In schools across the country, prior to the closings of schools due to the pandemic, hate filled speech had risen as students emulated divisive language which is now too common in national rhetoric and policy. A national UCLA study in 2019 found that “teachers are seeing increased incivility, intolerance and polarization in classrooms, heightened polarization on campus and an increase in students making derogatory remarks about other groups during class discussions. The study indicates what educators across the nation are facing. Explicitly racist, Islamophobic, xenophobic, homophobic, anti-Semitic, sexist, and cruel talk has become more commonplace in schools.”

Hate speech, has its offensiveness coming from an expressed idea, that people of a certain race, religion, gender, sexual orientation, ethnic origin, or disability are inferior and should be denied respect or even the rights of American citizenship.

Educators need to respond to such hateful speech. However, many educators feel unsure of what to do. Educators, due to law and regulation, cannot passively ignore hateful speech that “creates an intimidating, threatening or abusive educational environment.” Educators should never let speech devaluing, disrespecting, or misrepresenting “types of people” occur in schools without response. They should always model what it looks like to challenge, engage and question such speech.

Educators must question claims that hurt because they are inaccurate, and to press instead for the engagement of facts. Inaccurate claims about “types of people” distort other people’s families, cultures, histories, and neighborhoods or falsely deem some “groups” less valuable, skilled, or deserving of opportunity. It is important to question inaccurate or under-informed claims and to invite evidence-based reasoning and ongoing learning about complex social issues in order to achieve a deeper understanding of history and contemporary lives.

The National Coalition Against Censorship (NCAC) believes that the question of restricting “hate speech” in schools is a thorny issue. “Schools must provide access to education on a non-discriminatory basis, prevent harassment that interferes with their educational mission, and socialize students to live and work in a diverse community – and they must do all these things while recognizing that the right of free speech sometimes means the right to say things that are offensive to others.”

Title VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972 impose the responsibility on schools to ensure that educational opportunities are provided on a non-discriminatory basis. To rise to the level of discrimination, objectionable speech must create a “hostile environment.” Further, “Under U.S. Supreme Court decisions, discrimination occurs only when harassment is so severe, persistent, and pervasive that it creates a hostile or abusive educational environment and adversely affects a student’s ability to benefit from an education program. Age and maturity of students is also relevant. NCANC has stated that, “Under current Supreme Court standards, the ‘mere utterance of an ethnic or racial epithet which engenders offensive feelings’ is not sufficient to make a hostile environment claim.”
Concerns about a rise in hate crimes and bias incidents have surged since the 2016 election campaign and election of President Trump, who has frequently used coarse language and racist rhetoric when describing immigrants, people of color, and women. In schools, similar worries are echoed by some students, parents, and educators who suggest that Trump’s influence has emboldened some children, teenagers, and even school employees to openly espouse hateful views.

To understand how hate, intolerance, and bias are affecting school climate and impacting students and their educators, Education Week partnered with the nonprofit news organization ProPublica in a project called Documenting Hate. The Project analyzed three years of media reports and self-reported incidents of hate and bias in K-12 school settings, many submitted to ProPublica.

In a review of 472 verified accounts, investigators found that most incidents that took place in schools between January 2015 and December 2017 targeted black and Latino students, as well as those who are Jewish or Muslim. Most of the incidents, some of which were formally reported to school personnel, involved hate speech, both spoken and written. Reports of bodily harm were relatively rare.

The most common words were: “the n-word,” various versions of “build the wall” and “go back to [insert foreign country name here, usually Mexico].” The most common hate symbol: swastikas. The largest number of reports on a single day in K-12 schools occurred on November 9, 2016, the day after Trump’s election. However, is it fair to lay all the blame on the words and actions of President Trump for the vitriol spewed in schools?

Anecdotal reports aren’t enough to suggest that the President’s inflammatory talk has led to increased rates of bullying and new data show that bullying rates held steady in 2017, according to the Youth Risk Behavior Surveillance Survey.

One expert on school climate cautioned school leaders to avoid blaming acts of hate and bullying in the last couple of years on Trump’s influence. “There is usually never just one cause of bullying, so if we scapegoat it on the President, we are overlooking the broader climate issues that were there before and will likely continue if not directly addressed,” said Deborah Temkin, who is the director of education research for the nonpartisan Child Trends and previously overseeing federal efforts to combat bullying in the Obama administration.

Schools have long been a venue for bias and harassment, where targeted students can feel threatened and unwelcome and where parents worry about their children’s physical safety. Administrators often falter in dealing with the ugliness, in both the immediate aftermath and over the longer-term to confront deeper-seated hate and bias in their school communities.

K-12 leaders must first investigate and identify the motivation for the incidents, Temkin said, and then establish whether there are solutions such as anti-bias training and multicultural education that could address the problem. “We know how adults respond to incidents affects the entire climate of the school, as in saying that these incidents are not okay and not the norm,” Temkin said. “However, there is some assumption on the part of the parents of what a school should do that may not align to what a school should or can do.”
Often, Temkin said, school leaders and teachers may feel pressure to discipline those who commit the hateful acts, but doing so can undermine aiming for a more sustainable outcome in trying to push back on the bias itself. The two main areas to focus on should be making sure children who were targeted feel safe and delving into why the perpetrators of the bias incidents are acting that way.

Data on hate-related incidents in schools is relatively skimpy. The U.S. Department of Justice polls students periodically about the issue as part of its National Crime Victimization Survey. A recent school crime survey revealed that more than 25 percent of students reported seeing hate-related graffiti in their schools. That same survey also revealed that the majority of students who reported being a target of hate-related words attend suburban schools.

Public schools in America’s suburban communities are increasingly likely to be the most diverse, with majority white student enrollments giving way to an influx of students from a variety of racial, ethnic, and cultural backgrounds. Jewish organizations such as the Anti-Defamation League have reported that anti-Semitic incidents in general have soared to their highest levels in two decades in the U.S. over the last couple of years.

The pervasive use of social media to spread messages of hate can leave communities feeling pummeled. Many of the bias reports Education Week reviewed included the use of Instagram and Snapchat. Parents interviewed in various cities said they usually find out about hate-related incidents from their children or social media. While many of the reported incidents were peer-to-peer hate speech, teachers and school support staff have also been the source of bigoted statements.

While many countries ban hate speech, the U.S. has taken a different path. The U.S. Supreme Court has consistently ruled that such speech enjoys First Amendment protection unless it is directed to causing imminent violence or involves true threats against individuals. Laws that prohibit hate speech run afoul of the fundamental First Amendment principles. The Supreme Court has said consistently that the First Amendment prohibits the government from targeting the content of speech unless it falls within an unprotected category such as incitement to violence, true threats, fighting words, and obscenity.

The government also may not regulate speech based on the viewpoint expressed. The government cannot choose sides in the marketplace of ideas, permitting speech that is positive about a racial or religious group, for example, but banning speech that is critical or derogatory. “It is firmly settled that under our Constitution the public expression of ideas may not be prohibited merely because the ideas are themselves offensive to some of their hearers.”

Public schools must respect students’ rights to freedom of expression, guaranteed under the First Amendment to the U.S. Constitution. However, those rights aren’t absolute. There are some general exceptions to the protections afforded under the First Amendment as well as the restrictions on student speech that are peculiar to the school setting. Public schools have the responsibility to keep children safe, teach them proper behavior, and to make sure the school environment is conducive to learning.
In short, there is a dual responsibility for the schools to respect students’ rights to freedom of expression and to protect children and the learning environment.

There are three major Supreme Court decisions that shape how K-12 public schools need to approach First Amendment issues: Tinker v. Des Moines School District (1969), Bethel School District No. 403 v. Fraser (1986), and Hazelwood School District v. Kuhlmeier (1988). Tinker protected student free speech rights by outlining two key prongs of when schools could limit student speech. If the speech causes either a (1) material and substantial disruption or (2) collides with the rights of others, K-12 public school leaders can legally restrict such speech. School officials, however, may not squelch the expression of unpopular decisions just to avoid “discomfort and unpleasantness.” The banned speech would need to create a “substantial disruption” at school or would violate other students’ rights. Social media and other online speech has made the issue of disruption a more complicated issue.

In addressing this issue, the courts consider several factors when deciding whether a students’ speech is disruptive. These factors include:

a. Did it interfere with classwork or other school activities?
b. Did it cause disorder on campus?
c. Were other students so upset that they couldn’t concentrate on their school work or visited counselors in large numbers?
d. Did administrators and/or teachers have to take considerable time away from their regular duties in order to deal with the fallout?

The Fraser case followed and allowed schools to limit student speech that was lewd, vulgar, or counter to the educational mission of the school. The Court ruled that the First Amendment didn’t prevent schools from disciplining students for offensively lewd and indecent speech. The Court stated that society’s interest in teaching “the boundaries of socially appropriate behavior” outweighed the student’s right to express his views in a way that was highly offensive to his classmates.

In Hazelwood, the Court established that school officials could exert editorial control in school-sponsored expressive activities, such as the student newspaper. The Court held that “…educators do not offend the First Amendment by exercising editorial control over the style and content of student speech in school-sponsored expressive activities…” In short, school personnel control school-sponsored expression that could reasonably be seen as bearing the stamp of approval of the school. These three cases provide the foundation for legal interpretations of First Amendment cases in schools.

Another U.S. Supreme Court ruling also impacted student expression. In Morse v. Frederick (2007), schools were given a fair amount of leeway in deciding whether student’s speech poses a danger to classmates and teachers. This ruling indicated it was part of the school’s mission to protect students from messages that could be viewed as promoting or celebrating illegal drug use.
Policy Implications

A number of existing policies relate to this topic. They include, but are not limited to, the policies pertaining to student discipline/student conduct, bullying, hazing, terroristic acts/threats, cyberbullying, harassment, peer harassment, sexual harassment, in-school disturbances, nondiscrimination, freedom of expression, school climate and hate crimes and bias incidents in schools. Samples of these are available.

In addition to the above cited policies, a new policy, #0525, “Hate Speech in Schools,” has been developed. This is considered an optional policy for inclusion in a district’s policy manual.
An optional policy to consider.

Mission – Goals – Objectives

Hate Crimes and Bias Incidents in Schools

Hate Speech, Responding to:

The __________ School District is committed to providing a safe learning and working environment that is free from discrimination, harassment, intimidation and/or bullying. District policy requires all schools and personnel to promote mutual respect, tolerance, and acceptance among students and staff. Hate-motivated incidents, including hate speech, and crimes or actions motivated by bias/prejudice/bigotry jeopardize both the safety and well-being of all students and staff. The District will not tolerate hate-motivated incidents/crimes and/or hate speech based on actual or perceived characteristics, of actual or perceived sex, sexual orientation, gender, gender identity, gender expression, race or ethnicity, ethnic group identification, ancestry, nationality, national origin, religion, color, mental or physical disability, age, or on the basis of a person’s association with a person or group with one or more of these actual or perceived characteristics, in any program or activity it conducts or to which it provides significant assistance or retaliation in any form for reporting such incidents or crimes.

The Board of Education (Board) denounces the use of words or images to harass individuals or groups based on gender, gender expression, race, religion, sexual orientation, or any other aspect of identity. “Hate speech” of this nature is contrary to the District’s Mission Statement, Diversity Statement, and Core Values.

Hate speech, for the purpose of this policy, is defined as public speech that expresses hate or encourages violence towards a person or group based on something such as race, religion, sex, or sexual orientation”. Hate speech is “usually thought to include communications of animosity or disparagement of an individual or a group on account of a group characteristic such as race, color, national origin, sex, disability, religion, or sexual orientation sexual identity and sexual expression.

Alternate definition: Hate speech, for the purposes of this policy, is a communication that carries no meaning other than the expression of hatred for some group, especially in circumstances in which the communication is likely to provoke violence. It is an incitement to hatred primarily against a group of persons defined in terms of race, ethnicity, national origin, gender, religion, sexual orientation, sexual identity and sexual expression, and the like. Hate speech can be any form of expression regarded as offensive to racial, ethnic and religious groups and other discrete minorities or to women.

The Board believes educators should never tolerate hateful speech in District schools. The Board forbids hate speech, threat speech and harassment. The concept of free speech/freedom of expression is valued, not as some “right” to disparage others without any consequences, but as the ability to discuss ideas. All speech that denigrates, disrespects or misrepresents “types of people” must be challenged.
Mission – Goals – Objectives

Hate Crimes and Bias Incidents in Schools

Hate Speech, Responding to: (continued)

In order to prevent hateful speech and harassment, the Board specifically states that hate, harassment, and intimidation have no place in the schools of this District. All members of the educational community shall not be denigrated and/or threatened in order to promote a learning environment in which all students can participate and benefit from school. Students shall be provided activities in which they are asked to respect, value and learn from one another; to learn facts about communities and our shared society; and to promote messages of inclusion themselves.

Civil rights laws require educators to protect students from harassment or other discrimination based on race, color, national origin, sex, religion, disability, gender identity, gender expression and sexual orientation. Schools must maintain a safe and nondiscriminatory learning environment for all students. District staff shall prohibit harassment by name calling, conduct based upon protected classes that is so severe or pervasive that it unreasonably disrupts an individual’s educational or work environment or creates a hostile work educational or work environment. The shaping of student behavior requires the explicit promotion of respectful communication. The primary antidote to a hostile environment in schools is preventative speech. Such speech requires continually talking in classrooms and on the school campus about how to respect and value other human beings.

In responding to hate speech incidents, the Board believes educators can combine formal punishment of harassers, in accordance with District policies, and with restorative dialogues in order to have students consider the consequences and causes of their speech. A powerful response to hate speech is to talk more explicitly with students about how words can hurt and about the harmful ideas under the words. It is important to talk about why hateful speech is hurtful to other students and other individuals in the community. If left undisussed, an inaccurate claim can metastasize into hate. If left unchallenged, hateful speech can escalate into a threat. It is essential that all speech that hates and harms be challenged and questioned, within the parameters provided by law.

Hate Prevention Program

The Board believes that a comprehensive hate prevention program involving all staff and students will permit the expression of diverse viewpoints but will help to prevent hate crimes, hate speech and bias-related incidents in District schools and in the community.

1. Training shall be provided to all district staff in order to increase their awareness of the various manifestations of hate, hate speech and bias-related incidents. The training will include anti-bias and conflict resolution methods; procedures for identifying and reporting incidents of racial, religious, and sexual harassment, discrimination, and hate crime and hate speech; strategies for preventing such incidents from occurring; and resources available to assist in dealing with these incidents.
Mission – Goals – Objectives

Hate Crimes and Bias Incidents in Schools

Hate Speech, Responding to:

Hate Prevention Program (continued)

2. All students shall receive hate prevention training, including the issue of hate speech, through age-appropriate classroom activities, assemblies, and school-related activities. The Board believes that prejudice and discrimination are learned attitudes and behaviors. Teaching children that even subtle forms of hate such as ethnic slurs or epithets, negative or offensive name-calling, stereotyping, and exclusion are hurtful and inherently wrong can help to prevent more extreme, violent manifestations of hate. Structured classroom activities and programs will help children to develop empathy, while practicing the critical thinking and conflict resolution skills needed to recognize and respond to various manifestations of hate and bias-related behavior.

3. The District will develop partnerships with families, community organizations, and law enforcement agencies. These partnerships help identify resources available to school personnel to address hate incidents, raise community awareness of the issue, ensure appropriate responses to hate incidents, and ensure that youth receive a consistent message that hate-motivated and/or bias-related behavior will not be tolerated.

4. This policy shall be distributed annually to all students, their families and to all District personnel. The purpose of this policy is to promote a school climate in which racial, religious, ethnic, gender and other differences, as well as freedom of thought and expression, are respected and appreciated. The policy should have the input of parents, students, teachers, community members, and school administrators. It should respect diverse viewpoints, freedom of thought, and freedom of expression.

5. A range of corrective actions for those who violate school hate-prevention policies shall be used. The District will take a firm position against all injurious manifestations of hate, from ethnic slurs, racial epithets, and taunts, to graffiti, vandalism, discrimination, harassment, intimidation, and violence. A wide range of nondisciplinary corrective actions to respond to incidents, including counseling, parent conferences, community service, awareness training, or completion of a research paper on an issue related to hate, as well as disciplinary actions such as in-school suspension or expulsion shall be utilized. School officials shall contact local, state or federal civil rights officials to respond to more serious incidents and, in cases involving criminal activity or threat of criminal activity, should call the police.

6. Data is to be collected to focus district-wide hate prevention efforts. Collection of data on the occurrence of school-based hate or bias-related incidents or crimes will assist administrators and teachers to identify patterns and to more effectively implement hate prevention policies and programs.
Mission – Goals – Objectives

Hate Crimes and Bias Incidents in Schools (continued)

(cf. 0521 – Nondiscrimination)
(cf. 0523 – Equity and Diversity)
(cf. 0524 – Hate Crimes and Bias Related Acts)
(cf. 1316 – Civility on School Property)
(cf. 316.3 – Civil Discourse, Promoting of)
(cf. 4111.1/4211.1 – Affirmative Action)
(cf. 4118.11 – Nondiscrimination)
(cf. 4118.113/4218.113 – Harassment)
(cf. 4118.15 – Bullying, Workplace)
(cf. 4131 – Staff Development)
(cf. 5114 – Suspension/Expulsion)
(cf. 5118.1 – Homeless Students)
(cf. 5131 – Student Conduct)
(cf. 5131.91 – Hazing)
(cf. 5131.911 – Bullying/Safe School Climate Plans)
(cf. 5131.913 – Cyberbullying)
(cf. 5144 – Discipline)
(cf. 5145.2 – Freedom of Speech, Expression)
(cf. 5145.4 – Nondiscrimination)
(cf. 5145.42 – Racial Harassment)
(cf. 5145.5 – Sexual Harassment)
(cf. 5145.51 – Peer Sexual Harassment)
(cf. 5145.52 – Harassment)
(cf. 5145.53 – Transgender and Non-Conforming Youth)
(cf. 5145.6 – Student Grievance Procedure)
(cf. 6115 – Ceremonies and Observances)
(cf. 6121 – Nondiscrimination)
(cf. 6121.1 – Equal Educational Opportunity)
(cf. 6141.21 – Religions in the Public Schools)
(cf. 6141.22 – Religious Accommodations)
(cf. 6142.103 – Trauma Informed School)
(cf. 6145.23 – Gender Equity)

Legal Reference: Connecticut General Statutes
10-15c Discrimination in public schools prohibited. School attendance by five-year olds. (Amended by P.A. 97-247 to include “sexual orientation” and P.A. 11-55 to include “gender identity or expression”)
29-7m(a) Classification of crimes motivated by bias
29-7m(b) Report of crime motivated by bias.
53a-181i Intimidation based on bigotry or bias: Definitions.
3A-181i, j, k, l Intimidation based on bigotry in the first, second, or third degree.
17a-101 Protection of children from abuse.
Mission – Goals – Objectives

Hate Crimes and Bias Incidents in Schools

Legal Reference: Connecticut General Statutes (continued)
Connecticut State Board of Education “Position Statement on Culturally
Responsive Education,” adopted May 4, 2011
P.A. 17-111 An Act Concerning Hate Crimes
Title VII, Civil Rights Act, 42 U.S.C. 2000e, et seq.
29 CFR 1604.11, EEOC Guidelines on Sex Discrimination.
34 CFR Section 106.8(b), OCR Guidelines for Title IX.
#49, 29 CFR Sec. 1606.8 (a) 62 Fed Reg. 12033 (March 13, 1997) and 66
Fed. Reg. 5512 (January 19, 2001)
20 U.S.C. 7905 (Boy Scouts of America Equal Access Act)
Amendment of U.S. Constitution - Article I.
Tinker vs. Des Moines Independent Community School District, 393 U.S.,
503 (1969)
Bethel School Dist. No 403 v. Fraser, 478 U.S. 675 (1986)
Morse v. Frederick, 551 U.S. 393 (2007)
Faragher v. City of Boca Raton, No. 97-282 (U.S. Supreme Court, June
26, 1998)
Gebbser v. Lago Vista Indiana School District, No. 99-1866, (U.S.
Supreme Court, June 26, 1998)
Davis v. Monro County Board of Education, No. 97-843, (U.S. Supreme
Court, May 24, 1999.)
The Vietnam Era Veterans’ Readjustment Act of 1974, as amended, 38
U.S.C. §4212
Title II of the Genetic Information Nondiscrimination Act of 2008
The Americans with Disabilities Act as amended by the ADA
Amendments Act of 2008
Public Law 111-256
Meacham v. Knolls Atomic Power Laboratory 128 S.Ct. 2395, 76
4110 (2008)
Kentucky Retirement Systems v. EEOC 128 S.Ct. 2361, 76 U.S.L.W. 4503
(2008)
Sprint/United Management Co. v. Mendelsohn 128 S.Ct. 1140, 76

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