



Preventing and Addressing Identity-based Bullying in Schools

IDRA Model Policy Issue Brief



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Every year, millions of students experience harmful, bias-based behaviors, such as bullying, harassment and hate crimes while in school (GAO, 2021). These behaviors jeopardize students' ability to learn, and they create unwelcoming school climates – leaving many students feeling unsafe and disconnected (Craven, 2022).

All forms of bullying are harmful and must be prevented and addressed when they occur. Unfortunately, though, students across the nation are increasingly experiencing identity-based bullying – threatening and harmful behavior directed against a student on the basis of their immutable characteristics and/or legally-protected status.

One of every four bullied students experiences identity-based bullying (GAO, 2021).

In addition, the U.S. Department of Education's Office for Civil Rights logged a record number of discrimination complaints in 2022 – more than double the previous year (Green, 2023; Lhamon, 2023).

And in 2023, the FBI reported an all-time high for reported incidents of hate crimes, with schools as the third most common place that hate crime offenses occurred (FBI, 2024).

We must act now to reverse this alarming and unacceptable trend.

Effectively addressing identity-based bullying and harassment is critical to ensuring school safety and addressing youth mental health (Craven, 2022). Decades of research have shown that bullying is associated with negative health outcomes, such as depression and suicide, which can be exacerbated when students experience bullying on the basis of their identity (Alvis, et al., 2023; Kosciw, et al., 2021; Lutrick, et al., 2020; Garnett, et al., 2014).

Identity-based bullying and harassment further deprive students of educational opportunity due to increased absenteeism resulting from feeling uncomfortable or unsafe in school, increased disciplinary actions, and lower levels of school engagement and academic achievement (Brion-Meisels, et al., 2024; Greytak, et al., 2016; Ali, 2010).

The alarming rise in identity-based bullying, harassment and hate crimes has been accelerated by state and local policies seeking to censor speech, literature, curriculum, and educator training related to race, gender, and diversity, equity, and inclusion (DEI) initiatives (Feingold & Weishart, 2023; Carey, 2022; IDRA, July 2022).

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The good news is that solutions are within our grasp. State and school leaders can do the following.

- Clearly identify, define and prohibit identity-based bullying and harassment.
- Designate a bullying prevention and response coordinator.
- Provide supportive measures to ensure student safety and continued access to education after bullying or harassment occurs.
- Establish clear guidelines for conducting trauma-informed investigations of identity-based bullying and harassment.
- Ensure impacted students and families receive adequate notice, have a meaningful opportunity to participate in an investigation, and receive information regarding resolution of their bullying complaint.
- Use educational and restorative responses to address incidents of bullying and harassment.
- Require robust and ongoing staff training and development on preventing and responding to identity-based bullying and harassment.
- Ensure that student-oriented prevention policies and instructional standards explicitly address the prevalence, prevention, and intervention of identity-based bullying and harassment.
- Require schools to collect and report disaggregated data to better understand the prevalence of identity-based harassment.
- Ensure staff training includes guidance on identifying and timely reporting incidents of identity-based bullying and harassment to appropriate school authorities.

These model policy recommendations are discussed in detail below.

Defining Identity-based Bullying, Harassment and Hate Crimes

The way that *bullying* is defined in law has important implications for how behavior is viewed within the school community and the extent to which school personnel and other students recognize and respond to bullying behavior. Failing to provide clear definitions of bullying can lead to inconsistent approaches among school personnel to identification and enforcement of bullying policies (Swearer, et al., 2011).

This model policy brief focuses on defining and addressing identity-based bullying in schools. However, given the significant overlap of the terms *bullying*, *harassment*, and *hate crimes* in law and practice, a brief discussion of these key terms follows.

At their core, identity-based bullying, harassment and hate crimes are all harmful, legally prohibited bias-based behaviors perpetrated against youth in schools. Each of these categories of conduct has an element of bias or discrimination because they target an individual or group of individuals on the basis of their legally-protected status under federal civil rights laws. These identity-based categories include race, ethnicity, color, national origin, sex, sexual orientation, gender, gender identity, religion and disability status (Lahdon & Rapp, 2021).

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Targets of identity-based bullying, harassment and hate crimes are often chosen specifically because of their membership in a particular targeted group (OJJDP, 2022). As one commentator explained regarding victims of bias-based incidents, “It is not *who they are individually*, but *what they represent*, that is important” (Garland, 2012).

Bullying, harassment and hate crimes terms are frequently used interchangeably and in many cases overlap in application. However, these terms each have their own definitions and legal standards that schools should carefully adopt and adhere to in order to ensure compliance with applicable state and federal laws, policies and regulations (Stuart-Cassel et al., 2011).

Bullying

Bullying is unwanted, aggressive behavior among school-age children that involves a real or perceived power imbalance (Gladden, et al., 2014; Brion-Meisels, et al., 2024).¹ Often, the behavior is repeated, or has the potential to be repeated, over time – though a single act can constitute harmful bullying conduct.

Definitions of *bullying* are established by state law and local education agency policy and vary widely since there is no federal prohibition on bullying in schools (Gladden, et al., 2014).

Generally speaking, bullying behaviors include unwanted physical contact, name-calling, use of slurs or epithets, threats and intimidation through words or gestures, destruction of property, theft of personal possessions, social exclusion, and the use of digital or electronic devices or online media to harass, threaten, embarrass, or target another person (commonly referred to as *cyberbullying*).² When students target their peers with these behaviors, they can be physically, emotionally, socially and psychologically harmful for young people.

Schools often consider the following factors to assess whether harmful conduct constitutes bullying:

- whether the conduct has the effect or is intended to have the effect of physically harming a student, damaging a student’s property, or placing a student in reasonable fear of harm to the student’s person or of damage to the student’s property;
- whether the conduct is sufficiently severe, persistent, or pervasive that the act creates an intimidating, threatening, or abusive educational environment for a student – *i.e.*, the conduct creates a hostile environment;³
- whether the conduct materially and substantially disrupts the educational process or the orderly operation of a classroom or school;⁴ and
- whether the conduct infringes on the rights of the targeted student at school.⁵

Bullying can occur in a variety of settings, both on and off campus. While schools cannot fairly be expected to respond to or intervene in all harmful behavior young people experience in their communities, the U.S. Supreme Court recently affirmed that schools have the right and the responsibility to address “serious or severe bullying or harassment” that “target any member of the school community” in “off-campus circumstances.”⁶

¹The National Center for Injury Prevention and Control, Centers for Disease Control and Prevention and U.S. Department of Education published a uniform definition of bullying in 2014. See Gladden, R.M., Vivolo-Kantor, A.M., Hamburger, M.E., & Lumpkin, C.D. (2014). *Bullying Surveillance Among Youths: Uniform Definitions for Public Health and Recommended Data Elements*, Version 1.0. National Center for Injury Prevention and Control, Centers for Disease Control and Prevention and U.S. Department of Education. <https://www.cdc.gov/violenceprevention/pdf/bullying-definitions-final-a.pdf>

²For more information about cyberbullying, see <https://www.stopbullying.gov/cyberbullying/what-is-it>.

³This definition is drawn from the legal standard for *hostile environment harassment* under federal anti-discrimination laws, including Title VI of the Civil Rights Act of 1964, Title IX of the Educational Amendments Act of 1972, Title II of the Americans with Disabilities Act, and Section 504 of Rehabilitation Act. See Ali, R. (October 26, 2010). *Guidance on Schools’ Obligations to Protect Students from Student-on-Student Harassment on the Basis of Sex; Race, Color and National Origin; and Disability*, Dear Colleague Letter – Reducing Bullying in Schools. U.S. Department of Education, Office for Civil Rights. <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>; see also *Zeno v. Pine Plains Cent. Sch. Dist.*, 702 F.3d 655, 665 (2d Cir. 2012); *Davis v. Monroe Cty. Bd. of Educ.*, 526 U.S. 629, 650 (1999).

⁴This definition is modeled on the legal standard established by the U.S. Supreme Court in *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 509 (1969).

⁵In other words, the bullying or impact of the bullying restricts the rights of the targeted student at school. For example, bullying behavior may cause a student to avoid going the restroom or trying out for a team.

⁶See *Mahanoy Area Sch. Dist. v. B.L.*, 141 S. Ct. 2038, 2045–2047 (2021).

Bullying is unwanted, aggressive behavior among school-age children that involves a real or perceived power imbalance.

Identity-based Bullying

The U.S. Department of Justice defines *identity-based bullying* as bullying arising from a single significant act or pattern of acts by one or more students that is based on or targets a student's actual or perceived race, ethnicity, color, national origin, sex, gender, religion or disability status (Lahdon & Rapp, 2021; OJJDP, 2022). This also includes bullying based on association with a person or group of people with these characteristics.

While bullying on the basis of identity-based characteristics is implicit in the definition of bullying, research shows that explicitly naming (or “enumerating”) the traits or characteristics of students who have been historically targeted by bullying sends an important message to educators, students, and families about values regarding appropriate behavior, dignity and belonging in schools (CDC, 2021; Ali, 2010).

Harassment

Identity-based bullying may, alone or in connection with a pattern of behavior, create a discriminatory hostile learning environment or constitute discriminatory harassment under state or federal law (Ali, 2010).

Definitions of *harassment* can vary across jurisdictions and contain slightly different wording across statutes. Generally though, discriminatory harassment is unwelcome conduct based on an individual's legally-protected status that, based on the totality of the circumstances, is subjectively and objectively offensive and so severe or pervasive that it limits or denies a student the ability to participate in or benefit from a school's education program or activity (Ali, 2010; OCR, 1994).

Harassing conduct can be verbal, physical and virtual and – unlike bullying – need not necessarily be directed at a particular individual to be harmful.

Federal law requires schools that receive federal funds to prohibit, investigate and remedy bullying incidents related to a student's identity that may qualify as harassment under federal civil rights laws (Ali, 2010; Harper, 2018; GAO, 2021). Applicable laws include the following.

- **Title VI of the Civil Rights Act of 1964** (Title VI) prohibits discrimination on the basis of race, color or national origin in programs or activities that receive federal assistance.
- **Title IX of the Education Amendments of 1972** (Title IX) prohibits sex discrimination in programs or activities that receive federal financial assistance.
- **Section 504 of the Rehabilitation Act of 1973** (Section 504) prohibits discrimination on the basis of disability in programs or activities that receive federal financial assistance.
- **Title II of the Americans with Disabilities Act of 1990** (Title II) prohibits discrimination on the basis of disability by public entities, whether or not they receive federal financial assistance.

The Office for Civil Rights has the primary responsibility of enforcing federal civil rights laws in education, alongside the U.S. Department of Justice's Educational Opportunities Section (GAO, 2021).

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Hate Crimes

Hate crimes are crimes motivated by bias against others because of their actual or perceived race, ethnicity, sexual orientation, gender, gender identity, religion or disability (OJJDP, 2022). To be considered a hate crime, two elements must be present: (1) the act was an offense under criminal law, and (2) the act was motivated by bias.

Hate crimes are viewed as distinct from other crimes because often the impact of the crime is felt not only by the victim but also by other members of the targeted group (OJJDP, 2022).

For example, if a student is physically assaulted on campus because of their race, religion, gender identity, etc., the behavior may meet the legal definition of a hate crime under state or federal law.

Hate crimes are enforced by state and federal law enforcement entities, including the U.S. Department of Justice.⁷

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This brief focuses on defining, preventing and responding to identity-based bullying for four main reasons.

- **Identity-based bullying, along with hate crimes and harassment, is on the rise across the United States.**
- **Classroom censorship and attacks on public education have fueled bias-based harm and undermine safe and supportive school climates.**
- **Preventing and providing supportive measures in response to identity-based bullying is critical for addressing youth mental health, particularly for historically underserved youth and communities.**
- **Schools should prevent, recognize and end identity-based bullying before the behavior escalates into an increasingly serious school safety threat or civil rights violation.**

These policy considerations are discussed in the following sections.

⁷For additional information about hate crimes enforcement, see <https://www.justice.gov/hatecrimes/laws-and-policies>

Identity-based Bullying, Harassment and Hate Crimes are on the Rise in Schools

The U.S. Government Accountability Office (GAO) found that, in 2014-15, 2016-17, and 2018-19, one in five students ages 12 to 18 experienced bullying in school (2021). A more recent study by the National Center for Education Statistics had similar findings for the 2021-22 school year, estimating that 19% of students reported being bullied (2024).

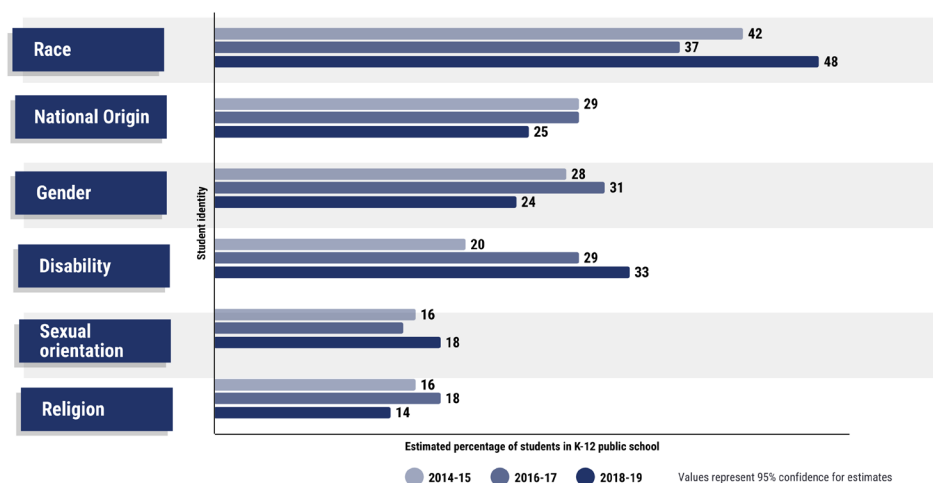
While all forms of bullying are harmful and must be swiftly addressed, students are increasingly being targeted for bullying on the basis of their identity status (Alvis, et al., 2023; Galán, et al., 2021). Of the students who report experiencing bullying, one out of every four describe being bullied on the basis of their identity (GAO, 2021).

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Bullying on the Basis of Race

Decades of research have shown that youth of color are at higher risk of being targeted by bullying (Alvis, et al., 2023; Galán, et al., 2021; Peskin, et al., 2006). Race continues to be the leading identity factor for students experiencing identity-based bullying, followed by disability and gender (GAO, 2021).⁸

Estimated Percentage of Students Experiencing Bullying Related to Identity in K-12 Public Schools

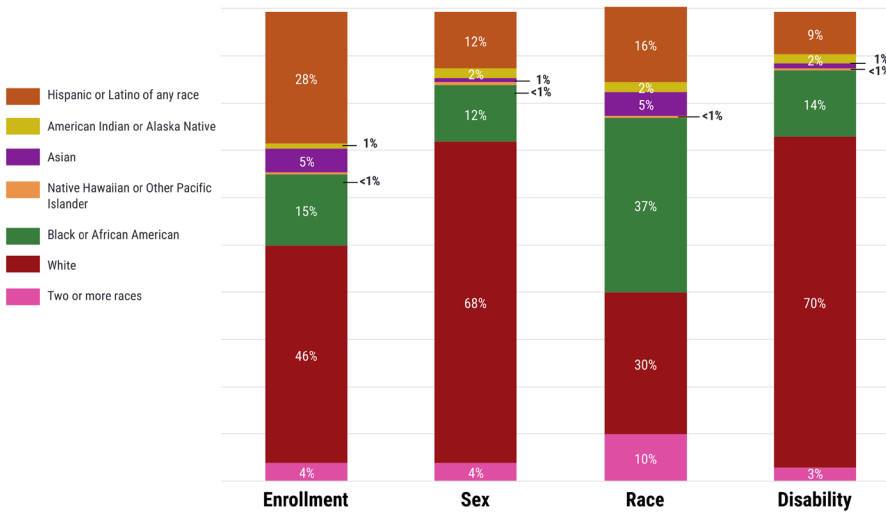


Data source: GAO analysis of the Department of Education's School Crime Supplement to the Department of Justice's National Crime Victimization Survey for school years 2014-15, 2016-17 and 2018-19. | GAO-22-104341

The data show that Black students experienced the most harassment and bullying (37%) on the basis of race, color and national origin, despite being only about 15% of the K-12 student population (OCR, Nov. 2023; Yang & McKnight, 2023).

⁸ It bears noting, though, that due to recent geo-political events, bullying and harassment on the basis of religion and national origin are also on the rise, targeting Jewish, Israeli, Muslim, Arab and Palestinian students (OCR, 2023). <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-202311-discrimination-harassment-shared-ancestry.pdf>

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Data source: U.S. Department of Education, Office for Civil Rights, 2020-21 Civil Rights Data Collection, released November 2023. <https://civilrightsdata.ed.gov>

Latino youth similarly experience bullying at rates that are often higher than their white, non-Latino peers and experience victimization attributed to language, perceived citizenship or belonging, and appearance (Lutrick, et al., 2020).

Asian American students have also reported increased levels of bullying and harassment in schools, particularly since the onset of the COVID-19 pandemic (Yellow Horse, et al., 2021). A 2021 report found that 80% of Asian American students experienced bullying on the basis of their Asian identity (Act to Change, et al., 2021).

Unfortunately, these numbers are very likely an underestimation, as students of color are less likely to report bullying than their white classmates. A 2018 study found that Black and Latino youth reported more experiences of bullying behaviors (*e.g.*, being threatened or put down by peers) but were less likely to endorse that they have been “bullied” compared to white youth (Lai & Kao, 2018).

Further, students of color may underreport their experiences with bullying due to cultural stigma and fear of backlash from authority figures who may assign severe punishments and over-police Black and Latino communities (Alvis, et al., 2023).

Bullying on the Basis of Religion, Ethnicity and National Origin

Students report experiencing bullying on the basis of their religion, ethnicity, national origin. A survey by the Institute for Social Policy and Understanding found that Muslim (60%) and Jewish (58%) students are most likely to experience religious discrimination, in addition to 26% of Catholics, 29% of protestants, 43% of white evangelicals, 27% of the non-affiliated, and 33% of the general public (Mogahed & Ikramullah, 2020).

Bullying and harassment on the basis of actual or perceived religion, ethnicity, and shared ancestry have also recently escalated (OCR, 2023). The Council on American-Islamic Relations noted that the education discrimination complaints it received last year jumped by 63%, to 177 cases (CAIR, 2023). And the Anti-Defamation League documented 494 incidents of antisemitism at non-Jewish, K-12 schools last year, a 49% increase over the prior year (ADL, 2023).

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Bullying Targeting LGBTQ+ Students

LGBTQ+ students report experiencing identity-based bullying and harassment at alarming rates. In 2021, a study found that high schoolers who identified as gay, lesbian, bisexual or questioning their sexual orientation were over twice as likely as their heterosexual classmates to experience bullying in school and online (Schaeffer, 2023).

According to a 2021 national survey, 82% of LGBTQ+ students reported feeling unsafe in school because of at least one of their actual or perceived personal characteristics, including 51% of LGBTQ+ students feeling unsafe because of their sexual orientation, 43% because of their gender expression, and 40% because of their gender (Kosciw, et al., 2021).

Bullying Targeting Students with Disabilities

A student's disability status is the second-highest risk factor for identity-based bullying (GAO, 2021). OCR reported receiving steadily increasing numbers of complaints concerning the bullying of students with disabilities and the effects of that bullying on their education, including on the special education and related services to which they are entitled (Lhamon, 2014; OCR, 2023).

Bullying targeting a student with a disability on any basis can result in a denial of a "free appropriate public education" (FAPE) under federal disability law that must be remedied.

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Hate Crimes and Harassment

K-12 schools themselves are reporting an increase in discriminatory harassment and hate crime offenses.

OCR recently reported 18,804 complaints of discrimination were filed between October 2021 and September 2022 – more than double the number of complaints filed in 2020-21 and shattering the all-time record of 16,000 complaints filed in 2016 (Green, 2023; Lhamon, 2023).

Relatedly, during the 2018-19 school year, around 20% of all students between the age of 12 and 18 reported seeing hate words or symbols, such as homophobic slurs and references to lynching, written in their schools (GAO, 2021).

These trends have persisted and escalated for over a decade. OCR received a 187% increase in the number of complaints between 2008 and 2019 (Leadership Conference, 2024). And the trends mirror the broader reality of our society, which has been increasingly shadowed by rises in extremism, hate and bigotry (Carey, 2022).

According to a 2023 special report published by the FBI, 10% of the total reported hate crime offenses in 2022 occurred at school. This was a significant increase from 2021, where school-based offenses accounted for 7.2% of all reported hate crime offenses (FBI, 2024).

Disturbingly, schools are now the third most common location for hate crimes to occur. Over 30% of young people reporting hate crimes experienced the offense at school, and nearly 36% of youth perpetrating a hate crime committed the offense at school (FBI, 2024).

The most common reported hate crime offense at school was intimidation, followed by destruction, damage, or vandalism of property, then simple assault, such as punching and pushing. From 2018 to 2022, the most common bias type motivating hate crime offenses was anti-Black bias. The second most common was anti-Jewish bias, and then anti-LGBTQ+ bias (FBI, 2024).

Classroom Censorship and Attacks on Public Education Fuel Bias-based Harm and Undermine Safe and Supportive School Climates

The alarming rise in identity-based bullying, harassment and hate crimes is fueled, in no small part, by state and local policies seeking to censor and control speech, literature, curriculum, and educator training related to race, gender, and diversity, equity, and inclusion (DEI) initiatives (Feingold & Weishart, 2023; Carey, 2022; IDRA, July 2022).

Censorship laws have created fear, confusion and uncertainty around how to talk about race and racism, identity-based bullying and harassment, and systemic discrimination. This has resulted in an increase in chilling of speech and action that would confront and correct such discrimination in schools (IDRA, Dec. 2022).

Because censorship laws in intent and in practice permit and empower exclusionary rhetoric and attitudes, these discriminatory policies expose students and educators to a heightened threat of identity-based bullying harassment, as well as formal sanctions, economic distress, and social ostracization.

As scholars recently observed, “This threat is most acute for students and educators of color, LGBTQ+ people, and educators who express commitments to equality and inclusion” (Feingold & Weishart, 2023).

Together, these policy trends destabilize culturally-sustaining learning environments, engender tolerance of discrimination and harassment, and discourage (or even prohibit) educators from taking evidence-based and legally-required action to prevent and respond to identity-based bullying and harassment when it occurs (Walker, 2024; Feingold & Weishart, 2023; Carey, 2023).

Researchers studying the impact of identity-based bullying and harassment continue to stress the importance of attending to the root causes of bias and the impact of discrimination when addressing instances of bullying and implementing bullying prevention programs and initiatives (Alvis, et al, 2023; Russell, et al., 2012).

Policies must be clear that bullying on the basis of a person’s protected identity status is prohibited. And policies must ensure that school employees feel empowered to act to prevent or address identity-based bullying and harassment – despite the proliferation of harmful censorship measures.

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Identity-based Bullying Increases Risk for Mental Health Challenges and Exacerbates Existing Traumas

Young people face an unprecedented mental health crisis (Office of the Surgeon General, 2021; Stone, 2023). Effectively addressing identity-based bullying and promoting student dignity and belonging in schools are critical steps for addressing this challenge.

According to the CDC, 42% of high school students in 2021 reported feeling so sad or hopeless that they stopped engaging in their usual activities – up from 26% in 2009 (Stone, 2023; CDC, nd).

Thoughts of suicide, suicide attempts and death by suicide among young people have also risen, with Black children nearly two times more likely than their white peers to die by suicide (Stone, 2023; CDC, 2023).

Researchers further estimate that depression and anxiety among young people doubled over the course of the COVID-19 pandemic (Stone, 2023; Racine, et al., 2021).

When asked about the impact bullying had on them, 38% of students reported negative feelings about themselves, 27% reported negative effects on their schoolwork, 24% reported negative effects on their relationships with family and friends, and 19% reported negative effects on their physical health (NCES, 2024).

Students with historically-marginalized identities are at a greater risk of experiencing mental health challenges, which increased during the pandemic (Office of the Surgeon General, 2023; Mulvey, et al., 2018).

Because these students already face mental health concerns at a disproportionate rate *and* are at greater risk for being targeted for bullying on the basis of their identity, the traumatic impact of identity-based bullying can be severe (Alvis, et al., 2023; Kosciw, et al., 2021; Douglas, et al., 2021; Lutrick, et al., 2020; Garnett, et al., 2014). This is particularly true for students of color (Alvis, et al., 2023; Douglas, et al., 2021).

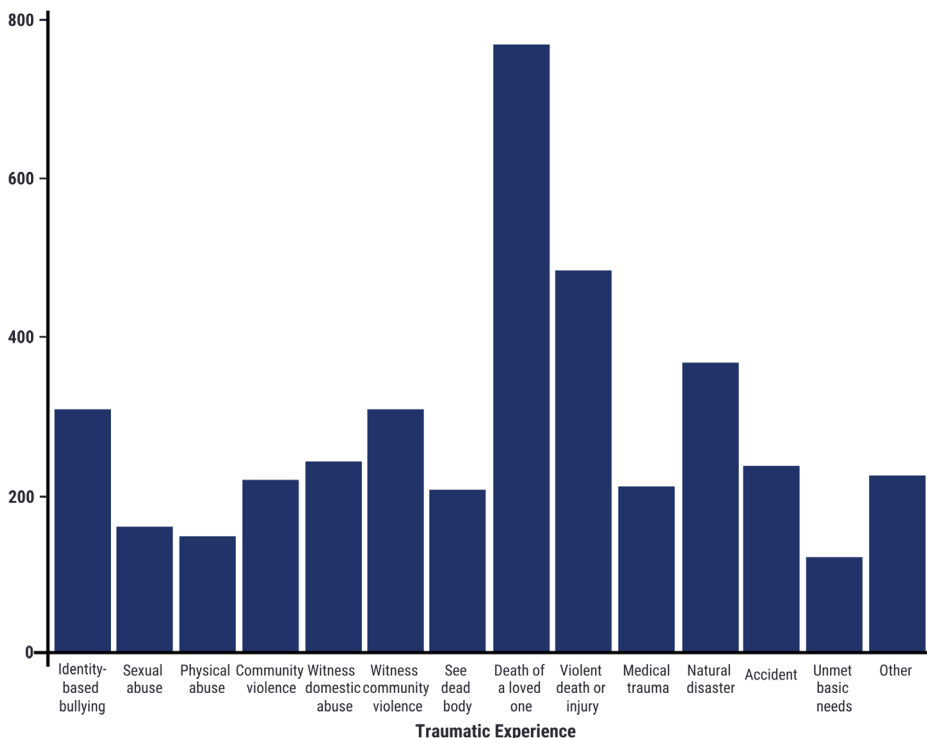
Against this backdrop, identity-based bullying is often experienced as a “violent assault on one’s sense of self” and is “inherently demeaning and personal” (Alvis, et al., 2023).

Because of its discriminatory nature, identity-based bullying and harassment manifest as “complex interpersonal trauma that can chronically and pervasively alter one’s social, psychological, cognitive and biological development” (Alvis, et al., 2023).

A 2023 study found that identity-based bullying victimization was associated with higher levels of depressive and post-traumatic stress symptoms. Significantly, identity-based bullying exposure was among the strongest predictors of mental health challenges, and identity-based bullying was found to have a similar effect on student mental health outcomes as sexual abuse, physical abuse and community violence (Alvis, et al., 2023).

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Prevalence Rates of Traumatic Experiences among Black and Latino Youth



Alvis, L., Douglas, R.D., Oosterhoff, B., Gaylord-Harden, N.K., & Kaplow, J.B. (2023). Identity-based bullying and Mental Health Among Black and Latino Youth: The Moderating Role of Emotional Suppression. *International Society for Traumatic Stress Studies*. <https://doi.org/10.1002/its.22927>

Students targeted by identity-based bullying are more likely to report substance-use issues, mental health concerns and academic difficulties. They are also more likely to engage in risky behaviors than their peers (Mulvey, et al., 2018).

Taken together, the research suggests that youth who are targeted by identity-based bullying, harassment and hate crimes experience more severe negative consequences compared with youth who experience more generalized peer abuse (OJJDP, 2022). Identity-based bullying is especially detrimental to youth mental health.

This is especially true for students with intersectional identities. Recent research found that youth who experience multiple types of identity-based bullying report more negative outcomes of bullying and higher levels of school avoidance and fear than those students who only report one type of bias-based bullying and those who experience non-identity-based bullying (Alvis, et al., 2023; Mulvey, et al., 2018). Specifically, gender diverse Black and Latino youth reported the highest rates of identity-based bullying (Alvis, et al., 2023).

Finally, students who engage in bullying are themselves at a greater risk of mental health challenges and often have a history of trauma (NTCSN, nd). Studies of adverse childhood experiences (ACEs) have found that children who report more adverse childhood experiences are also more likely to exhibit bullying behavior. And, unfortunately, students who have been bullied are also more likely to engage in bullying behavior themselves. This is why restorative responses are key to prevention.

Because youth are particularly vulnerable to social and emotional harm during adolescence, addressing identity-based victimization must be addressed swiftly, effectively and with attention to the particular harm caused by discriminatory bullying (Alvis, et al., 2023; Russell, et al., 2012).

Policymakers Must Act to Prevent, Recognize and End Identity-based Bullying

As noted throughout this brief, federal guidance has long established that schools should prevent and respond to bias-based incidents in schools. But many states and school districts do not have sufficient guidance to appropriately address identity-based bullying and harassment.

With instances of biased-based harm on the rise, schools must prevent, recognize and end identity-based bullying before the behavior escalates into an increasingly serious school safety threat or civil rights violation.

Policymakers must therefore act to ensure effective prevention and appropriate response to identity-based bullying and harassment.

The recommendations that follow build on the U.S. Department of Education's "key elements" of state bullying laws (Stuart-Cassel, 2011) and implement the research, guidance and legal considerations discussed above.

1. Clearly identify, define and prohibit identity-based bullying and harassment.

As the U.S. Supreme Court has observed, "Enumeration is the essential device used to make the duty not to discriminate concrete and to provide guidance for those who must comply."⁹ In addition, the U.S. Department of Education has identified enumeration as one of 11 key components of anti-bullying policy (Stuart-Cassel, et al., 2011; Ali, 2010).

⁹ *Romer v. Evans*, 517 U.S. 620, 628 (1996).

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Youth who experience multiple types of identity-based bullying report more negative outcomes of bullying and higher levels of school avoidance and fear than other students.

Accordingly, state law and school district policies should clearly define and prohibit identity-based bullying under the district's policies,¹⁰ as follows:

Identity-based bullying means bullying or cyberbullying that is based on or targets:

1. a student's actual or perceived race, ethnicity, color, national origin, sex, sexual orientation, gender, gender identity, religion, or disability status, or
2. association with a person or group with one or more of the actual or perceived race, ethnicity, color, national origin, sex, sexual orientation, gender, gender identity, religion or disability status.¹¹

As an alternative, states and school districts can also amend current bullying law or policies, respectively, to include specific references to protections on the basis of students' identity. For example:

Bullying is prohibited against any student for any reason, including but not limited to any such behavior that is directed toward a student on the basis of the student's actual or perceived race, ethnicity, color, national origin, sex, sexual orientation, gender, gender identity, religion or disability status.

2. Designate a bullying prevention and response coordinator.

As discussed throughout this brief, bullying is a complex challenge with significant impacts on student and school safety, student dignity and belonging, and student mental and physical health. Moreover, given the reality that students belonging to historically-marginalized identities are increasingly at risk of being targeted for bullying, staff responding to bullying reports must also be trained on recognizing and implementing school's anti-discrimination and harassment policies.

Accordingly, state bullying laws should require each school district to designate at least one employee with the responsibility of serving as the primary contact for and coordinator of a district's bullying prevention and response policy. Districts can model this requirement on existing laws by requiring schools to designate employees to coordinate a school's compliance with federal civil rights law.¹²

Bullying Prevention and Response Coordinator

A [local education agency] must designate at least one employee to coordinate the [agency's] evidence-based prevention, education, and awareness initiatives and oversee campus responses to a reported incident of bullying.

1. The designated employee's contact information must be provided to students and families in writing at the beginning of each academic year and be published on the [local education agency's] website.
2. The designated employee must monitor and evaluate the [local education agency's] implementation of evidence-based prevention, education, and awareness programming, including barriers to reporting information about a bullying incident.
3. The designated employee must have access to all reports, complaints, investigative materials, and any other information or documentation relating to the resolution of a reported bullying incident, subject to any requirements or limitations established by law.

¹⁰ To check whether a particular state has ensured that bullying definitions include enumerated protections for students on the basis of their identities, visit <https://www.stopbullying.gov/sites/default/files/documents/common-components-state-anti-bullying-laws-regulations-by-state.pdf>

¹¹ This definition is consistent with that used by the U.S. Department of Justice (Lahdon, et al., 2021).

¹² See, e.g., 34 C.F.R. § 106.8(a) (requiring schools to designate an employee to "coordinate its efforts to comply with its responsibilities" under Title IX).

3. Provide supportive measures to ensure student safety and continued access to education after bullying or harassment occurs.

Given the well-documented mental, physical, emotional and academic impacts of bullying, schools should ensure that students impacted by a bullying incident are adequately supported during and after an investigation.

As an example, granting an impacted student an extension of academic deadlines may prevent that student from unfairly receiving falling grades. In some cases, supportive measures may be for safety, such as separating students or making class schedule modifications so that impacted students reduce their interaction until a resolution can be facilitated.

Schools may use the following definition of supportive measures:

“Supportive measures” means non-disciplinary, non-punitive individualized services offered, as appropriate, and reasonably available, and without fee or charge, that are designed to ensure students impacted by bullying have continued access to a school’s education programs and activities, protect the safety of all students implicated by a report of bullying and the broader school community, and deter bullying behavior. Supportive measures may include, but are not limited to:

1. counseling, extensions of academic or other deadlines, class-related adjustments, modifications to class schedules, campus escort services, and other similar measures; and
2. mutual restrictions on contact between the students implicated by a report of bullying.¹³

State laws and local education agency policies should outline the supportive measures available for a student impacted by bullying, including a target of, witness to, or student alleged to have engaged in bullying. For example:

Supportive Measures

- (a) Supportive measures must be promptly made available to a student targeted by, engaging in, or witnessing bullying behavior.
- (b) Supportive measures must be offered regardless of whether a student elects to initiate an investigation or grievance process under this section.
- (c) Each school must designate an employee with responsibility for coordinating the provision of supportive measures to a student impacted by bullying.
- (d) Information about the availability and provision of supportive measures must be provided to students and families at the beginning of each academic year and posted on the [local education agency’s] website.

4. Establish clear guidelines for conducting trauma-informed investigations of identity-based bullying and harassment.

School leaders need guidance to assist in the investigation of identity-based bullying. By crafting clear guidelines for investigation, school districts enable administrators to better identify, address and ultimately prevent identity-based bullying and districts empower impacted students and families to meaningfully participate in a school’s investigation.

State law and local education agency policy should ensure the following components are included in a school’s bullying investigation protocol.

¹³ This definition is modeled, in part, on a similar provision established in the 2020 Title IX regulations. See 34 C.F.R. 106.30(a) (*Supportive Measures*).

Initial evaluation of a bullying report, including the following.

1. meeting with the individual(s) who made the report, if the name and contact information for the reporting individual is available;
2. identifying, to the extent possible, the name and contact information of the targeted student, student alleged to have engaged in bullying, and any potential witnesses; and
3. taking reasonable steps to preserve evidence relating to the alleged incident in the possession of, under the control of, or otherwise accessible to the [local education agency], such as security camera footage or publicly available Internet or social media posts.

Notice of rights and options to impacted students and families, including:

1. providing a copy of and explaining the local education agency's bullying harassment policies and procedures;
2. discussing and identifying supportive measures;
3. taking steps to identify the targeted student's goals and desired outcomes; and
4. taking steps to facilitate the willingness of a student who engages in bullying conduct to accept responsibility for and address the harm caused by the behavior.

5. Ensure impacted students and families receive adequate notice, have a meaningful opportunity to participate in an investigation, and receive information regarding resolution of their bullying complaint.

School administrators should ensure that students and families are aware of an investigation and adequately document their findings and determination. Students and their families should be given an opportunity to share their side of the story before any final decision is made.

State law and local education policy should ensure that school leaders take steps to document the steps taken to investigate and respond to bullying incidents. For example:

Documentation of Investigation

The principal or designee shall document the steps taken to investigate and respond to a report of bullying. Documentation must include:

1. any statements prepared by the targeted student, the student alleged to have engaged in bullying, and any witnesses;
2. written summaries of investigative interviews with the targeted student, the student alleged to have engaged in bullying, and any witnesses; and
3. any evidence related to the alleged incident, including text messages, social media content, photographs, videos, security camera footage, police reports, etc.

In addition, school officials charged with investigating a bullying complaint should prepare a written summary of the information and evidence considered in reaching a determination of whether the school's bullying policy has been violated.

Investigation Report

The principal or designee shall provide a written summary of a bullying investigation to both parties within 10 school days of receiving the complaint, unless there is good cause for extending the investigation period.

1. The written summary shall comply with state and federal laws regarding privacy of student records, including the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99).
2. The investigation report must include a summary of the information and evidence considered, a determination regarding responsibility for the alleged bullying conduct, and the rationale for the determination.
3. The principal or designee must provide an opportunity for the targeted student and the student alleged to have engaged in bullying and their parent or guardian to review and comment on the written summary before a determination of responsibility becomes final.

Finally, regardless of a school's determination in a bullying investigation, school leaders should take steps to repair the harm caused by harmful behavior – particularly when an element of bias is present. Schools should communicate the following notice to students and families as part of resolution of a bullying complaint.

The principal or designee shall provide notice of the actions to:

1. restore or preserve a targeted student's access to or participation in the [local education agency's] education programs or activities;
2. protect the safety and sense of belonging of the targeted student and the broader school community; and
3. educate the student alleged to have engaged in bullying behavior on the harm caused by the alleged bullying behavior.

6. Use educational and restorative responses to address incidents of bullying and harassment.

Schools must end their reliance on suspensions, alternative school placements, police and court intervention, and other discipline strategies that research shows are ineffective and harmful – including in cases of bullying and harassment.

While efforts should certainly be taken to ensure the immediate safety of students and adults in schools, research demonstrates that relying on harmful exclusionary and punitive tactics as a response to bullying and harassment does not solve the issues that lead to those behaviors (Craven, 2023).

Exclusionary discipline and criminalization compromise the safety and rights of individual students and create hostile school environments. These practices undermine important efforts to create welcoming and supportive schools, negatively impact the academic and social success of all students, and are disproportionately used against Black students, other students of color, young people with disabilities and LGBTQ+ youth (Craven, 2023).

And these practices wholly ignore the underlying issues that lead to bullying behaviors, including individual student challenges and trauma, school and community cultures, and school leaders who fail to effectively prevent and intervene in these harmful behaviors.

Rather than rely on harsh and punitive practices, schools must:

- address the underlying causes of bullying behaviors and community cultures that allow bullying to occur;
- foster inclusive and welcoming classrooms that are free of discrimination; and
- invest in research-based school climate programs, community-school partnerships and instructional practices.

Schools should consider the following remedies in response to a confirmed incident of bullying.

- a bullying prevention and education program for the individuals involved in the complaint;
- a comprehensive education program for the school community;
- follow-up inquiries to determine whether any new incidents or any instances of bullying or retaliation have occurred;
- involving families and students in efforts to identify problems and improve school climate;
- increasing staff monitoring of areas where bullying has occurred; and
- appropriate evidence-based discipline policies and practices.

When a student is found responsible for violating a school's bullying policy, school leaders should take a holistic and restorative approach to crafting a plan to address and end the harmful behavior (Jones, 2023).

To encourage this approach, state law and local education agency policies should incorporate the following factors:

- the impact on and goals of the targeted student;
- the responsible student's willingness to accept responsibility for and take steps to address the harm caused by the bullying behavior;
- the interim and ongoing steps taken to address the root causes of the bullying behavior;
- the nature, frequency, and seriousness of the conduct;
- the age of the students involved;
- whether the student alleged to have engaged in bullying has engaged in any prior acts of bullying or retaliation; and
- other factors established by local education agency policy or required by law.

7. Require robust and ongoing staff training and development on preventing and responding to identity-based bullying and harassment.

State law must ensure that bullying prevention and response training for educators includes information regarding how to identify and timely report incidents of identity-based bullying and harassment to appropriate school authorities.

Employee training and professional development standards should specify that training should be conducted annually and outline appropriate curriculum. For example:

At the start of each academic year, all [local education agency] employees will participate in training on preventing, identifying, responding to, and reporting incidents of bullying.

1. Curriculum. Each [local education agency] shall provide age-appropriate and evidence-based instruction on bullying prevention in each grade that is incorporated into school curricula for all K-12 students. Effective instruction may include classroom approaches, whole school initiatives, and focused strategies for bullying prevention and social skills development.
2. Annual Staff Training. Annual training required in this section shall include staff duties and responsibilities under a school's anti-bullying policies, an overview of the steps that the school principal or other designee will follow upon receipt of a report of bullying or retaliation, and an overview of the bullying prevention curricula to be offered at all grades throughout the school.

In addition, state bullying policies should outline research-based topics for preventing and remedying bullying behavior, such as:

- developmentally appropriate strategies to prevent bullying;
- developmentally appropriate strategies for immediate, effective interventions to stop bullying incidents;
- information regarding the complex interaction and power differential that can take place between and among a student engaging in bullying behavior, a targeted student, and witnesses to bullying;
- research findings on bullying, including information about specific categories of students who have been shown to be particularly at risk for bullying in the school environment;
- information on the incidence and nature of cyberbullying; and
- Internet safety issues as they relate to cyberbullying.

8. Ensure that student-oriented prevention policies and instructional standards explicitly address the prevalence, prevention and intervention of identity-based bullying and harassment.

State law and school policies should ensure that direct instruction and positive school culture programs include requirements for students to understand how to identify, report and interrupt bullying based on a range of behaviors, including based on a student's identity.

Given the current climate of censorship in many states and school communities, state law also should make clear that education, prevention and response to identity-based bullying and harassment are not precluded in any way by a state or school district's "divisive concepts" law or policy. Many K-12 censorship laws discourages educators from discussing "controversial issues of public policy or social affairs" (Feingold & Weishart, 2023). This language could be construed as prohibiting educators from discussing the prevalence of identity-based bullying with students and precluding educators from implementing strategies to reduce identity-based bullying.

Policymakers must make clear that schools have the responsibility and may use evidence-based resources to address identity-based bullying.

For example, state laws governing staff professional development and training could include the following language regarding bullying prevention programming.

Prevention Programming

A local education agency's policy must contain appropriate preventative measures for bullying, cyberbullying, and identity-based bullying and plans to implement them in students' academic curriculum, support services, employee training, and professional development, notwithstanding existing state law concerning discussions of race, ethnicity, gender, sexuality, and other characteristics protected by federal or state law in classroom curriculum, educator training, and professional development.

9. Require schools to collect and report disaggregated data to better understand the prevalence of identity-based harassment and tailor prevention programming accordingly.

The failure to properly collect and assess data on bullying and racial identity obscures the full negative impact identity-based bullying has on students and schools and makes it a more difficult problem for schools and districts to solve.

Further, schools need public reporting requirements to ensure that top policymakers in school districts are apprised of bullying and harassment prevalence and to create transparency for the community.

Data collection and reporting should be disaggregated on the basis of identity-factor(s) and reported annually. State bullying laws can effectuate this requirement with the following provision.

Each [local education agency] shall prepare an annual summary of the [agency's] compliance with the policy required by this section and publish the annual summary on the [agency's] website. The reports may not identify any person, and must include information regarding:

1. the number of reports of bullying received under this Act, including the number of reports of cyberbullying and identity-based bullying, disaggregated by race, ethnicity, color, national origin, sex, sexual orientation, gender, gender identity, religion, or disability status; and
2. a general description of the [local education agency's] responses and interventions in response to bullying reports.

Local education agencies should also be mindful of their requirements to report data about bullying and harassment to state and federal agencies, including to the U.S. Department of Education as part of its Civil Rights Data Collection.

10. Ensure staff training includes guidance on identifying and timely reporting incidents of identity-based bullying and harassment to appropriate school authorities.

School policies should clarify the appropriate recipient of a bullying report to ensure that it is documented and processed in a timely and trauma-informed manner. School policies should also ensure that identity-based bullying is reported to a school or district's equal educational opportunity or civil rights compliance administrator.

The following language creates a presumption of mandatory reporting for all school staff upon witnessing or receiving information concerning bullying.

A [local education agency] employee who, in the course and scope of their employment, witnesses or receives information regarding an incident that the employee reasonably believes constitutes bullying by or against an enrolled student to promptly report the incident to the school's [principal or other campus behavior coordinator] or other appropriate school district official.

Research has shown that students are often reluctant to report incidents of bullying to school authorities out of fear of reprisal, disrupting social relationships or initiating punitive discipline for peers.

Accordingly, schools should designate one or more employees or community-based partners to serve as confidential resources for students seeking to understand their rights and options and receive support without triggering a formal investigative response. For example:

1. A [local education agency] may designate one or more individuals, such as a school counselor, social worker, or trained community-based partner, as a confidential, non-reporting resource for students to seek guidance and support regarding interpersonal conflicts, including allegations of bullying.
2. A confidential employee shall report only the nature of the incident reported and is not required to report the name of the targeted student or the student alleged to have engaged in the bullying behavior, unless:

- A. the confidential employee is given permission to share the information by the person who disclosed the information;
- B. there is an immediate threat of harm to the reporting individual or others;
- C. the conduct involves suspected abuse of a minor under the age of 18; or
- D. as otherwise required by law or pursuant to a subpoena or court order or similar individualized legal requirement.

Conclusion

These model policy recommendations were developed in collaboration with students, families, educators, and advocates directly impacted by incidents of racial and other forms of identity-based bullying and harassment.¹⁴ The policy elements and procedures outlined in the accompanying model state level legislation grew from the stories – many of them enraging and heartbreaking – of student and families seeking justice, dignity and safety in their schools.¹⁵

Using a movement lawyering approach (Camiscoli, 2024), we have sought to honor the stories and sacrifices of these and so many other young people and their families who have suffered as a result of a school's failure to prevent and remedy identity-based bullying and harassment.

Students must be able to enter their classrooms and not experience bullying or harassment from fellow students or their teachers simply because of who they are.

Students must be able to freely express every aspect of their identities, and school staff should affirm and nurture their unique and diverse cultures and experiences.

Students must be able to access health professionals and support services, rather than be subject to increased surveillance, hardening and policing.

And when they engage in harmful behavior, including bullying and harassment, students should be met with accountability, support and education – not exclusionary discipline or criminalization.

All students deserve to feel safe and welcome in school. School efforts to prevent and respond to bullying must account for the specific ways that bullying targets students on the basis of their identities and the magnified harm that students and a school community experience when the bullying behavior is motivated by bias or discrimination.

Additional resources, including a comprehensive literature review and strategies for schools, educators, and students to identify, address, and prevent bullying and harassment, are available in IDRA's online assistance toolkit, **Interrupting Bullying & Harassment in Schools**, available at <https://idra.news/webInterrupt>.

IDRA is available for any questions or further resources that we can provide. For more information, contact Paige Duggins-Clay, J.D., at paige.duggins-clay@idra.org.

Students must be able to enter their classrooms and not experience bullying or harassment from fellow students or their teachers simply because of who they are.

¹⁴ See IDRA. (March 9, 2023). Bill Filed: Texas Must Prohibit and Prevent Racial Bullying in Schools – Texas Senate Hispanic Caucus, Texas Legislative Black Caucus and IDRA Call on the Legislature to Protect Students from Identity-based Bullying and Harassment. <https://idra.news/PreventRacialBullyinginSchools>; IDRA. (April 17, 2023). End Identity-based Bullying in Texas Schools – News Conference for Hearing on HB 4625. <https://www.idra.org/resource-center/end-identity-based-bullying-in-texas-schools-news-conference-for-hearing-on-hb-4625>

¹⁵ See, e.g., IDRA. (December 13, 2022). IDRA, Lubbock NAACP join Slaton and Lubbock Families in Demanding End to School-Based Racial Discrimination – Complaints Filed to Office for Civil Rights. IDRA. <https://idra.news/LBKstatement>; Hylton, A. (December 16, 2022). Texas School District Accused of Inaction Over Racist Bullying of Black Students. NBC Nightly News. <https://www.nbcnews.com/nightly-news/video/texas-school-district-accused-of-inaction-over-racist-bullying-of-black-students-157805637623>

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