students are unsafe and additional adult supervision may be required, such as playgrounds, hallways, and lunch areas.

(4) An LEA shall take strong responsive action against retaliation, including assistance to victims and their parents in reporting subsequent problems and new incidents.

(5)(a) An LEA shall provide that students, school employees, coaches, and volunteers receive training on bullying, cyber-bullying, hazing, and retaliation, from individuals qualified to provide such training.

(b) The training described in Subsection (5)(a) shall[:]

- (i) include information on: ~~[various types of aggression and bullying, including:~~
~~—(A) overt aggression that may include physical fighting such as punching, shoving, kicking, and verbal threatening behavior, such as name calling, or both physical and verbal aggression or threatening behavior;~~

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~~——(B) relational aggression or indirect, covert, or social aggression, including rumor spreading, intimidation, enlisting a friend to assault a child, and social isolation;~~

~~——(C) sexual aggression or acts of a sexual nature or with sexual overtones;~~

~~——(D) cyber-bullying, including use of email, web pages, text messaging, instant messaging, social media, three-way calling or messaging or any other electronic means for aggression inside or outside of school;]~~

(A) bullying, cyber-bullying, hazing and retaliation;

~~[(E)](B) [bullying, cyber-bullying, hazing and retaliation based upon the students' or employees' identification as part of any group protected from d]Discrimination under the following federal laws:~~

~~[(i)] Title VI of the Civil Rights Act of 1964[; including discrimination on the basis of race, color, or national origin];~~

~~[(ii)] Title IX of the Education Amendments of 1972[; including discrimination on the basis of sex]; [or]~~

~~[(iii)] Section 504 of the Rehabilitation Act of 1973; and~~

~~(IV) Title II of the Americans with Disabilities Act of 1990[; including discrimination on the basis of disability]; [and]~~

(C) how bullying, cyber-bullying, hazing and retaliation are different from discrimination and may occur separately from each other or in combination;

~~[(F)](D) bullying, cyber-bullying, hazing, and retaliation based upon the students' or employees' actual or perceived characteristics, including race, color, national origin, sex, disability, religion, gender identity, sexual orientation, or other physical or mental attributes or conformance or failure to conform with stereotypes; and~~

(E) the right of free speech and how it differs for students, employees, and parents;

~~(ii) complement the suicide prevention program required for students under Rule R277-620 and the suicide prevention training required for licensed educators consistent with Subsection 53G-9-704(1); and~~

~~(iii) include information on when issues relating to this rule may lead to student or employee discipline.~~

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(6) The training described in Subsection (5) shall be offered to:

- (a) new school employees, coaches, and volunteers; and
- (b) all school employees, coaches, and volunteers at least once every three years.

(7)(a) An LEA's policies developed under this section shall complement existing school policies and research based school discipline plans.

(b) Consistent with Rule R277-609, the discipline plan shall provide direction for dealing with bullying, cyber-bullying, hazing, retaliation and disruptive students.

(c) An LEA shall ensure that a discipline plan required by Rule R277-609:

(i) directs schools to determine the range of behaviors and establish the continuum of administrative procedures to be used by school personnel to address the behavior of students;

(ii) provides for identification, by position, of individuals designated to issue notices of disruptive student behavior, bullying, cyber-bullying, hazing, and retaliation;

(iii) designates to whom notices shall be provided;

(iv) provides for documentation of disruptive student behavior in the LEA's student information system;

(v) includes strategies to provide for necessary adult supervision;

(vi) is clearly written and consistently enforced; and

(vii) includes administration, instruction and support staff, students, parents, community council and other community members in policy development, training and prevention implementation so as to create a community sense of participation, ownership, support and responsibility.

R277-613-5. Reporting and Incident Investigations of Allegations of Bullying, Cyber-bullying, Hazing, and Retaliation.

(1) In accordance with an action plan adopted in accordance with Subsection R277-613-4(1)(c), an LEA shall:

(a) investigate allegations of incidents of bullying, cyber-bullying, hazing, and retaliation in accordance with this section; and

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(b) provide an individual who investigates allegations of incidents of bullying, cyber-bullying, hazing, and retaliation with adequate training on conducting an investigation.

(2)(a) An LEA shall investigate allegations of incidents described in Subsection (1)(a) by interviewing at least the alleged victim and the individual who is alleged to have engaged in prohibited conduct.

(b) An LEA may also interview the following as part of an investigation:

(i) parents of the alleged victim and the individual who is alleged to have engaged in prohibited conduct;

(ii) any witnesses;

(iii) school staff; and

(iv) other individuals who may provide additional information.

(c) An individual who investigates an allegation of an incident shall inform an individual being interviewed that:

(i) to the extent allowed by law, the individual is required to keep all details of the interview confidential; and

(ii) further reports of bullying will become part of the review.

(3) The confidentiality requirement in Subsection (2)(c) does not apply to:

(a) conversations with law enforcement professionals;

(b) requests for information pursuant to a warrant or subpoena;

(c) a state or federal reporting requirement; or

(d) other reporting required by this rule.

(4) In conducting an investigation under this section, an LEA may:

(a) review disciplinary reports of involved students; and

(b) review physical evidence, consistent with search and seizure law in schools, which may include:

(i) video or audio;

(ii) notes;

(iii) email;

(iv) text messages;

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(v) social media; or

(vi) graffiti.

(5) An LEA shall adopt a policy outlining under what circumstances the LEA will report incidents of bullying, cyber-bullying, harassment, and retaliation to law enforcement.

(6) An LEA shall adopt a policy outlining under what circumstances the LEA will investigate and report incidents of bullying, cyber-bullying, and retaliation as civil rights violations.

~~(6)7~~ Following an investigation of a confirmed allegation of an incident of bullying, cyber-bullying, hazing, or retaliation, if appropriate, an LEA may:

(a) in accordance with the requirements in Subsection (6), take positive restorative justice practice action, in accordance with policies established by the LEA; and

(b) support involved students through trauma-informed practices, if appropriate.

~~(6)8~~(a) An alleged victim is not required to participate in a restorative justice practice as described in Subsection (7)(a) with an individual who is alleged to have engaged in prohibited conduct ~~[as described in Subsection (5)(a)]~~.

(b) If an LEA would like an alleged victim who is a student to participate in a restorative justice practice, the LEA shall notify the alleged victim's parent of the restorative justice practice and obtain consent from the alleged victim's parent before including the alleged victim in the process.

~~(7)9~~ A grievance process required under Subsection 53G-9-605(3)(f) shall be consistent with the LEA's established grievance process.

~~(8)10~~ An LEA shall, as required by Subsection 53G-9-606(2), report the following annually, on or before June 30, to the Superintendent in accordance with the Superintendent's submission requirements:

(a) a copy of the LEA's policy required in Section R277-613-4;

(b) implementation of the signed statement requirement described in Subsection 53G-9-605(3)(h);

(c) verification of the LEA's training of school employees relating to bullying, cyber-bullying, hazing, and retaliation described in Section 53G-9-607;

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(d) incidents of bullying, cyber-bullying, hazing, and retaliation;

(e) the number and type of incidents described in Subsection ([8]10)(d) required to be reported separately under federal law, including the reporting requirements in:

(i) Title VI of the Civil Rights Act of 1964;

(ii) Title IX of the Education Amendments of 1972; [~~or~~]

(iii) Section 504 of the Rehabilitation Act of 1973; and

(iv) Title II of the Americans with Disabilities Act of 1990; and

(f) the number and type of incidents described in Subsection ([8]10)(d) that include a student who was bullied, cyber-bullied, hazed, or retaliated against based on the student's actual or perceived characteristics, including disability, race, national origin, religion, sex, gender identity, or sexual orientation.

([9]11) The requirements of this Rule R277-613 are in addition to any federal requirements, including reporting civil rights violations to the appropriate entities and taking other appropriate action.

R277-613-6. Training by LEAs Specific to Participants in Public School Athletic Programs and School Clubs.

(1)(a) Prior to any student, employee or volunteer coach participating in a public school sponsored athletic program, both curricular and extracurricular, or extracurricular club or activity, the student, employee or coach shall participate in bullying, cyber-bullying, hazing, and retaliation prevention training.

(b) A training described in Subsection (1)(a) shall be offered to new participants on an annual basis and to all participants at least once every three years.

(2) An LEA shall inform student athletes and extracurricular club members of prohibited activities under this rule and potential consequences for violation of the law and the rule.

(3) An LEA shall maintain training participant lists or signatures, to be provided to the Board upon request.

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R277-613-7. Abusive Conduct.

(1) An LEA shall prohibit abusive conduct.

(2) An LEA's bullying, cyber-bullying, hazing, abusive conduct, and retaliation policy, required in Section 53G-9-605 [~~53A-11a-301~~] and this rule, shall include a grievance process for a school employee who has experienced abusive conduct as described in Subsection 53G-9-605(3)(f).

KEY: abusive conduct, bullying, harassment, hazing, training

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