

Model School Policy: Bullying by Teachers and Abuse of Educational Authority by Alice Vachss

This policy statement is designed to give educators fair notice as to the unacceptability of certain herein-described conduct; define for students the minimums of teacher conduct they are entitled to expect; establish practicable, accessible remedies for certain abuses, facilitate quality assurance in the retention and promotion of teachers, and define specific consequences for specifically described abusive behaviors. The policy statement has additionally created a unique instrument called a "Statement of Standards and Protections" which is intended to be a prompt, fair, specific, and equitable remedy.

1. **Justification and Findings:** We, as an educational institution, make the following determinations:
 - a. Although most teachers do not bully, those who do inflict significant harm.
 - b. Such harm is compounded by an indifferent educational institutional response.
 - c. Students who are the victims of bullying feel trapped. The harm of being bullied is exacerbated by feelings of powerlessness to stop the abuse.
 - d. Non-abusive teachers are concerned with the misuse of complaint procedures and the specter of false allegations.
 - e. Normal complaint procedures are often not a practicable resolution of the immediate situation. Some common problems with complaint procedures are that they take too long and that administrators are inexperienced at, or uncomfortable with, fact-finding procedures.
 - f. Despite the best efforts of educational institutions, adjectival school policies may be so vague as to fail to provide adequate demarcation of acceptable vs. unacceptable teacher conduct.
 - g. It is our responsibility as an educational institution to intervene in the abuse of educational authority before it becomes a pattern of conduct cognizable as bullying.
 - h. Abuse of educational authority (as defined in this policy statement) is inappropriate, unprofessional, and deserving of sanctions.
 - i. Abuse of educational authority is an offense against the educational institution as well as the individual.
 - j. This institution finds bullying (as defined in this policy statement) antithetical to an educational environment which fosters learning.
 - k. This policy is intended to provide remedies in addition to those remedies, if any, already available under pre-existing school policies.

2. **Conduct subject to discipline:**

- a. **Abuse of Educational Authority:** This policy statement defines acts of abuse of educational authority which are both separately sanctionable and which may, with multiple occurrences and in combination with other factors become the predicate to a finding of bullying by a teacher.
- i. **Adjudication Standards:** Unlike a violation of a Statement of Standards and Protections, *infra*, in order to impose sanctions upon a teacher for abusing educational authority, there must be specific written findings of fact that:
 - (1) the conduct occurred, and
 - (2) the conduct alleged is an act of educational abuse as defined in this policy statement.
 - ii. Typical acts of abuse of educational authority include¹:
 - (1) **Deliberate public humiliation:** Demeaning a student in the classroom is an archetypical act of abuse of educational authority. Often defended as "discipline," the hallmark of this intentionally distress-inducing speech or conduct is that it is committed in the presence of third parties.
 - (2) **Acts of physical cruelty**²: In addition to intentional infliction of physical injury, any physical act by a teacher against a student, designed to or the foreseeable effect of which is to humiliate, is an act of abuse of educational authority.
 - (3) **Violation of personal boundaries:** Fundamental to all boundary violations is the fact that, but for the educational authority, the student would not permit the intrusion. Abuse of educational authority can violate either personal boundaries (such as privacy) or physical boundaries, or both. Most especially notable among educators who bully are acts or demands which violate the physical boundaries of students but do not, in and of themselves, amount to sexual assault or harassment.
 - (4) **Fear Testing:** Fear testing is a targeting technique whereby the entire group is exposed to threat in order to determine variances in

¹ Note: the above list is representative, not all-inclusive. Conduct can be deemed an act of abuse of educational authority without being specified in this policy, so long as the act itself is deliberate, harmful and, in context, part of a larger course of bullying behaviors.

² The provisions herein exist independently of any school policy, city ordinance, or state law addressing corporal punishment of students.

- individual vulnerability.
- (5) **Marginalization:** Marginalization is an isolating technique used to separate the target from the group. Once the target has been selected, the abusive educator makes repeated public references to differences between the victim and other group members.
 - (6) **Scapegoating:** Less subtle than marginalization, scapegoating references are overtly derogatory. The abuser continually points to the target as stupid, makes the target the butt of all "jokes," and/or begins to ascribe blame to the target for any negatives occurring within or to the group.
 - (7) **Misuse of grading:** This policy makes the specific finding that grading is exclusively a performance measure. Any other use, including as a means to allegedly "maintain discipline," is an act of abuse of educational authority.
 - (8) **Vague assignments with variable evaluation criteria:** Assignments open to alternate interpretations can be evaluated by whim rather than to a specified standard. Like misuse of grading, they present an opportunity to discriminate against a target by means that, on the surface, appear defensible if challenged.
 - (9) **Secondary gain:** It is an act of abuse of educational authority to enforce personal, social, or political viewpoints. Students shall not be required to adopt the nonprofessional viewpoints of their teachers nor shall grading be based on their degree of indoctrination.³ Nothing in this policy statement, however, is intended to curtail an educator's freedom of academic expression concerning the subject matter of the class.
 - (10) **Gaslighting:** Gaslighting is both an abuse of educational authority creating a separate harm and a consequence-avoidance technique. Targets are told, directly and/or by insinuation, that they are crazy; that they have imagined the wrong, misinterpreted it, or blown it bizarrely out of proportion; and that the mistreatment is all in their minds.
 - (11) **Retaliation against a victim or witness:** Retaliation consists of escalation of the behavior complained of, or increased abusiveness, following a complaint or attempt to complain by the student, or

³ In this context it is important to note that the nature of the enforced nonprofessional viewpoint -- for example, whether it is "liberal" or "conservative" -- is irrelevant.

derogation of the student for having complained.

- (12) **Violation of Pre-Specified Protections:** Failed intervention exacerbates a bullied victim's sense that they are powerless, trapped, and without recourse. Teachers who abuse their educational authority intentionally induce such feelings to increase their own sense of power and/or as a consequence-avoidance technique. Therefore, whether or not a Statement of Standards and Protections [as defined *infra*] has been issued, it is an abuse of educational authority for a teacher to deliberately contravene an order from a superior to desist from specified behaviors toward a named student.

b. **Violation of a Statement of Standards and Protections** As an alternative or in addition to filing a complaint against an educator for abuse of educational authority, this policy creates a unique instrument, a Statement of Standards and Protections⁴, specific to the complexities of intervention in educational abuse of authority. It is designed to distinguish between abusive and permissible educator conduct, and to intervene in a situation by either deterring misconduct or facilitating intervention.

i. **Definition:** A Statement of Standards and Protections is merely a determination that *if true* certain specific complained of conduct would constitute abuse of educational authority. The issuance of a Statement of Standards and Protections is not itself a sanction, but rather specific notice that certain behaviors are sanctionable and will be sanctioned if they occur in the future. Violation of a Statement of Standards and Protection is punishable by the specific sanction listed in the Statement, and additionally may, upon multiple occurrences, be a predicate to a finding of bullying by an educator.

ii. **Adjudication Standards:**

- (1) **issuance:** The sole determination necessary to issue a Statement is that the conduct complained of, if it were true, would constitute an act of abuse of educational authority.⁵

⁴A sample Statement appears in Appendix A.

⁵ For the sake of clarity the following example is provided: If a parent alleged that a teacher had repeatedly referred to his child as "the stupid troll who is holding back the class" in front of the other students, the administrator need not determine if such references were ever in fact made. The administrator would simply determine that such conduct, if true, would violate

- (2) **violation:** The sole findings of fact that are necessary to find a violation are:
 - (a) that a Statement of Standards and Protections was issued and its receipt acknowledged by the educator, and
 - (b) that the educator subsequently engaged in conduct prohibited by the Statement.⁶
- c. **Bullying of a student:**
 - i. Elements of Bullying
 - (1) **Targeting:** Targeting is the act of selecting one or more specific individual(s) within a defined group for negative differential treatment. Under this policy, the reason that a particular victim was targeted will not be determinative of whether remedies are available⁷. It is our specific finding that bullies target victims for any number of unacceptable reasons including but not limited to:
 - (a) an attribute that the abuser believes is disfavored by the larger group such as race or apparent sexual preference, or
 - (b) the abuser's perception that the victim is particularly vulnerable to bullying, or
 - (c) opportunism, i.e., the abuser's perception that the victim is unlikely to complain or to be believed if she or he tries to complain.
 - (2) **Power Differential:** Bullying is a misuse of power and therefore dependent upon a pre-existing imbalance in relative power between

the prohibition contained in the section of this policy defining a deliberate act of public humiliation, and issue a Statement of Standards and Protections which deems referring to the child in those or similar words an act of abuse of educational authority.

⁶ Remedies under this section have been specifically crafted to minimize the necessity for findings of contested facts. Therefore, a specific finding as to the veracity of the initial complaint is not necessary to either issue a Statement or before sanctions may be imposed for violating a Statement. In determining whether a Violation of a Statement of Standards and Protections occurred, the conduct which prompted the Statement is not at issue . . . only the conduct which followed the Statement's receipt by the educator.

⁷ This language is intended to specifically disavow herein distinctions such as those which may exist, for example, between policies on harassment generally and specialized policies on sexual harassment, hate or bias offenses, and/or racial discrimination.

individuals. It is a specific finding of this policy statement that a power imbalance is inherent in the educator/student relationship.

- (3) **Course of conduct:** For purposes of this policy, bullying by educators is defined as multiple incidents of abuse of educational authority⁸. There is no requirement of linear progression in the degree and intensity of the abusiveness of each incident.
- (4) **Consequence-avoidance:** Teachers who bully have developed a stylized set of behaviors to avoid consequences to themselves. For purposes of determining appropriate penalties, it is specifically noted that the incidence of bullying by teachers is inversely correlated to the abuser's expectation of consequences.
 - (a) **Indicia of consequence-avoidance:**
 - (i) **Bully culture:** an environment where other students form a "club" where the membership requirement is, or in any other way actively participate in, the victimization of their peer and/or the defense of their teacher's abusive conduct.
 - (ii) **Pattern of dismissed complaints:** a history of dismissed complaints, particularly of sexual harassment. These prior complaints will have been "unfounded" because sanctions could not be imposed under the standards prevailing at the time, not because they did not occur.
 - (iii) **Collusion with other bullies:** alliances which form a mutual protection pact among teachers or between teachers and administrative or schoolboard personnel.
 - (iv) **History of cross-complaints:** a direct correlation between complaints against the educator and retaliatory or preemptive complaints against other teachers or staff who attempt to intervene.
 - (v) **Tenure or other job security:** an escalating pattern of complaints correlated to job security or longevity or to a grant of tenure.
 - (vi) **A pattern of retaliation for any challenge, or**

⁸ Individual acts of abuse of educational authority are separately sanctionable. [See §2.a, *infra*.]

anticipated challenge, to the bully's authority:
multiple acts or attempts to harm, discredit or humiliate colleagues, superiors, bystanders, student victims, or other parties which can be traced to such parties' efforts to curtail abuse of educational authority.

- ii. **Adjudication Standards:** In order to sanction a teacher for bullying, there must be specific findings of fact that the teacher:
- (1) targeted a particular student or students,
 - (2) engaged in a course of conduct which included at least three instances of abuse of educational authority, or two violations of a Statement of Standards and Protections, and
 - (3) engaged in at least one consequence-avoidance behavior as defined *supra*.

The element of a power differential is presumed and therefore no specific finding of fact is necessary.

3. **Specialized Procedures Involving Issuance of a Statement of Standards and Protections:** This policy contemplates the ready accessibility to students of a "Statement of Standards and Protections" tailored to their unique situation. When a request for a Statement of Standards and Protections has been made, no fact-finding or investigation is necessary. The sole necessary determination is whether, if the allegations were true, they would amount to an abuse of educational authority. As to all qualifying allegations, a Statement of Standards and Protections must be issued prohibiting that misconduct as well as prohibiting retaliation. Additionally, a Statement must be issued whenever there is a finding of abuse of educational authority, regardless of the type of disciplinary proceeding in which such finding was made, and whether or not a request for a Statement has been made. A Statement may be issued whether or not a formal complaint of any kind has been filed.

- a. **Request for a Statement:** A student, *or anyone else on their behalf*, may request a Statement of Standards and Protections from any of the persons listed in this policy statement as persons with whom a complaint may be filed for abuse of educational authority, specifically _____, _____, _____, or _____ with regard to any educator. Irrespective of changes of personnel or administrative organization, two separate and independent choices of where to file a complaint must be available at all times to students seeking a Statement. At least one such choice must be someone who is not an employee of the educational institution. A request for a statement should be considered an emergency, and determination of the request must be made no later than one business day after the

- request was made.
- b. **Statements in conjunction with other proceedings:** In the alternative to specific requests *supra*, whenever any complaint for any form of misconduct is filed against a teacher by or on behalf of a student, whether or not a request has been made for a Statement, that complaint must be reviewed by an administrator designated by this policy statement as someone with whom a complaint of abuse of educational authority may be made, for a determination of whether a Statement of Standards and Protections is warranted,
 - c. **Determination:** The administrator or school board member must determine if the conduct complained of, if true, would constitute an act of abuse of educational authority. The administrator or school board member does not determine the truthfulness of the allegations. So long as the complaint describes an abuse, the administrator or school board member must complete a particularized Statement of Standards and Protections, using a form similar to the sample in APPENDIX A, forbidding future conduct that would constitute the abuse complained of, and forbidding retaliation against the student and any other student witness for the request and/or issuance of a Statement.
 - d. **Effect:** The Statement of Standards and Protections serves as notice that certain specified conduct, if it occurs in the future, will be deemed an act of abuse of educational authority. It is vital to the efficacy of this remedy that the Statement be as specific and thorough as possible. The educator who is the subject of the complaint must sign an acknowledgment of receipt of the Statement. The issuance of a Statement of Standards and Protections is not a disciplinary matter. However, the violation of a Statement of Standards and Protections is a disciplinary matter carrying mandatory penalties of _____.
4. **Procedures, generally,** As to all three types of sanctionable conduct under this policy:
- a. **Filing a complaint:**
 - i. **Who may file:**
 - (1) Any person may file a complaint on behalf of a student for any act alleged to be violative of this school policy.
 - (2) Guidance counselors⁹ are mandated reporters of abuse of educational authority, violations of Standards and Protections, and

⁹ *Drafter's Note: The term "guidance counselor" has been used generically. Individual schools may well to choose to modify this denomination to reflect the job title at a particular school and/or to enlarge the category of mandated reporters to all those in a counseling or therapeutic relationship with students wherein disclosures of abuse are likely to occur.*

Bullying and are required to inform a school board member designated *infra* whenever the guidance counselor is informed of conduct which may qualify as sanctionable conduct under this policy or as conduct which would qualify for the issuance of a Statement of Standards and Protections.

- ii. **Administrative complaint:** Disciplinary proceedings against a teacher for bullying shall be automatically initiated by an administrative complaint without the necessity of a formal complaint by or on behalf of a particular victim upon the occurrence of:
 - (1) three or more findings of abuse of educational authority for which sanctions have been imposed.
 - (2) two or more findings of a Violation of a Statement of Standards and Protections.
- iii. **With whom to file:** the following two separate sets of specified persons are responsible for the receipt and processing of all complaints and it is within the sole discretion of the complainant which s/he opts to select¹⁰:
 - (1) _____ school administrator is designated as the person responsible for the processing of complaints. If s/he is unavailable or has a conflict of interest, then _____ school administrator is alternatively responsible.
 - (2) _____ school board member is designated as the person responsible for the processing of complaints. If s/he is unavailable or has a conflict of interest, then _____ school board member is alternatively responsible.
- b. **Complaint Procedure:** Whenever a complaint has been received, the person receiving the complaint (as designated in this policy) must make a reasonable and prompt investigation, and to present the results of that investigation to the hearing board otherwise designated by school policy as the proper venue for disciplinary proceedings against educators. The standard of proof necessary for any determination which will directly subject the teacher complained of to sanctions is preponderance, i.e., that the alleged conduct is more likely than not to have occurred.
- c. **Permissible Sanctions**

¹⁰ *Drafter's Note: Specific names should be inserted prior to the initial dissemination, and updated prior to subsequent dissemination mandated by this policy. The names of all currently assigned personnel should additionally be posted on the website mandated by this policy. Designated titles should be adjusted to the specific educational institution.*

- i. **Abuse of Educational Authority:** Depending on the egregiousness of the act, penalties may range from _____ to _____.¹¹
 - ii. **Violation of a Statement of Standards and Protections:** Violation of a Statement carries a mandatory penalty of _____. All Statements of Standards and Protections must contain a notice specifying the penalty to be imposed and indicating that the penalty is mandatory upon a finding that a Statement has been violated.
 - iii. **Bullying:** A determination that an educator has bullied a student is punishable with reassignment, demotion, suspension, or termination.
 - d. **Limitations on Sanctions:** It is never an appropriate sanction under this school policy to:
 - i. require face-to-face mediation, or any other discussion between the student and teacher, or
 - ii. require any procedure which involves the student and teacher being alone together, or
 - iii. negotiate a "settlement" the terms of which require that there be no record that a complaint was filed, or
 - iv. as the sole sanction for a repeated infraction, renew a previous order for counseling, anger management, or any other therapy.
5. **Specialized protections for student victims:** It is the specific intention of this policy that no student shall be subjected to penalties or prejudice for seeking, being the subject of, or being granted any remedy under this policy.
- a. No student shall be compelled to participate in any of the complaint processes defined by this policy statement. When a complaint has been filed by someone other than the student, the student shall be invited but not required to take part in the process at whatever point in time he or she elects to do so. This policy specifically finds that bullying may take an emotional toll on victims that makes it difficult, if not impossible, for them to participate in formal proceedings against the bully. For that reason, formal complaints of abuse of educational authority or bullying may be filed by a parent, guardian, bystander, other teacher, other

¹¹ *Drafter's Note: Penalties have not been pre-specified in this model school policy. Individual schools must make that determination as part of the process by which their policy is ratified. This draft model policy indicates where a range of penalties is available and where, by contrast, a single option should be inserted. The sole instance of sanction specifics contained in this draft is the listing of possible penalties for a finding of educator bullying. It has been included to set the baseline for other sanctions.*

student, or any other person having knowledge of or a stake in stopping the alleged abuse. No victim of bullying or abuse of educational authority will be required to participate in the complaint process against their will. No complaint will be dismissed on the basis of the victim's refusal or unavailability to proceed. The quantum of proof necessary and sufficient for a finding shall remain the same whether or not victim evidence is available.

- b. Adverse consequences to a victimized student defeat the purposes of this policy. Therefore, no student shall be penalized in any way for utilizing any of the provisions of this school policy. Regardless of outcome, this school will take all reasonable steps to avoid stigma to any student subject or witness to any proceeding under this policy. Additionally,
 - i. Upon a finding of abuse of educational authority:
 - (1) When the course is elective, the student victim shall be allowed to withdraw from that class without penalty and without any reference to the withdrawal on his or her transcript.
 - (2) When the course is mandatory, the student victim shall be allowed to complete the class under the direction of another teacher qualified in the subject matter. This option shall also be available for an elective course *if* an alternative teacher is available.
 - ii. Upon a finding of a violation of a Statement of Standards and Protections, or of bullying, if the teacher has not been removed from the bullied student's class, the student shall be allowed to transfer to another class. If no other class exists, the bullied student shall be provided with alternatives such as an online class, or supervised (by another teacher) independent study.
6. **Procedures involving faculty personnel files:** In order to track patterns of complaints and subtleties of abuse of educational authority so as to inform the decision-making process, it is a mandatory provision of this school policy that:
- a. Faculty personnel files shall include a subfolder of:
 - i. All formal grievances and complaints filed against the teacher, with an attached notation as to disposition, and
 - ii. When an informal complaint of abuse of educational authority has been lodged¹², at a minimum, the fact of complaint shall be notated for future

¹² The provisions of this paragraph are not intended to authorize informal complaint procedures but rather to recognize that in any educational institution informal procedures will have occurred in the past and, despite being specifically discouraged by this policy statement,

references together with any substantive indicia of either the truth or falsity of the facts underlying the complaint. Specifically,

- (1) All written informal complaints with a notation as to the underlying facts and any determination made or action taken, and
 - (2) A log of informal complaints orally reported to other teachers, the principal, or district officials, with a notation on each of the underlying facts, the determination if any, and any action taken by school officials and
- iii. A separate form listing any and all findings of Abuse or Educational Authority and violations of a Statement of Standards and Protections,
 - iv. Student evaluation forms, and
 - v. Student feedback from a website specifically designed to disseminate and explain this policy and elicit feedback on abuse of educational authority.
 - vi. Course evaluation forms which have been modified to specifically invite anonymous student disclosure of bullying behaviors by teachers.
- b. These subfolders shall be consulted during periodic peer review of all faculty (regardless of seniority or tenure), such review to take place no less frequently than once every _____ years.
 - c. Additionally, these subfolders shall be considered in any administrative review of the teacher for retention, sabbatical or promotion purposes. Not only will findings of violations of this policy be a negative factor in such reviews, educational employees with records which are free of any findings of violations of any of the provisions in this policy shall receive favorable credit for that fact.

7. **Implementation:** In order to maintain appropriate standards of educator conduct, it is necessary to:

- i. disseminate this policy statement and explain its implications
 - (1) to all current students, faculty, administrative staff, and schoolboard members, and
 - (2) in all orientations of new students, faculty, administrators, and schoolboard members, and
 - (3) in a website as described in *supra*, and
- ii. enforce the provisions herein.

may inadvertently occur in the future.

APPENDIX A
{Sample} Statement of Standards and Protections

- This Statement has been prepared by _____ {administrator or school board member} and delivered to _____ {educator}.
- This Statement is intended as a quality assurance measure.
- *Issuance* of this or any other Statement of Standards and Protections shall not be considered a disciplinary measure against any educator.
- *Violation* of this Statement of Standards and Protections, however, shall expose the educator to mandatory disciplinary measures. It is the policy of this school that educational authority should be used only to further legitimate educational goals. To implement this policy, consequences must be imposed whenever an educator is forewarned of the abusiveness of particular conduct, and nevertheless commits such conduct. Violation of a Statement of Standards and Protections incurs a mandatory punishment of _____.
- _____ {administrator or school board member} has received information which, if true, would amount to an act of abuse of educational authority as defined by school policy.
- It is the determination of _____ {administrator or school board member} that it is an act of abuse of educational authority to
[for example:]
 - *refer to or address a student as _____, whether directly or to a third party in student's presence, explicitly or by innuendo.*
 - *cause or encourage members of student's peer group to refer to the student as such.*
- Further, it is an act of abuse of educational authority to take any punitive or retaliatory measures against any student or any other complainant or witness for having initiated, contributed to or pursued the issuance of this Statement.

On _____ {date} I prepared this Statement of Standards and Protections and gave a copy to _____ {educator}

On _____ {date} I received a copy of this Statement of Standards and Protections.

{administrator or school board member}

{educator}