EXHIBIT 12
DATE 1-17-05
SB 198

MTSBA

"...fostering excellence in public education through school board leadership."

TO: Senate Education Committee

FROM: Lance L. Melton, Executive Director
Montana School Boards Association

SENATE EDUCATION
EXHIBIT NO. 12
DATE 1-17-05
BILL NO. SB-198

RE: SB 198

DATE: Monday, January 17, 2005

The Montana School Boards Association stands as a reluctant opponent to Senator Kitzenberg's SB 198, requiring the adoption of a specific policy on bullying. MTSBA is not opposed to the underlying intent of SB 198 in seeking to protect children against bullying, but believes that the best place to have a discussion on this issue is in each school district, where the policy can be tailored to meet local needs and circumstances. A one size fits all approach rarely if ever works in these types of cases, and could end up actually limiting the protections available under existing law.

A good example of this potential is SB 198's limitation in its coverage to intimidation, harassment or bullying on school property or at a school function. Under existing case law, this type of conduct can form the basis of a disciplinary action even if it occurs away from school under certain circumstances. In general, in order to justify disciplining a student for behavior away from school, school authorities must be able to show that the student's actions have a direct and immediate effect either on school discipline or on the general safety and welfare of students and staff. The implication of SB 198, however, is that discipline can be based only on actions that occur in proximity to school or at a school event. That is not to say that the drafters for SB 198 intentionally excluded conduct that could form the basis of discipline, just that setting something like this in stone in statute is not the best way to address and seek to prevent the issue from occurring in our schools.

School districts already have full authority to adopt and administer policy without any additional statute. Section 20-3-323, MCA, provides a broad coverage in requiring that school districts adopt policies necessary to "***administer the requirements of the general law, this title, the policies of the board of public education, and the rules of the superintendent of public instruction***." Additionally, Section 20-5-202, MCA, provides that the trustees of the district are already empowered to adopt a policy defining the authority and procedure for suspension and expulsion. MTSBA provides model policies, attached, that school districts typically adopt after modifying at the local level. I am unaware of a single district that has not adopted some version of a policy prohibiting intimidation, bullying and harassment.

There are several areas in the law and in administrative rules of the Board of Public Education where policies are required. Each of those areas where policies are required places a legal burden on a school district, which, if not met, can lead to liability for the district. When the requirements are set forth in law, even technical or minor deviations from such policies can form the basis of a successful claim against the district.

SB 198 has some specific potential for harm in creating liability, in that it provides several duties, compliance with which would be fairly difficult if not impossible for a school district to prove. The duty to ensure that every staff member, independent contractor, school volunteer and student is "made aware" of the policy implies an effort significantly beyond simple notification and distribution, and could entail a substantially expensive effort in conducting training and to prove that individuals receiving such training actually understood the actual awareness by any individual violating the policy. Failure of such proof could lead to liability by the school district. Additional problems in this regard include:

- Proving what is or is not "reasonable" in terms of the perception of motivation for behavior under Section 2, subsection (2);
- Proving what is or is not "reliable" information under Section 5, school responsibilities;
- Proving what is or is not "prompt" in terms of the reporting duty;
- Establishing what a "training or orientation" program is or is not with regard to Section 4's requirement of incorporating the provisions of the policy into such training;

All of these issues may appear innocuous, but could end up encouraging and bolstering litigation against school districts if harm should come to a student from harassment, intimidation or bullying.

MTSBA appreciates Senator Kitzenberg's interests and motivations in bringing SB 198, but respectfully opposes its passage. This is an issue that is best addressed and resolved at the local level.

Thanks

Sexual Harassment/Intimidation of Students

Sexual harassment is a form of sex discrimination and is prohibited. An employee, District agent, or student engages in sexual harassment whenever that individual makes unwelcome advances, requests sexual favors, or engages in other verbal, non-verbal, or physical conduct of a sexual or sex-based nature, imposed on the basis of sex, that:

1. Denies or limits the provision of educational aid, benefits, services, opportunities, or treatment, or that makes such conduct a condition of a student's academic status; or
2. Has the purpose or effect of:
   a. Substantially interfering with a student's educational environment;
   b. Creating an intimidating, hostile, or offensive educational environment;
   c. Depriving a student of educational aid, benefits, services, opportunities, or treatment; or
   d. Making submission to or rejection of such unwelcome conduct the basis for academic decisions affecting a student.

The terms "intimidating," "hostile," and "offensive" include conduct that has the effect of humiliation, embarrassment, or discomfort. Examples of sexual harassment include, but are not limited to, unwelcome touching, crude jokes or pictures, discussions of sexual experiences, pressure for sexual activity, intimidation by words, actions, insults, or name calling, teasing related to sexual characteristics, and spreading rumors related to a person's alleged sexual activities.

Students who believe that they may have been sexually harassed or intimidated should consult a counselor, teacher, Title IX coordinator, or administrator, who will assist them in a complaint process. Supervisors or teachers who knowingly condone or fail to report or assist a student to take action to remediate such behavior of sexual harassment or intimidation may themselves be subject to discipline.

Any District employee who is determined, after an investigation, to have engaged in sexual harassment will be subject to disciplinary action up to and including discharge. Any student of the District who is determined, after an investigation, to have engaged in sexual harassment will be subject to disciplinary action, including, but not limited to, suspension and expulsion consistent with the District's discipline policy. Any person who knowingly makes a false accusation regarding sexual harassment likewise will be subject to disciplinary action up to and including discharge with regard to employees or suspension and expulsion with regard to students.

The District will make every effort to ensure that employees or students accused of sexual harassment or intimidation are given an appropriate opportunity to defend themselves against such accusations.

To the greatest extent possible, the District will treat complaints in a confidential manner. The District realizes that limited disclosure may be necessary in order to complete a thorough investigation. Retaliation against persons who file a complaint is a violation of law prohibiting discrimination and will lead to disciplinary action against an offender.

Any individual seeking further information should consult the Superintendent for the name of the current Title IX Coordinator for the District. The Superintendent will ensure that student and employee handbooks include the name, address, and telephone number of an individual responsible for coordinating District compliance efforts.

An individual with a complaint alleging a violation of this policy should follow the Uniform Complaint Procedure.

Cross Reference: 1700 Uniform Complaint Procedure

Legal References: Art. X, Sec. 1, Montana Constitution
§§ 49-3-101, et seq., MCA Montana Human Rights Act
Title IX of the Educational Amendments, 20 U.S.C. ' 1681, et seq.
34 CFR Part 106

Policy History:
Adopted on:
Revised on:

_____**School District** 3225F

Harassment Reporting Form for Students

School _____ Date _____

Student's name _____

(If you feel uncomfortable leaving your name, you may submit an anonymous report, but please understand that an anonymous report will be much more difficult to investigate. We assure you that we'll use our best efforts to keep your report confidential.)

- Who was responsible for the harassment or incident(s)? _____

_____

- Describe the incident(s). _____

_____

_____

- Date(s), time(s), and place(s) the incident(s) occurred. _____

_____

_____

- Were other individuals involved in the incident(s)? ❑ yes ❑ no

If so, name the individual(s) and explain their roles. _____

_____

_____

_____

- Did anyone witness the incident(s)? ❑ yes ❑ no

If so, name the witnesses. _____

_____

_____

_____

- Did you take any action in response to the incident? ❑ yes ❑ no

If yes, what action did you take? _____

_____

_____

_____

- Were there any prior incidents? ❑ yes ❑ no

If so, describe any prior incidents. _____

_____

_____

Signature of complainant _____

Signatures of parents/legal guardians _____

_____School District

3226

STUDENTS (Alternate 1)

Hazing/Harassment/Intimidation/Bullying/Menacing

The Board will strive to provide a positive and productive learning and working environment. Hazing, harassment, intimidation, menacing, or bullying by students, staff, or third parties is strictly prohibited and shall not be tolerated.

Students whose behavior is found to be in violation of this policy will be subject to discipline up to and including expulsion. Staff whose behavior is found to be in violation of this policy will be subject to discipline up to and including dismissal. Third parties whose behavior is found to be in violation of this policy shall be subject to appropriate sanctions as determined and imposed by the Superintendent or the Board.

Individuals may also be referred to law enforcement officials.

The Superintendent is directed to develop administrative regulations to implement this policy. Regulations shall include descriptions of prohibited conduct and reporting and investigative procedures, as needed, and provisions to ensure notice of this policy is provided to students, staff, and third parties.

Policy History:
Adopted on:
Revised on:

Hazing/Harassment/Intimidation/Bullying/Menacing

The Board will strive to provide a positive and productive learning and working environment. Hazing, harassment, intimidation, menacing, or bullying by students, staff, or third parties is strictly prohibited and shall not be tolerated.

Definitions

1. "Third parties" include, but are not limited to, coaches, school volunteers, parents, school visitors, service contractors or others engaged in District business, such as employees of businesses or organizations participating in cooperative work programs with the District and others not directly subject to District control at inter-District and intra-District athletic competitions or other school events.

2. "District" includes District facilities, District premises, and non-District property if the student or employee is at any District-sponsored, District-approved, or District-related activity or function, such as field trips or athletic events, where students are under the control of the District or where the employee is engaged in District business.

3. "Hazing" includes, but is not limited to, any act that recklessly or intentionally endangers the mental or physical health or safety of a student for the purpose of initiation or as a condition or precondition of attaining membership in or affiliation with any District-sponsored activity or grade-level attainment, including, but not limited to, forced consumption of any drink, alcoholic beverage, drug, or controlled substance, forced exposure to the elements, forced prolonged exclusion from social contact, sleep deprivation, or any other forced activity that could adversely affect the mental or physical health or safety of a student; requires, encourages, authorizes, or permits another to be subject to wearing or carrying any obscene or physically burdensome article, assignment of pranks to be performed, or other such activities intended to degrade or humiliate.

4. "Harassment" includes, but is not limited to, any act which subjects an individual or group to unwanted, abusive behavior of a nonverbal, verbal, written, or physical nature, on the basis of age, race, religion, color, creed, national origin, sex, ancestry, disability, or marital status.

5. "Harassment, intimidation, or bullying" means any act that substantially interferes with a student's educational benefits, opportunities, or performance, that takes place on or immediately adjacent to school grounds, at any school-sponsored activity, on school-provided transportation, or at any official school bus stop, and that has the effect of:

    1. Physically harming a student or damaging a student's property;

2. Knowingly placing a student in reasonable fear of physical harm to the student or damage to the student's property;
3. Creating a hostile educational environment.

6. "Intimidation" includes, but is not limited to, any threat or act intended to tamper with, substantially damage, or interfere with another's property, cause substantial inconvenience, subject another to offensive physical contact, or inflict serious physical injury, on the basis of age, race, religion, color, creed, national origin, sex, ancestry, disability, or marital status.
7. "Menacing" includes, but is not limited to, any act intended to place a school employee, student, or third party in fear of imminent serious physical injury.

All complaints about behavior that may violate this policy shall be promptly investigated. Any student, employee, or third party who has knowledge of conduct in violation of this policy or feels he/she has been a victim of hazing, harassment, intimidation, bullying, or menacing in violation of this policy is encouraged to immediately report his/her concerns to the building principal or the Superintendent, who have overall responsibility for such investigations. This report may be made anonymously. A student may also report concerns to a teacher or counselor, who will be responsible for notifying the appropriate District official. Complaints against the building principal shall be filed with the Superintendent. Complaints against the Superintendent shall be filed with the Board.

The complainant shall be notified of the findings of the investigation and, as appropriate, that remedial action has been taken.

Students whose behavior is found to be in violation of this policy will be subject to discipline up to and including expulsion. Staff whose behavior is found to be in violation of this policy will be subject to discipline up to and including dismissal. Third parties whose behavior is found to be in violation of this policy shall be subject to appropriate sanctions as determined and imposed by the Superintendent or the Board. Individuals may also be referred to law enforcement officials.

Retaliation is prohibited against any person who reports or is thought to have reported a violation, files a complaint, or otherwise participates in an investigation or inquiry. Such retaliation shall be considered a serious violation of Board policy, whether or not a complaint is substantiated. False charges shall also be regarded as a serious offense and will result in disciplinary action or other appropriate sanctions.

The Superintendent shall be responsible for ensuring notice of this policy is provided to students, staff, and third parties and for the development of administrative regulations, including reporting and investigative procedures, as needed.

<u>Policy History:</u>
Adopted on:
Revised on: