

Bullying & Students with Disabilities

**An advocacy guide for understanding &
addressing bullying in schools**

Special Education Task Force

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www.nyspecialtaskforce.org

This Guide contains general information and does not constitute individual legal advice about your situation. You should consult with an attorney for individual legal advice about your situation and to find out how this information applies to your situation.

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TABLE OF CONTENTS

Preface.....	5
Introduction.....	6
Overview: Laws and Obligations of Schools	8
<i>The Dignity for All Students Act.....</i>	9
<i>Section 504 of the Rehabilitation Act of 1973.....</i>	13
<i>The Individuals with Disabilities Education Act.....</i>	16
<i>Chart of Laws Addressing Bullying & Harassment</i>	18
Action Plan For Student, Parents and Advocates for Addressing Bullying	19
<i>Step 1: Document the Bullying & Harassment</i>	19
<i>Step 2: Notify the School and Request Information</i>	19
<i>Step 3: Work with School Administrators</i>	20
<i>Step 4: Work with the CSE or 504 Team.....</i>	22
<i>Students with IEPs</i>	22
<i>Students with 504 Plans</i>	26
Legal Remedies	31
<i>Complaint to Office for Civil Rights</i>	31
<i>Complaint to NYS Education Dept.....</i>	32
<i>Impartial Due Process Hearing</i>	33
<i>Civil Litigation</i>	34
Special Situations	35
<i>Cyberbullying.....</i>	35
<i>Criminal Conduct.....</i>	38
<i>Child Abuse</i>	39
<i>Students in Private Schools</i>	40
What To Do When The Student is The Bully.....	42
What To Do When The Student Witnesses Bullying.....	46
Resources	47
Appendix A.....	50
<i>Dear Colleague Letter OCR 2000.....</i>	51
<i>Dear Colleague Letter OCR 2010.....</i>	55
<i>Dear Colleague Letter OSERS 2013</i>	65
Appendix B	69
<i>Sample Letter</i>	70
Appendix C	72
<i>CSE/504 Meeting Plan Agenda.....</i>	73

PREFACE

The Special Education Task Force is comprised of over 200 parent advocates, school district staff, attorneys and other individuals who are involved or interested in special education issues, and work collaboratively to ensure that children with disabilities are educated in the least restrictive setting and receive a free and appropriate education. The Special Education Task Force works to assure that families and school personnel have the knowledge and skills to enable them to effectively assist students with disabilities. To this end, this publication was developed to educate families and educators on bullying and harassment of students with disabilities in schools.

This publication provides information for parents and families and schools about the laws, regulations and policies of bullying and harassment in schools. Our hope is that through the use of this publication, parents, families and school districts will collaborate in order to help students impacted by bullying and harassment.

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INTRODUCTION

Bullying and harassment in schools has become a national issue, particularly for students with disabilities. Surveys have shown that at least 20% of students are bullied at some time during their school years.¹ In July 2000, the United States Department of Education Office for Civil Rights (OCR) issued official statements about bullying and disability harassment in schools in response to a rising number of complaints of bullying and disability harassment in schools.

Disability harassment can have a profound impact on students, raise safety concerns, and erode efforts to ensure that students with disabilities have equal access to the myriad benefits that an education offers. Indeed, harassment can seriously interfere with the ability of students with disabilities to receive the education critical to their advancement . . . When disability harassment limits or denies a student's ability to participate in or benefit from an educational institution's programs or activities, the institution must respond effectively. Where the institution learns that disability harassment may have occurred, the institution must investigate the incident(s) promptly and respond appropriately.²

Since this first public statement the OCR has issued other official statements³ emphasizing the need for schools to address bullying and harassment of students, including students with disabilities.

Bullying can be physical or verbal, in-person, or through technology, but no matter what form bullying takes the impact is real –interfering with a student’s social, emotional development and school performance. Many studies have been conducted which demonstrate that bullying can lead to serious consequences for students, including higher dropout rates, more incidents of violence in school, lower self-esteem, fewer friends, declining grades, and increased illness. Bullying can also have lifelong consequences, such as, involvement in the criminal justice system, mental health issues, and an inability to develop relationships both for the victim and the bully.

Students who bully have often been victims of physical abuse or bullying themselves. Bullying is a complex issue with multiple contributory factors such as family, community, school, and peer interactions. Students who bully are more likely to drop out of school, think of suicide, bring weapons to school or drink alcohol or smoke. In a recent study of more than 520,000 3rd-12th graders from 1,593 schools across the United States, researchers found that overall, 20% of girls

¹ According to the 2009 Youth Risk Behavior Survey published by the Centers for Disease Control, 20% of high school students (grades 9-12) had been bullied on school property at least once in the previous 12 months. Centers for Disease Control and Prevention (2009) Another national survey, the School Crime Supplement to the National Crime Victimization Survey, reported that 28% of students ages 12-18 had been bullied at school during the 2008/2009 school year. National Center for Educational Statistics (2009).

² U.S. Dept. of Education - “Dear Colleague” Letter, July 25, 2000. <http://www2.ed.gov/about/offices/list/ocr/docs/disabharassltr.html>. A copy of this Letter can be found in Appendix A of this guide.

³ U.S. Dept. of Education, Office for Civil Rights “Dear Colleague” Letter, Oct. 26, 2010; U.S. Dept of Education, Office for Civil Rights “Dear Colleague” letter, Aug.20, 2013. See Appendix A of this guide.

and 25% of boys had been involved in bullying on a regular basis (2-3 times/month or more often).⁴

In addition to these children and youth who bully or are bullied, research confirms that many more (two thirds of all students surveyed in several studies) witness bullying. These witnesses or bystanders play a role in the bullying. Bystanders unwittingly support the bullying that they observe through laughter or smiles, or body language. Studies indicate that bystanders often watch but feel disengaged; dislike the bullying that they observe but feel reluctant to take action against it; or they may try to help in some way.⁵

The purpose of this publication is provide students, parents, advocates and school personnel with the information and tools needed to address bullying and harassment of students, particularly students with disabilities. This publication (1) informs readers of the legal protections afforded to students who experience bullying in schools under both New York State and Federal Laws; (2) provides a strategic ‘action plan’ to address and prevent bullying and harassment of students with disabilities; and (3) offers resources on bullying and harassment in schools.

⁴ Olweus & Limber (2010)

⁵ Olweus (1993) Rivers, Poteat, Noret, & Ashhurst (2009) Trach, Hymel, Waterhouse, & Neale (2010)

OVERVIEW

LAWS AND SCHOOL OBLIGATIONS

What laws prohibit bullying and harassment of students with disabilities?

This guide focuses specifically on the most common laws triggered by bullying and harassment of New York students with disabilities: (1) the Dignity for All Students Act, (2) Section 504 of the Rehabilitation Act and (3) the Individuals with Disabilities Education Act. There are additional state and federal laws that may be applicable when addressing this issue.⁶ This guide details the situations where each law applies and each law's particular requirements of schools to address bullying and harassment. Some or all of the laws detailed in this guide may apply to any given situation. The "Action Plan" section of this guide provides an overall strategy for using all of these laws.

What kinds of bullying behavior do these laws cover?

Bullying and harassment can take many forms. While each of the laws highlighted below has its own specific definition of bullying and/or harassment, they address conduct that is intimidating, harmful or abusive including:

- Verbal (name calling, threats, taunting, teasing);
- Physical (blocking someone's path, physical restraint, hazing, pushing, kicking, spitting, stealing, unwanted sexual touching);
- Psychological (social exclusion, extortion, intimidation, spreading rumors, manipulating social relationships);
- Graphic (using or distribution pictures, written statements, cyberbullying).

Who can be considered a bully?

The laws described in this Guide apply to bullying or harassing conduct by school employees and volunteers, as well as bullying by peers. There are specific laws that apply when a school employee or volunteer engages in bullying behavior.⁷

Does the bullying have to occur on school grounds?

No, but in most circumstances the law protects against conduct that occurs on school property or at a school sponsored event such as a field trip or athletic event. School property also includes school buses and other vehicles funded by the school district to provide transportation to students. The question of whether a school must address bullying and harassment that takes place off school grounds is less clear. The Commissioner of the New York State Education Department (NYSED) has upheld several suspensions of students whose misconduct occurred

⁶ For a full understanding of all laws that may be implicated in a particular case, consult an attorney.

⁷ See "Abuse by School Personnel" in "Special Circumstances" section of this Guide.

off school grounds.⁸ Courts have also recognized that students may be disciplined for conduct that occurred outside of the school that may endanger the health or safety or pupils within the educational system or adversely affect the educative process.⁹ Moreover, the NYSED has advised schools to develop policies that address cyberbullying that occurs off school grounds that endanger the health or safety of a student within the educational system or adversely affects the educational process.¹⁰

THE DIGNITY FOR ALL STUDENTS ACT

What is the Dignity for All Students Act (DASA)?

DASA is a New York State statute that went into effect on July 1, 2012. Its purpose is to provide all school age children a safe and supportive environment free from discrimination, intimidation, taunting, harassment, and bullying, including cyberbullying, on school property, a school bus and/or at a school function.

How does DASA impact other Anti-Discrimination Laws?

DASA does not alter any existing anti-discrimination obligations under federal civil rights law including the obligation to adopt and publish a non-discrimination policy. School Districts, BOCES and charter schools (“Schools”) must ensure that their policies comply with federal civil rights laws and regulations such as Title VI of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; and Title II of the Americans with Disabilities Act of 1990, and their respective implementing regulations; (e.g., Titles II, VI, IX, Section 504).

What does DASA require?

Curriculum:

DASA requires school districts to expand instruction in civility, citizenship and character education to include concepts of tolerance, respect for others and dignity including: an awareness and sensitivity in the relations of people, including different races, weights, national origins, ethnic groups, religions, religious practices, mental or physical abilities, sexual orientations, gender identity and sexes. Curriculum must include instruction in safe and responsible use of the Internet and electronic communications and strongly discourage acts of harassment, bullying, and discrimination. The NYSED has provided guidance and educational materials, including best practices in addressing cyberbullying, and best practices in helping families and communities to work cooperatively with schools in addressing cyberbullying.¹¹

⁸ See, e.g., Appeal of C.R., Decision No. 15,330; Appeal of K.S., 43 Ed Dept Rep 492, Decision No. 15,063; Appeal of Ravick, 40 id. 262, Decision No. 14,477; Appeal of Orman, Decision No. 14,389.

⁹ See, Matter of Coghlan v. Bd. of Educ. of Liverpool Cent. School Dist., 262 AD2d 949, citing Pollnow v. Glennon, 594 F.Supp. 220, 224, affd, 757 F.2d 496.

¹⁰ See “Cyberbullying” in the “Special Circumstances” section in this Guide.

¹¹ See NYSED.gov, *The Dignity for All Students Act*, <http://www.p12.nysed.gov/dignityact>.

Code of Conduct:

DASA requires that each School have language addressing DASA in their code of conduct. The Code of Conduct must include provisions prohibiting discrimination and harassment against any student by employees or students, and provisions for responding to such acts.

Staff training:

School employees must receive training to raise awareness and sensitivity to potential acts of discrimination and/or harassment and to enable employees to prevent and respond to incidents of discrimination and harassment.

DASA Coordinator:

Each school must designate and train at least one staff member to handle human relations in the areas of: race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender, and sex.

Reporting:

Finally, DASA requires that schools collect and report data regarding material incidents of discrimination and harassment. Material incidents¹² of discrimination and/or harassment on school grounds or at a school function must be reported to New York State Education Department (NYSED) annually.¹³

How do I know if DASA applies to my student's situation?

DASA applies to all students, regardless of disability, whenever a student experiences threats, intimidating behavior or abuse on school property that interferes with the student's safety or learning experience or self-esteem/peace of mind, etc. DASA also applies to cyberbullying and harassment that occurs on or off school property that creates a risk of harm or bullying on school property. DASA applies to bullying and harassing conduct by peers or school employees.

How do I use DASA to help my student?

DASA is triggered when a school district employee (teacher, administrator, etc.) witnesses bullying or harassment *or* receives a verbal or written report of bullying or harassment. School employees must notify the principal, superintendent or designee within one school day after witnessing the incident or receiving the report. The employee must also file a written report with the designated administrator within two school days. However, if the incident(s) have not been witnessed or reported by a school employee, the parent, guardian or student should report any bullying or harassment to the principal or superintendent, preferably *in writing*, as soon as possible.¹⁴

What must the school do when a report of bullying or harassment is received?

When a school employee witnesses bullying, harassment or discrimination or receives a verbal or written report of such acts, a designated school administrator must conduct or supervise a *thorough* and *prompt* investigation of the reported incident to determine if bullying and/or

¹² See definition for Material Incident later in this section.

¹³ See NYSED.gov, Information and Reporting Services,
http://www.p12.nysed.gov/irs/school_safety/school_safety_data_collection.html.

¹⁴ See "Action Plan" later in this Guide.

harassment occurred. While there are no specific requirements regarding what must be included in the investigation, typically the investigator will (or should):

- Interview the student–victim (Note that a parent or guardian can request to be present for all or part of this interview if the student requires support or assistance in communicating; alternatively, you can request the presence of a trusted school professional familiar to your child);
- Interview any witnesses, including school staff, students or others;
- Interview the alleged perpetrator(s);
- Interview teachers and school staff who are familiar with the student-victim to determine if any incidents have been observed or if there have been any changes in student’s behavior, demeanor, performance and/or attendance;
- Identify and review any electronic recordings or evidence of the alleged conduct;
- Review records of the student-victim and perpetrator(s).

What is the Purpose of the DASA Investigation?

The purpose of the investigation is to determine if a “Material Incident of Discrimination and/or Harassment” occurred. A "Material Incident of Discrimination and/or Harassment" means:

1. A single incident or a series of related incidents of discrimination and/or harassment that includes physical contact and/or verbal threats, intimidation or abuse by a student and/or employee on school property or at a school function;
2. Based on a person’s actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, **disability**, sexual orientation, gender or sex; and
3. That creates a **hostile environment**.¹⁵

What is a Hostile Environment?

A **hostile environment** is created when the discriminatory, bullying or harassing conduct is of such severe or pervasive nature that:

- It has or would have the effect of unreasonably and substantially interfering with a student’s educational performance, opportunities or benefits, or mental, emotional and/or physical well-being; **or**
- Reasonably causes or would reasonably be expected to cause a student to fear for his or her physical safety.

What are Examples of a Hostile Environment?

The U.S. Department of Education offers the following examples of a hostile environment for students with disabilities:

- Several students continually remark out loud to other students during class that a student with dyslexia is "retarded" or "deaf and dumb" and does not belong in the class; as a result, the harassed student has difficulty doing work in class and her grades decline.

¹⁵ 8 NYCRR 100.2(1)(9).

- A student repeatedly places classroom furniture or other objects in the path of classmates who use wheelchairs, impeding the classmates' ability to enter the classroom.
- A teacher subjects a student to inappropriate physical restraint because of conduct related to his disability, with the result that the student tries to avoid school through increased absences.
- A school administrator repeatedly denies a student with a disability access to lunch, field trips, assemblies, and extracurricular activities as punishment for taking time off from school for required appointments related to the student's disability.
- A professor repeatedly belittles and criticizes a student with a disability for using accommodations in class, with the result that the student is so discouraged that she has great difficulty performing in class and learning.
- Students continually taunt or belittle a student with mental retardation by mocking and intimidating him so he does not participate in class.¹⁶

What happens if the school's investigation finds that a "Material Incident" occurred?

When an investigation verifies a material incident of harassment, bullying, or discrimination, the designated administrator must (1) take prompt action, reasonably calculated to end the harassment, bullying, or discrimination; (2) eliminate any hostile environment; (3) create a more positive school culture and climate; (4) prevent recurrence of the behavior; and (5) ensure the safety of the student or students against whom such behavior was directed.¹⁷

If the investigation finds that the conduct may constitute a crime, the school must report the incident to the police. If the conduct involved physical abuse by a school employee or volunteer, the State Education Law requires the District to report the incident(s) to the police and NYSED.¹⁸

What happens if, after completing its investigation, the school does not find a "Material Incident" occurred?

A school administrator may not be able to verify that bullying, harassment or discrimination occurred, or may determine that some type of misconduct occurred but it does not constitute a "material incident" of bullying, harassment or discrimination. DASA does not provide a specific procedure for parents or students to appeal that decision, but the school may have a policy that allows a parent or student to challenge that decision.

Advocacy Tip . . .

If the school does not have such a policy, the parent or student may want to request a meeting to discuss any remaining concerns. The parent or student may request that the situation be monitored carefully. The parent or student should send a letter or email to the administrator after the meeting to confirm the concerns that were discussed and any actions the administrator agreed to take.

¹⁶ U.S. Dept. of Education, Office for Civil Rights "Dear Colleague" Letter, July 25, 2000, <http://www2.ed.gov/about/offices/list/ocr/docs/disabarassltr.html>. A copy of this Letter can be found in Appendix A of this guide.

¹⁷ <http://www.p12.nysed.gov/dignityact/documents/DASACodeofConductGuidance.pdf>.

¹⁸ New York Education Law article 23-B. For additional information, see "Abuse by School Personnel" in the "Special Circumstances" section of this Guide.

Do I have the right to a final report after the investigation is completed?

Maybe. DASA itself does not require that a parent (and/or the student, if appropriate) be given a final report after the investigation is completed. However, the guidance issued to all schools by the NYSED requires schools to develop policies specifically related to DASA and encourage schools to adopt a policy to address how investigations will be reported to parents.¹⁹

Even if the school's policy does not require that a final report be provided, the parent or the student (if over 17) can often obtain the report through other means. The simplest method is to request, in writing, the final report. If the school refuses to provide the report, you can still access the report under the Federal Educational Rights and Privacy Act (FERPA).²⁰ FERPA provides parents and students over the age of 17 the right to access all school records that pertain to the student; this includes a final report after an investigation. Under FERPA, the school must provide access to the requested record or document within 45 days of a *written* request. Keep in mind that FERPA protects the records and privacy of *all* students, so the report or document you receive may be *redacted*. This means that the names of other students and school personnel may be blocked out.

SECTION 504 OF THE REHABILITATION ACT OF 1973

Section 504 of the Rehabilitation Act of 1973 is a federal law that applies to all public schools, colleges and universities, and other schools and institutions that receive any federal funds. Section 504 requires that students with disabilities are provided a free appropriate public education which is defined as an education comparable to that provided to students without disabilities. Section 504 prohibits discrimination against individuals with disabilities, and ensures that students with disabilities can participate in school programs and activities. "Disability harassment" is a form of discrimination prohibited by Section 504.²¹ Title II of the Americans with Disabilities Act (ADA) has similar protections and provisions.

How does Section 504 Protect Students with Disabilities from Bullying and Harassment?

Section 504 prohibits **harassment** of a student based on the student's disability, if this conduct denies the student an equal opportunity to an education. Being subjected to harassment because of disability by students or school personnel may make the school experience different or unequal to the experience of students without disabilities.

What is "disability harassment" under Section 504?

Disability harassment under Section 504, as it relates to students, is (1) intimidation or abusive behavior towards a student by another student, school employee or school volunteer; (2) based

¹⁹ See, NYSED.gov, *Dignity for All Students Act: Guidance for Local Implementation*, <http://www.p12.nysed.gov/dignityact/documents/DASAGuidanceLocalImplementation.pdf>, page 10.

²⁰ 20 USCA 1232(g); 34 CFR 300.613; 34 CFR 99.11. For more information on FERPA see *Special Education in Plain Language* at www.nyspecialtaskforce.org.

²¹ 29 U.S.C. § 794(a); 34 CFR Part 104. For more information about Section 504 see *Special Education in Plain Language* at www.nyspecialtaskforce.org

on the student's disability; (3) that creates a hostile environment at school or at a school-sponsored event.

Intimidation and abusive behavior can take many forms, including but not limited to:

- Verbal acts and name calling;
- Graphic and written statements;
- Physically threatening conduct;
- Harmful conduct;
- Humiliating conduct.

To qualify as disability harassment, the intimidation or abusive behavior must be based on ***the student's disability***. While there is no specific definition of this term, case law and guidance from the Office for Civil Rights suggest that the harassing conduct must be *related* to the student's disability, either directly or indirectly. An example of a direct relationship would be calling a student with a cognitive delay a "retard" or a "special." An example of an indirect relationship might be threatening to pull a fire alarm to a student with autism who is highly anxious about fire alarms. In contrast, if the student was being verbally abused because he or she is overweight, and the student's weight is unrelated to his or her disability, this would not meet the definition of disability harassment.

A ***hostile environment*** is present when the intimidation or abusive conduct adversely affects the student's ability to participate in, or benefit from, his or her educational program. Conduct which is severe, persistent, and pervasive creates a hostile environment even if there are no tangible effects on the student. Some common indicators of a hostile environment include: avoidance of school, classes, or school activities; declining grades; declining participation; sudden loss of friends; physical symptoms; behavior problems; and/or depression or anxiety.

This list is not exhaustive. Each student can react to harassment differently. The key for the purposes of Section 504 harassment is that the student's access to school and/or any school activity is compromised because of the harassment. Thus, a hostile environment would also be found where an administrator prevents a student from attending a field trip because the student has had many absences due to his or her disability.

How do I use Section 504 if my student is being harassed?

Section 504 provides remedies to students who face disability harassment that are triggered by **written notice** to school officials that harassment is occurring. When a school becomes aware that a student with a disability may be being harassed because of his or her disability, the school has specific legal obligations to address the situation.²²

What does Section 504 require the school do when a report of disability harassment is received?

When a school administrator is notified or aware that disability harassment may be occurring, the school must ensure a ***thorough*** and ***prompt*** investigation of the reported incident to determine if disability harassment has occurred or is occurring. Typically, the investigation should include:

²² For specific guidance in notifying the school and addressing harassment using Section 504, see "Action Plan" section of this Guide.

- Student-victim interview (You can request to be present for this interview if the student requires support or assistance in communicating or request that a school professional familiar to your child is present);
- Interview with any witnesses, including school staff, students or others;
- Interview with the alleged bully ensuring that the victim is not exposed to retaliation;
- Interview with teachers/school staff familiar with the student-victim to discuss observation of incidents or changes in student's behavior, demeanor, performance and/or attendance;
- Identification and review of any electronic recordings or evidence of the alleged conduct;
- Reviewing records of the student-victim and perpetrator(s).

What happens if the school's investigation finds that Disability Harassment has occurred or is occurring?

When an investigation verifies that disability harassment under Section 504 has occurred, the school must take prompt and *reasonably* calculated steps to (1) eliminate the hostile environment and (2) prevent recurrence and retaliation. If the investigation finds that the conduct constitutes a crime, the DASA requires the school to report the incident to the police. If the investigation finds that the conduct may involve physical abuse by a school employee or volunteer, the school must report the incident to the police and NYSED.²³

What steps must the school take to eliminate/prevent disability harassment?

Section 504 does not specify or define the actions that must be taken by the school upon a finding of disability harassment, only that such actions be *reasonably calculated* to address and prevent disability harassment. The U.S. Department of Education has repeatedly and

emphatically advised school districts of the harm bullying and harassment causes students with disabilities:

... harassment can seriously interfere with the ability of students with disabilities to receive the education critical to their advancement . . . When disability harassment limits or denies a student's ability to participate in or benefit from an educational institution's programs or activities, the institution must respond effectively. Where the institution learns that disability harassment may have occurred, the institution must investigate the incident(s) promptly and respond appropriately.²⁴

What happens if the school does not find Disability Harassment?

After conducting an investigation, the school administrator may determine that the alleged harassment has not occurred or that the reported conduct does not satisfy the Section 504

²³ Education Law article 23-B. For additional information, see "Abuse by School Personnel" later in this Guide.

²⁴ U.S. Dept. of Education, Office for Civil Rights "Dear Colleague" Letter, July 25, 2000, <http://www2.ed.gov/about/offices/list/ocr/docs/disabharassltr.html>; see also, U.S. Dept. of Education, Office for Civil Rights "Dear Colleague" Letter, Oct. 26, 2010, <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.html>. Copies of both these letters can be found in Appendix A of this guide.

definition of disability harassment. If you agree with this decision, but believe the student is being bullied or otherwise harassed, DASA may apply to the situation.²⁵

In addition, if the student has a 504 Plan, the school may be obligated to provide specific supports and accommodations through those plans to ensure the student is receiving a free appropriate public education.²⁶ Finally, the parent or student may want to request a meeting to discuss any remaining concerns. The parent or student may request that the situation be monitored carefully. The parent or student should send a letter or email to the administrator after the meeting to confirm the concerns that were discussed and any actions the administrator agreed to take.

What if I Disagree with the Decision?

If you disagree with the decision of the school that disability harassment has not occurred or is not occurring, you may file a complaint with the Office for Civil Rights.²⁷

INDIVIDUALS WITH DISABILITIES EDUCATION ACT

The Individuals with Disabilities Education Act (“IDEA”) is a federal law designed to protect the rights of students with disabilities by ensuring that all eligible students with disabilities receive a free and appropriate public education (“FAPE”). School districts provide FAPE by providing special education services which are individualized to meet the unique needs of students with disabilities, and reasonably calculated to provide an educational benefit. Services are reasonably calculated to provide an educational benefit when they are provided in accordance with a proper Individualized Education Program (“IEP”), which is specifically tailored to the unique needs of the student and geared towards preparing the student for further education, employment and independent living.

What is a school’s responsibility under the IDEA with regard to bullying?

Bullying that adversely affects a student’s ability to receive meaningful educational benefit may rise to a denial of FAPE under the IDEA and therefore must be addressed by a school. However, the United States Department of Education has recently advised all school administrators that “even when situations do not rise to a level that constitutes a denial of FAPE, bullying can undermine a student’s ability to achieve his or her full academic potential” and further directs school administrators to effectively prevent and respond to bullying.”²⁸

When does bullying and harassment result in a denial of FAPE?

Bullying or harassment that is so significant that it impacts a student’s ability to participate in any or all aspects of the school day or interferes with his or her ability to make progress in school and/or towards the student’s IEP goals, denies that student a FAPE. The following is a list of

²⁵ For further information, see Dignity for All Students Act in “Overview of Laws” section in this Guide.

²⁶ See “Action Plan” section in this Guide.

²⁷ See “Office for Civil Rights” later in this Guide.

²⁸ U.S. Dept. of Education, Office for Civil Rights “Dear Colleague” letter, August 20, 2013, <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201301-504.html>. A copy this Letter can be found in Appendix A of this guide.

indicators that likely suggest bullying or harassment is depriving the student of meaningful educational benefit:

- Declining grades;
- Declining attendance;
- Declining participation in class or school activities;
- Declining concentration;
- Physical symptoms (headache, nausea, pain) with repeated trips to the school nurse;
- Refusal or resistance to attending school;
- Skipping/ avoiding certain class(es);
- Repeatedly arriving late to class/school or leaving class/school early;
- Social isolation or withdrawal;
- Acting out or behavior problems.

How do I use the IDEA if my student is being bullied or harassed?

IDEA requires school district to develop an IEP for all eligible students with disabilities. When bullying or harassment is interfering with a student's ability to make progress at school, the student's IEP can be a very effective means of identifying the student's needs related to the bullying and ensuring that appropriate services, supports and accommodations are provided.²⁹

²⁹ For guidance on working with the school to address bullying and harassment through the student's IEP see 'Action Plan' section of this Guide.

CHART ON BULLYING LAWS

Laws that Address Bullying and Harassment of Students with Disabilities

<u>Law-Based Strategy</u>	<u>Applies To:</u>	<u>Does Not Apply If:</u>
Dignity for All Students Act (DASA)	<ul style="list-style-type: none"> • All students, with or without disabilities • All NY public and charter schools • Conduct that occurs on school property or at a school-sponsored event <ul style="list-style-type: none"> ○ Limited exception to this rule for cyberbullying 	<ul style="list-style-type: none"> • Bullying conduct occurs off school property or outside of school –sponsored activity • Student attends private school at parent expense
Section 504 of the Rehabilitation Act of 1973	<ul style="list-style-type: none"> • All students with disabilities • All schools that receive federal funds (directly or indirectly), i.e., all public schools and many private schools • Conduct that occurs on school property or at a school sponsored event 	<ul style="list-style-type: none"> • Bullying or harassing conduct does not meet the definition of “Disability Harassment” under 504 • To qualify as “disability harassment”: <ol style="list-style-type: none"> 1. Intimidation or abusive conduct 2. Based on student’s disability 3. Occurs on school property or at school function 4. Creates a “hostile environment”
Individuals with Disabilities Education Act	<ul style="list-style-type: none"> • Only students with disabilities who are classified under IDEA and have an IEP • All NY public schools • Students in private schools who have an IEP • Conduct that interferes with the student’s ability to gain educational benefit at school 	<ul style="list-style-type: none"> • Students who do not have an IEP

ACTION PLAN FOR STUDENTS, PARENTS AND ADVOCATES FOR ADDRESSING BULLYING & HARASSMENT AT SCHOOL

It is normal for victims of bullying and their parents to want to “go after” the bully and demand “justice” from the school district. However, emotionally charged confrontations with the alleged bully, his or her parents and/or the school administration are often unproductive and could aggravate the situation. Instead, keep your focus on the needs of the student-victim and use the laws and procedures available to address the situation.

This section provides a four-step Action Plan for effectively advocating for a student with a disability who is being bullied and harassed at school. The strategies included in the Action Plan capitalize on the Federal and State laws and procedures that govern bullying and harassment of students with disabilities.

STEP 1: DOCUMENT THE BULLYING AND HARASSMENT

Bullying and harassment are rarely isolated incidents. In most cases, there is a pattern of conduct that starts with minor or occasional incidents that escalate over time. It is important for parents to document all incidents of conflict, bullying and harassment, preferably at the time each incident occurs. This documentation should be in writing, detailing who, what, where and when as well as the impact on the student and the outcome of any strategies used to address the situation. If a teacher or administrator is aware of the incident, keep notes regarding any communications with school employees. This information can prove extremely useful in establishing the nature and severity of bullying, developing effective interventions and supporting formal remedies such as complaints, due process hearings and/or litigation in the event such legal actions become necessary or appropriate.

STEP 2: NOTIFY THE SCHOOL DISTRICT AND REQUEST INTERVENTION

When a school becomes aware that a student with a disability may be being bullied or harassed, the school has specific legal obligations to address the situation. At minimum, the school must conduct an investigation.³⁰ Therefore, it is critical that parents (of the student, if appropriate) notify the appropriate school officials *in writing* that bullying and harassment is or may be occurring. The letter or email providing notice should include the following information:

- Student’s name, school and grade;
- Identification of the student as a student with a disability and whether the student had an Individualized Education Program (IEP) or a 504 Plan;
- Specific description of all incident(s) and/or conduct about which you are concerned, including details about *where* and *when* the incidents occurred, *what* was said or done,

³⁰ See “Overview of Laws and School Obligations” section in this Guide.

and **who** was involved or witnessed the incident(s), including identification of the perpetrator(s), if known. Include all incidents, even if they are minor;

- Description of how the bullying and/or harassment has impacted (or is impacting) the student and how the conduct is interfering with the student's participation in school or school activities;
- Statement that you believe the student is being bullied and harassed based on disability in violation of the Dignity for All Students Act and Section 504 of the Rehabilitation Act of 1973;
- Request that the school conduct a prompt and thorough investigation and take immediate steps to eliminate the bullying and harassment and prevent it from reoccurring;
- Request for an opportunity to discuss the outcome of the investigation and the steps the administration will be taking to address the situation and prevent future incidents;
- If the student has an IEP or 504 Plan, request that a CSE meeting or 504 Team meeting be scheduled as soon as possible to address the impact of bullying and harassment and determine if additional supports are needed;
- Your contact information and preferred method of communication.

The letter or email should be sent to the principal/administrator of the school the student attends. The administrator who is responsible for the student's IEP or 504 Plan (i.e. CSE Chairperson or 504 Coordinator) should receive a copy of the letter or email. If the alleged bully is a school employee or the bullying involves severe conduct or injury, the Superintendent should also be copied on the letter or email. A **Sample Letter** can be found in Appendix B of this Guide.

STEP 3: WORK WITH SCHOOL ADMINISTRATORS TO ADDRESS AND PREVENT BULLYING &/OR HARASSMENT

When an investigation verifies a material incident of bullying or harassment under DASA or verifies conduct that constitutes disability harassment, as defined by Section 504, the school administration must "take prompt action, reasonably calculated to end the harassment, bullying, and/or discrimination, eliminate any hostile environment, create a more positive school culture and climate, prevent recurrence of the behavior, and ensure the safety of the student or students against whom such behavior was directed."³¹

What role can I plan in developing a response to the bullying or harassment?

While the responsibility for addressing the bullying lies with the school, the school administration should be working collaboratively with the parents (and the student, if appropriate) to develop an appropriate response. If the school does not voluntarily attempt to involve parent and/or student, the parent can request a meeting with the administrator(s) to review the outcome of the investigation and develop a response plan. Keep in mind that the school is not generally permitted to disclose identifying information about the perpetrator or the details of any disciplinary action against him or her. However, the student-victim and parents should be given enough details regarding the bullying incident(s) to meaningfully participate in the development of an effective administrative response. This information is also essential when working with the CSE or the student's 504 Team to address and prevent bullying.³²

³¹ See NYSED, *The Dignity for All Students Act, Guidance for Updating Codes of Conduct* <http://www.p12.nysed.gov/dignityact/documents/DASACodeofConductGuidance.pdf> (June 2013).

³² For more information see "Action Plan" (Step 4) section in this Guide.

What kind of things can the school do to address bullying, harassment and/or discrimination against the student and prevent it from happening again?

There are no specific required interventions the school must take when there is a finding of bullying, harassment and/or discrimination. However, the school is required to take steps that a reasonable person would consider appropriate to address the situation and prevent recurrence. Generally, schools may take a variety of steps to meet its obligations, such as:

- Disciplinary action against the perpetrator;
- Use of an adult monitor to keep an eye on the activities of the perpetrator(s);
- Counseling for the perpetrator(s);
- Counseling for the student-victim;
- Adult monitoring at times and/or locations when the student is vulnerable (e.g., bus, recess, bathroom);
- Separating victim and perpetrator;
- Pass that allows student-victim to leave class early or arrive at class late to avoid halls and busy transitions;
- Written plan or protocol for student-victim that identifies specific personnel the student should contact (e.g. counselor, teacher, nurse, administrator) and places the student can go (e.g. nurse's office, social worker's office, main office) if the student is feeling anxious or threatened. Adults that are part of the safety plan should be responsible for reporting issues and incidents to the designated administrator.

How can I ensure these interventions will be provided?

Bullying investigations and outcomes are usually handled by school administrators. This means the teachers and staff providing direct supervision of the student-victim may not be fully aware of the situation or the plan to address and prevent future incidents. Therefore, it can be very beneficial to request a team meeting that includes all the adults who are responsible for the student's safety at school throughout the day. This includes all of the student's teachers, related service providers, hall and lunch monitors, and administrator(s). If the bullying is occurring on the bus, then bus drivers and bus aides should be included as well.

There are several benefits for holding a team meeting when bullying and harassment is occurring at school:

- Increased awareness and monitoring of the student throughout the school day;
- All team members are aware of what conduct is considered bullying and what is expected of them to prevent and address bullying. This can be helpful if one or more team players is less sensitive to bullying or believes some bullying is "normal;"
- Team, parent and student (if appropriate) can work together to develop or improve a **written** Safety Plan that includes all steps and interventions that will be taken to address the bullying and prevent recurrence. While most parents want the bullying to end, the school team usually has the experience to know what strategies are effective and the resources available to assist in prevention.

Be sure to request a copy of the agreed upon Safety Plan and review it carefully. If the plan does not include the interventions or actions discussed, contact the administrator to resolve the inconsistencies.

Advocacy Tip . . .

If some members of the student's team are unable to participate in the meeting (and this is likely), then an administrator or other school staff member should be designated to share the background information and Safety Plan developed at the meeting with those who cannot attend.

STEP 4: Work with the CSE or 504 Team

An important tool available to students with disabilities and their parents/guardians to address bullying and harassment is the student's Individualized Education Program (IEP) or 504 Plan. Both of these documents are prescribed by federal laws that ensure that students with disabilities receive a free appropriate public education free from bullying or harassment that adversely impacts the student's ability to participate in, or benefit from, school and school activities.³³ These laws also provide specific procedures and safeguards for students and parents in the event the school is not providing the student with a FAPE.

STUDENTS WITH IEPs

How can I use the student's IEP to address bullying and harassment?

When it has been determined that bullying and/or disability harassment has occurred or is occurring, a meeting of the Committee on Special Education (CSE) should be held promptly.³⁴ If a CSE meeting is not already scheduled, make a request, in writing, for an emergency CSE meeting to (1) discuss the impact of the bullying and/or harassing conduct on the student; (2) determine if the conduct has caused the student's academic, social, and physical needs to change; (3) determine if the student requires any changes in special education services, supports and accommodations; and (4) amend the IEP, as needed, to reflect these determinations.

What if the school refuses or unreasonably delays convening a CSE meeting?

The IDEA gives students, parents and schools the right to request a review of the student's IEP by the CSE at any time. With limited exceptions, the requested CSE meeting must occur within 60 days of the request. In a situation involving bullying and/or harassment, the need to make changes to the student's IEP may be urgent. The school cannot simply rely on anti-bullying policy to fulfill its responsibilities for providing FAPE under the IDEA. If the school denies the request for a CSE meeting or refuses to convene the meeting within a reasonable time, contact the school, in writing. Your letter should include the following:

³³ While both the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act of 1973 require schools to provide students with disabilities a "free appropriate public education", each law defines FAPE differently. Under the IDEA, FAPE means the child is receiving meaningful educational benefit 20 U.S.C. § 1401(9). Section 504 defines FAPE as an education comparable to that provided to students without disabilities (29 U.S.C. § 794).

³⁴ If you have followed the suggested Action Plan in this Guide, you may have already requested a CSE meeting when you initially notified the school of your concerns about bullying and/or disability harassment. See "Action Plan" (Step 2) in this Guide.

- Statement that you disagree with the school’s decision and believe the student’s special education needs have changed;
- Statement that you continue to believe a meeting is needed;
- An explanation of how the bullying has/is impacting the student academically, socially, physically and/or behaviorally;
- Specify any specific areas of vulnerability to bullying or harassment the student may have related to his or her disability (e.g., poor social or pragmatic skills, physical limitations, cognitive impairment, etc.);
- Request that a meeting be held by a certain date;
- Request a written response explaining the reasons for any continued denial of your request for a meeting.

In the unlikely event the school continues to refuse a CSE meeting:

- Meet with the principal or superintendent to discuss interventions to address the bullying and/or harassment if you have not done so already;³⁵ **and**
- Consider using your Procedural Safeguards, including filing a complaint with the NY Department of Education, mediation, and/or requesting an impartial hearing.³⁶

What can I do to prepare for the CSE meeting?

It is always a good idea to prepare for a CSE meeting in advance. For a meeting convened for the purpose of addressing bullying or harassment, consider the following:

- Request that the building administrator that handles bullying matters is present at the meeting;
- If a Safety Plan or other written plan has been developed by the school administration (non-CSE), make sure the CSE Chairperson has copy in advance of meeting;
- Send copies of any new information or recommendations from outside professionals to the CSE Chairperson in advance;
- Review the student’s current IEP and most recent IEP goal progress report;
- Identify your specific concerns regarding the student’s needs or vulnerabilities with regard to bullying and being susceptible to bullying;³⁷
- Bring a support person to take notes and keep you focused on the student and the IEP. Bullying is a highly emotional issue.

What should I expect at the meeting?

Since the primary purpose of the meeting is to assess the impact of bullying and/or harassment on the student and determine if changes to the IEP are needed, the focus should be on the

³⁵ See “Action Plan” (Step 3) in this Guide.

³⁶ For a comprehensive explanation of these options and related procedures, see *Special Education in Plain Language* at www.nyspecialtaskforce.org.

³⁷ Consider using a meeting agenda form to help you identify, explain and discuss concerns. A sample Meeting Agenda form can be found in Appendix C of this Guide.

student, not the bully or what the school has or hasn't done. Essential discussion questions include:

- How has the bullying and/or harassment affected the student? Have there been any changes in academic performance, attendance, social relationships, social functioning, emotional status, physical needs? The Present Levels of Performance Section of the IEP should be amended to reflect any identified changes or needs.
- Does the student's disability make him or her more vulnerable to bullying? What skills, if any, would help the student be less vulnerable? Common IEP goals for students vulnerable to bullying focus on improving skills in: socializing with peers, communicating effectively, understanding social norms, self-advocacy, valuing self, responding to bullying, following a safety plan, and reporting bullying. This list is not exhaustive! If additional skill building is needed, the CSE should develop measurable annual goals for those skills and amend the IEP to incorporate those goals.
- Does the student require additional services, supports and/or accommodations to (1) address the impact of the bullying; (2) prevent future bullying; (3) build needed skills; and/or (4) keep the student safe? The IEP should be amended to include all additional or modified services, supports and accommodations.

What types of services, supports and accommodations would be helpful to address and prevent bullying?

Just as each student and each student's experience of, and reaction to, bullying and harassment is unique, there are limitless IEP-related interventions that can address the student's needs. Therefore, the team should work to incorporate individualized supports for each student impacted by bullying or harassment. The following is a list of supports that are commonly incorporated in an IEP to address bullying and/or harassment:

- Training for the student on how to follow his or her safety plan and ongoing monitoring to ensure plan is being used and is effective;
- Daily check-in with a trusted adult to report and discuss any issues or incidents of bullying;
- Counseling with school psychologist or social worker to improve self-esteem, build social and self-advocacy skills, address effects of bullying, etc.;
- Speech-language therapy to improve social communication skills;
- Social skills groups;
- Allow the child to leave class a few minutes early or arrive a few minutes late to avoid hallway confrontations;
- Provide student with a hall pass that allows the student to seek out a designated adult or office if the student is feeling anxious or to report an issue;

- Adult Monitor to loosely shadow the student at times and places where bullying is occurring and provide intervention when needed. However, the adult should be as unnoticeable as possible;
- Periodic team meetings or other consistent communication protocol that includes parents to monitor progress and problems;
- Consultation with an outside professional familiar with the student or having expertise in the student's area of disability and the impact of bullying;
- Training for staff and classmates about the student's disability to foster a better understanding of the student and the supports used by the child (e.g. assistive technology, aide) by a person with expertise in the student's type of disability. **CAUTION:** Due to confidentiality rights, this intervention should only be used with the student and parent's consent and the parent and student (if appropriate) should be included in the planning of the training.

Keep in mind that the IEP must address the disability-related needs and goals of the particular student. Therefore, the IEP cannot include interventions such as keeping the bully away from the student as that involves directing the activities of another student. While separating the victim and bully may be useful, that type of intervention can only be implemented and enforced by the school administration.

Are there any types of interventions that should be avoided?

While each student and situation is unique, interventions that exclude or isolate the student, or deprive the student of the opportunity to access particular activities or places are often inappropriate and may be discriminatory. For example, a proposal to allow the student-victim to go to the computer room or spend time with a preferred teacher instead of going to recess on the playground may initially seem like a good idea, but in reality, it is isolating the student, denying the student access to opportunities to socialize, get exercise, and practice social skills. Careful consideration should be given to any intervention that separates a student from his or her regular classmates and environment. Such interventions may be appropriate on a very temporary basis while the school develops or implements a safety plan or other actions to address the bullying, but should never be long term.

In addition, the CSE should ensure that the student-victim remains in his or her current placement unless the CSE, including parents, determines that the student can no longer receive FAPE in the placement even with maximum use of special education services, supplementary aids and supports, and accommodations. This is required by the IDEA's requirement that students with disabilities must be educated in the Least Restrictive Environment(LRE).³⁸

What can I do if the CSE makes recommendations and I don't agree?

The IDEA includes a variety of "Procedural Safeguards" to protect the rights of students and their parents/guardians including procedures for disputing a CSE decision or recommendation. Procedural safeguards that may be useful in disputes involving bullying include:

³⁸ For further information on LRE requirements, see *Special Education In Plain Language* at www.nyspecialtaskforce.org.

- Prior Written Notice;
- Independent Educational Evaluation;
- Mediation;
- Complaint to NY Education Department;
- Impartial Due Process Hearing.³⁹

What happens after the CSE meeting?

If the CSE determines that changes to the student's IEP are needed, you should receive a revised IEP that reflects those changes. Be sure to carefully review the revised IEP to ensure that it includes the changes discussed and agreed to. If the IEP does not reflect the agreed upon changes, send a letter or email to the CSE chairperson detailing the discrepancies and requesting correction.

Continue to monitor the student's progress at school and the school's implementation of the services, supports and accommodation identified in the IEP. Contact the CSE chairperson, in writing, with any issues as they arise. If the bullying or harassment continues, it may be necessary for the CSE to reconvene and modify the IEP.

STUDENTS WITH 504 PLANS

How can I use the student's 504 Plan to address bullying and harassment?

When it has been determined that bullying and/or disability harassment has occurred or is occurring, a 504 Team meeting should be held promptly.⁴⁰ If a 504 meeting has not been scheduled, then make a request, in writing, for an emergency 504 meeting to (1) discuss the impact of the bullying and/or harassing conduct on the student; (2) determine if the conduct has caused the student's disability-related needs to change; (3) determine if the student requires any new or different accommodations; and (4) amend the 504 Plan, as needed, to reflect these determinations.

What if the school refuses or unreasonably delays convening a 504 TEAM meeting?

In a situation involving bullying or harassment, the need to make changes to the student's 504 Plan may be urgent. The school cannot simply rely on its anti-bullying policy to fulfill its responsibilities for providing an appropriate, non-discriminatory education under Section 504. If the school denies the request for a 504 meeting or refuses to convene the meeting within a reasonable time, contact the school's 504 Coordinator, in writing. Your letter should include the following:

- Statement that you disagree with the school's decision and believe the student's disability-related needs have changed;

³⁹ Each of these procedural safeguards is explained thoroughly in *Special Education in Plain Language* at www.nyspecialtaskforce.org.

⁴⁰ If you have followed the suggested Action Plan in this *Guide*, you may have already requested a 504 Team meeting when you initially notified the school of your concerns about bullying and/or disability harassment. See "Action Plan" (Step 2) in this Guide.

- Statement that you continue to believe a meeting is needed;
- An explanation of how the bullying has/is impacting the student academically, socially, physically and/or behaviorally;
- Specify any specific areas of vulnerability to bullying or harassment the student may have related to his or her disability (e.g., poor social or pragmatic skills, physical limitations, cognitive impairment, etc.);
- Request that a meeting be held by a certain date;
- Request a written response explaining the reasons for any continued denial of your request for a meeting.

In the unlikely event the school continues to refuse a 504 meeting:

- Meet with the principal or superintendent to discuss administrative interventions to address the bullying and/or harassment if you have not done so already⁴¹; and
- Contact the school's 504 Compliance Officer, in writing, and request a copy of the district's 504 Grievance Policy. Follow the procedures in that Policy.

What can I do to prepare for the 504 Team meeting?

It is always a good idea to prepare for a 504 meeting in advance. For a meeting convened for the purpose of addressing bullying or harassment, consider the following:

- Request that the building administrator that handles bullying matters is present at the meeting;
- If a safety plan or other written plan has been developed by the school administration, make sure 504 chairperson has copy in advance of meeting;
- Send copies of any new information or recommendations from outside professionals to the 504 chairperson in advance;
- Review the student's current 504 Plan;
- Identify your specific concerns regarding the student's needs or vulnerabilities with regard to bullying and being susceptible to bullying;⁴²
- Bring a support person to take notes and keep you focused on the student and the 504 Plan. Bullying is a highly emotional issue.

⁴¹ See "Action Plan" (Step 3) in this Guide.

⁴² Consider using a Meeting Agenda form to help you identify, explain and discuss concerns. See Appendix C in this Guide for a Sample Meeting Agenda form.

What should I expect at the meeting?

Since the primary purpose of the meeting is to assess the impact of bullying and/or harassment on the student and determine if changes to the 504 Plan are needed, the focus should be on the student, not the bully or what the school has or hasn't done. Essential discussion questions include:

- How has the bullying and/or harassment affected the student? Have there been any changes in academic performance, attendance, social relationships, social functioning, emotional status, physical needs?
- Does the student's disability make him or her more vulnerable to bullying? What skills, if any, would help the student be less vulnerable? Consider the student's social, pragmatic, and self-advocacy skills as well as his/her ability to follow a safety plan and reporting bullying. This list is not exhaustive.
- Does the student require additional accommodations to (1) address the impact of the bullying; (2) prevent future bullying; and/or (3) keep the student safe? The 504 Plan should be amended to include all additional or modified accommodations.

What types of accommodations would be helpful to address and prevent bullying?

Just as each student and each student's experience of, and reaction to, bullying or harassment is unique, there are limitless accommodations that can address the student's needs. Therefore, the team should work to incorporate individualized supports for each student impacted by bullying or harassment. The following is a list of supports that are commonly incorporated in a 504 Plan to address bullying and/or harassment:

- Training for the student on how to follow his or her safety plan and ongoing monitoring to ensure plan is being used and is effective.
- Providing a daily "check-in" with a trusted adult to report and discuss any issues or incidents of bullying.
- Providing counseling with school psychologist or social worker to improve self-esteem, build social and self-advocacy skills, address effects of bullying, etc.
- Providing access to social skills groups.
- Allowing the child to leave class a few minutes early or arrive a few minutes late to avoid hallway confrontations.
- Providing the student with a hall pass that allows the student to seek out a designated adult or office if the student is feeling anxious or to report an issue.
- Assigning an Adult Monitor to loosely shadow the student at times and places where bullying is occurring and provide intervention when needed. However, the adult should be as unnoticeable as possible.

- Holding periodic team meetings or agreeing on another consistent communication protocol that includes parents to monitor progress and problems.
- Consulting with an outside professional familiar with the student or having expertise in the child's area of disability and the impact of bullying.
- Training for staff and classmates about the student's disability to foster a better understanding of the student and the supports used by the child (e.g. assistive technology, aide) by a person with expertise in the student's type of disability. **CAUTION:** Due to confidentiality rights, this intervention should only be used with the student and parent's consent and the parent and student (if appropriate) should be included in the planning of the training.

Keep in mind that the 504 Plan must address the disability-related needs of the particular student. Therefore, the 504 Plan cannot include interventions such as keeping the bully away from the student as that involves directing the activities of another student. While separating the victim and bully may be useful, that type of intervention that can only be implemented and enforced by the school administration.

Are there any types of interventions that should be avoided?

While each student and situation is unique, interventions that exclude or isolate the student, or deprive the student of the opportunity to access particular activities or places are often inappropriate and may be discriminatory. For example, a proposal to allow the student-victim to go to the computer room or spend time with a preferred teacher instead of going to recess on the playground may initially seem like a good idea, but in reality, it is isolating the student, denying the student access to opportunities to socialize, get exercise, and practice social skills. Careful consideration should be given to any intervention that separates a student from his or her regular classmates and environment. Such interventions may be appropriate on a very temporary basis while the school develops or implements a safety plan or other actions to address the bullying, but should never be long term.

What can I do if the 504 Team makes recommendations I don't agree with or refuses to provide accommodations?

Section 504 of the Rehabilitation Act requires schools to have a written grievance procedure to challenge decisions related to all aspects of a 504 Plan. Simply request the school's Grievance Policy and follow it.

Another option to challenge a 504-related decision is to file a complaint with the U.S. Office for Civil Rights (OCR). OCR is charged with enforcing Section 504.⁴³

Finally, students and parents who disagree with a 504-related decision may use due process and seek an impartial hearing. The impartial hearing process for school-related 504 matters is essentially the same as the process detailed in the Individuals with Disabilities Education Act.⁴⁴

⁴³ For more information, see "File a Complaint with the Office for Civil Rights" in the "Legal Remedies" section in this Guide.

⁴⁴ For further information on impartial hearings, see "Initiate an Impartial Hearing Under IDEA" in "Legal Remedies" section in this Guide.

What happens after the 504 meeting?

If the 504 Team amends the student's 504 Plan, the school should provide a revised 504 Plan that reflects those changes to the parent. The parent should carefully review the revised Plan to ensure that it includes the changes discussed and agreed to. If the 504 Plan does not reflect the agreed upon changes, send a letter or email to the 504 team coordinator detailing the discrepancies and requesting correction.

Continue to monitor the student's progress at school and the school's implementation of the accommodations identified in the 504 Plan. Contact the 504 Coordinator, in writing, if any issues arise as they arise. If the bullying or harassment continues, it may be necessary for the 504 Team to reconvene and modify the 504 Plan.

LEGAL REMEDIES IF SCHOOL IS NOT RESPONDING OR RESPONSE INEFFECTIVE

In most cases, parents and schools are able to work effectively together to address and prevent bullying. However, if the school is unresponsive or the bullying and/or harassment continues even with some intervention, formal legal remedies may be appropriate. This section provides information on the most common of these remedies.

FILE A COMPLAINT WITH THE OFFICE FOR CIVIL RIGHTS

The U.S. Office for Civil Rights (“OCR”) is authorized to enforce Section 504 of the Rehabilitation Act as well as the Americans With Disabilities Act and resolve complaints of discrimination, including discrimination resulting from disability harassment. To initiate an investigation by OCR, a complaint must be filed by the student or a person or entity acting on the student’s behalf. The complaint can be filed online at <http://www2.ed.gov/about/offices/list/ocr/complaintintro.html> or filed by mail. The complaint should provide the following information:

- Name, age, address of student;
- Name of school or school district where harassment is occurring and address;
- Your name and relationship to the student;
- Description of the discrimination /disability harassment;
- Description of how the harassment/discrimination has impacted the student’s access or participation in school and/or school activities;
- Optional: if you notified the school in writing regarding your concerns, you may want to include that letter;
- Optional: summary of school’s response to notice of suspected disability harassment (e.g. the school did not investigate; the school refused to address or prevent the harassment; the school’s intervention did not work and the harassment is still occurring).

Complaints to OCR must be filed within 180 calendar days of the discriminatory conduct. In limited circumstances, OCR will waive the time restriction.⁴⁵

What happens after I file a complaint with OCR?

OCR evaluates each complaint that it receives in order to determine whether it can investigate the complaint. OCR makes this determination with respect to each allegation in the complaint. If OCR needs more information in order to clarify the complaint, it will contact the complainant; the complainant has 20 calendar days within which to respond to OCR’s request for information.

If OCR determines that the complaint is timely and meets other jurisdictional requirements, it will notify the complainant and the school. OCR will then conduct an investigation including collecting and analyzing relevant evidence from the complainant, the school, and other sources

⁴⁵ For further information and instructions regarding filing an OCR complaint, see <http://www2.ed.gov/about/offices/list/ocr/complaintintro.html>.

as appropriate. In some cases, OCR will ask the parties to engage in Early Complaint Resolution, a process facilitated by OCR with the goal of assisting the parties in resolving the allegations in the complaint. Sometimes, just the filing of the complaint will prompt the school to resolve the issues directly with the student or parent or OCR.

In any case, if resolution has not been achieved by the conclusion of the investigation, and OCR concludes that the school has violated Section 504 (or the ADA), OCR will attempt to secure a voluntary resolution agreement but will take all necessary steps to ensure that the school will take specific remedial actions to address the area(s) of noncompliance identified by OCR. OCR will then monitor the school's compliance.⁴⁶

Advocacy Tip . . .

Advising the school that you are considering filing an OCR complaint may prompt the school to re-evaluate your concerns and/or the school's response. Consider sending a letter or email detailing your concerns about how the situation has been handled and what you would like to see happen. End the letter by stating that if the situation cannot be resolved, you will be left with no choice but to file a complaint with the Office for Civil Rights based on disability harassment and discrimination on a specific date (perhaps 5 – 10 days from the date of letter).

FILE A COMPLAINT WITH THE NYSED

A complaint to the New York State Education Department (NYSED) is a remedy available under the Individuals with Disabilities Education Act (IDEA). Therefore, this option is only applicable to students with IEPs or students who have been evaluated under the IDEA but found ineligible for IDEA services. If you, or any other individual or organization believes that a school has made a decision that adversely affects the student's right to a free appropriate public education, a written complaint may be submitted to the NYSED.

The complaint must include:

- a statement that a school district or public agency has violated a requirement of Part B of IDEA or State law/regulation related to students with disabilities;
- the facts on which the statement is based;
- the signature and contact information of the person filing the complaint;
- if alleging violations with respect to a specific child, include:
 - the name and address of the residence of the child;
 - the name of the school the child is attending;
- in the case of a homeless child or youth, available contact information for the child and the name of the school the child is attending;
- a description of the nature of the problem of the child; and
- a proposed resolution of the problem to the extent known and available.⁴⁷

⁴⁶ For further information about how OCR handles complaints, see <http://www2.ed.gov/about/offices/list/ocr/complaints-how.html>.

⁴⁷ New York State Education Department has an optional form that can be used to submit a complaint at <http://www.p12.nysed.gov/specialed/formsnotices/samplecomplaint.htm>. You do not need to use this form, but any other form of complaint must provide the required information, as appropriate, as indicated on the sample form. 8 NYCRR 200.5(l).

Advocacy Tip . . .

In the case of bullying and harassment, the complaint should include: (1) a description of the bullying and harassment that has occurred; (2) how it has interfered with the student's right to receive educational benefit at school and; (3) the school district's decision or action or failure to act that fails to address the bullying and thereby deprives the student of FAPE.

Are there are time restrictions on filing a complaint with the NYSED?

The NYSED will not consider complaints about violations that occurred more than one year ago. Therefore your complaint should be filed as soon as possible after the violation but must be filed within one year of the violation.⁴⁸

What happens after the NYSED receives a complaint?

After the NYSED receives your written complaint, it will conduct an investigation to determine if the alleged decision violated the IDEA or relevant state laws. The NYSED will issue a written decision of its findings. If one or more violations are found, the NYSED will require the school district to take appropriate steps to remedy each violation and, in some instances, monitor the school to ensure compliance in the future. In some instances, the NYSED may require the school district to provide compensatory services to “make up” missed instruction or services resulting from the misconduct.

For additional information and guidance on filing a NYSED complaint, see *Special Education in Plain Language*, www.nyspecialedtaskforce.org.

Advocacy Tip . . .

The Special Education Quality Assurance Office of the NYSED is charged with investigating complaints and ensuring compliance with IDEA and state special education laws. The Office has regional offices staffed by Associates who can offer technical assistance to parents and school districts. Before filing a formal complaint with the NYSED, you may want to contact your Regional Quality Assurance Office for assistance in resolving this matter. It may be helpful to advise the Office that you are considering filing a formal complaint with the NYSED but are exploring ways to resolve the issue before resorting to that action.

INITIATE AN IMPARTIAL HEARING UNDER IDEA

An impartial due process hearing is a **formal** legal process where the disagreements between you and the school are presented to, and decided by, an Impartial Hearing Officer (“IHO”). For disagreements related to IEPs and the Individuals with Disabilities Education Act (IDEA), an impartial hearing can be held regarding any matter relating to the identification, evaluation or educational placement of your child, or the provision of a free appropriate public education to the student.⁴⁹ For disagreements related to students with 504 Plans, an impartial hearing can be held regarding any matter related to the 504 Plan and/or its implementation. The procedures for

⁴⁸ 8 NYCRR 200.5(l)(1)(iii).

⁴⁹ 8 NYCRR 200.5(j)

impartial hearings under the IDEA and Section 504 are very similar.

For further information and guidance on impartial due process hearings, see *Special Education in Plain Language*, www.nyspecialedtaskforce.org.

PURSUE CIVIL LITIGATION AGAINST THE SCHOOL DISTRICT⁵⁰

Suing a school based on alleged disability discrimination and harassment is a serious and daunting remedy, but one that is both effective and necessary in a limited number of cases. Monetary damages may be available if the case is successful. In order for a school to be civilly liable for violations of Section 504 (and the ADA in some circumstances), the plaintiff (student) must prove the basic elements of disability harassment (intimidation or abusive behavior towards a student by another student, or school employee, based on the student's disability that creates a hostile environment at school or at a school-sponsored event) **and** at least one school administrator had written notice of the alleged harassment **and** that the school was **deliberately indifferent** to the harassment. Deliberate indifference generally means that the school's response (or failure to respond) to the harassment "is clearly unreasonable in light of the known circumstances".⁵¹

Advocacy Tip. . .

If considering civil litigation under Section 504 or other laws, it is strongly recommended you consult an attorney with expertise in civil rights litigation prior to taking any formal action. Also note that there are specific requirements and time limitations for notifying a school district of any intent to pursue litigation. Failure to file a claim prior to the expiration of these timelines will likely preclude a party from bringing the claim entirely, therefore, early consultation with an attorney is recommended.

⁵⁰ In addition to Section 504 and the ADA, disability harassment and abusive conduct that creates a hostile environment or otherwise deprives a student of an education may be the basis for Constitutional and related claims as well as state tort actions. Discussion of such laws and claims are beyond the scope of this *Guide*. It is recommended that an attorney with expertise in civil rights litigation be consulted to fully explore all potential claims and the merits of a particular case.

⁵¹ *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629, 648 (1999).

SPECIAL SITUATIONS

CYBERBULLYING

What is cyberbullying?

Cyberbullying, (also referred to as online social cruelty or electronic bullying) is harassment or bullying by any form of electronic communication, and include incidents occurring off school property that create or would foreseeably create a risk of substantial disruption within the school environment. Cyberbullying can involve: sending mean, vulgar, or threatening messages or images; posting sensitive, private information about another person; pretending to be someone else in order to make that person look bad; (or) intentionally excluding someone from an online group.⁵² Cyberbullying occurs when students use technology, usually computers or cell phones, to harass, threaten, humiliate, or hassle peers. It has been hard for researchers to determine how often cyberbullying occurs because the definition of cyberbullying varies. One study found that 20% of students said they repeatedly made fun of or repeatedly picked on another student through email or text message.⁵³ Another study found that 42% of students have been bullied while online and one in four has had it happen more than once.⁵⁴

Why is cyberbullying different than other bullying?

The New York State Education Department (NYSED) has identified cyberbullying as an increasing concern to educators, administrators, students, and parents.⁵⁵ The threat of cyberbullying is 24/7 and without geographic boundaries. Two-thirds of youth go online every day and this online forum allows for anonymity –it is easier to bully using typed words rather than spoken words face-to-face. Cyberbullying creates an illusion of anonymity because cyberbullies cannot see their victim/s or the resulting harm or pain caused towards others; and the recipient does not know whom to trust. Adults are often slow to respond to cyberbullying often because the bully is unknown. This promotes the belief in students that there are little or no consequences for their actions. Cyberbullies are able to quickly disseminate harmful information to a large group of individuals before any action can be taken. Removing the harmful information from service provider websites or electronic format is time consuming and the time it takes means that bullying is ongoing.

Is a school required to address cyberbullying that occurs at school?

Yes, NYS law requires each school district adopt a Code of Conduct so that it addresses internet and electronic device safety issues including cyberbullying and sexting. Since the description of cyberbullying is not in statute, regulation, and/or case law, the NYSED has recommended the use the NYS Department of Criminal Justice Services (NYSDCJS) definition. NYSDCJS defines cyberbullying as “the repeated use of information technology, including e-mail, instant message, blogs, chat rooms, pagers, cell phones, and gaming systems, to deliberately harass, threaten or

⁵² <http://stopbullyingnow.hrsa.gov/adults/cyber-bullying.aspx>.

⁵³ Sameer Hinduja and Justin W. Patchin, Cyberbullying Research Center, *Cyberbullying: Identification, Prevention, and Response* (2010).

⁵⁴ i-SAFE America Inc. is the worldwide leader in the Internet - <http://isafe.org/>.

⁵⁵ http://www.p12.nysed.gov/technology/internet_safety/documents/cyberbullying.html.

intimidate others.”⁵⁶ A student’s violation of the school’s Code of Conduct subjects the student to disciplinary action by the school. Disciplinary or referral actions include the following:

- Referral to counseling;
- Teacher removal;
- Suspension from class or activities; in-school equivalent of one full day; Activities or transportation for five (5) consecutive school days;
- Out of school suspension: equivalent of one full day;
- Transfer to alternative setting; or
- Transfer to law enforcement.⁵⁷

NYSED advises that a school’s code of conduct include statements that make it abundantly clear that cyberbullying is a form of electronic aggression and that it is inappropriate and will not be tolerated on school grounds or at school-sponsored events or functions, using either school or personal information technology equipment.

What can schools do to stop cyberbullying?

School districts are required to follow all of the requirements set forth in this guide to address bullying. The recent passage of the New York State Education Law on Internet Safety and Appropriate Use (Ed Law Section 814) requires that students be educated in safe and appropriate use of Internet technology and resources.⁵⁸ The United States Department of Health and Human Services (HHS) also advises that schools

- Educate students, teachers, and other staff members about cyberbullying;
- Be sure that the school’s anti-bullying rules and policies address cyberbullying;
- Closely monitor students’ use of computers at school;
- Use filtering and tracking software, but don’t rely solely on this software, to screen out cyberbullying and other problematic online behavior;
- Investigate reports of bullying and cyberbullying immediately
 - Notify parents of all children involved;
 - Closely monitor the behavior of affected students;
 - Investigate to see if the victim could use some support.⁵⁹

Can a student be disciplined for cyberbullying at home or out of school?

Yes. A major challenge for school administrators related to cyberbullying is how to legally and effectively deal with behavior and/or incidents that take place off campus that may endanger the health or safety of pupils within the educational system or adversely affect the educative process. The Commissioner of Education has ruled that school districts may discipline students for behavior that occurs off school grounds.⁶⁰ However, since regulation of bullying, particularly

⁵⁶ See, http://criminaljustice.state.ny.us/missing/i_safety/i_intro.htm.

⁵⁷ See, <http://www.p12.nysed.gov/sss/ssae/schoolsafety/vadir/glossary08aaug.html>

⁵⁸ See, http://www.p12.nysed.gov/technology/internet_safety/sec814.html.

⁵⁹ United States Department of Health and Human Services (HHS) in its Stop Bullying Now! Campaign. Visit <http://www.stopbullyingnow.hrsa.gov/adults/default.aspx>.

⁶⁰ See, *Appeal of K.S.*, 43 Ed Dept Rep 492, Decision No. 15,063; *Appeal of Ravick*, 40 id. 262, Decision No. 14,477; *Appeal of Orman*, Decision No. 14,389. Case law has also recognized that students may be disciplined for conduct that occurred outside of the school that may endanger the health or safety of

cyberbullying, may involve free speech and expression, there are constitutional limitations on the ability of a school district to restrict these forms of speech and expression and to discipline students for engaging in them.⁶¹ The NYSED recommends that schools develop policies on cyberbullying that address bullying that occurs off school grounds and given the rapidly evolving area of the law, the NYSED advises schools to periodically review their policies to make sure that they reflect current developments in the law.

What can a victim do to address cyberbullying?

A victim of cyberbullying is entitled to all of the protections afforded to students that experience other bullying.

If you are a student who is a victim of cyberbullying –speak up! A victim should tell an adult if he or she receives an inappropriate, anonymous message, a threat, or other upsetting materials to see if the message can be traced through the Internet Service Provider. The victim should also report the incident to the appropriate school administrator. Many schools have adopted codes of conduct that address cyberbullying whether it happens at school or in the community. A victim should refrain from responding to bullying messages, emails, and other forms of cyberbullying messages. Do not delete these messages –they are helpful for adults to identify and respond appropriately to the cyberbully. For more information on resources that can assist victims of bullying see the Resource section of this guide.

What can parents do to address cyberbullying with the school?

- Record, print, save any posts, messages, etc.
- Document time, place, etc
- Document any relationship to what occurred or is occurring at school
- Don't respond to the bully
- Bring to the attention of school principal immediately, *in writing*.⁶²

What can a bystander/observer do to address cyberbullying?

Bystanders/observers of cyberbullying have an important role in eliminating the bullying. Students that are bullied through cyberbullying are overwhelmed and feel that they need to manage the threat alone. The bystander/observer should support the victim in private or in front of the bully, tell the bully to stop, and/or tell an adult about the cyberbullying.

What can a parent do to prevent and/or address cyberbullying at home?

Strategies that may be helpful as a parent in addressing cyberbullying –whether your student is the bully or the victim:

pupils within the educational system or adversely affect the educative process. See *Matter of Coghlan v. Bd. of Educ. of Liverpool Cent. School Dist.*, 262 A.D.2d 949, citing *Pollnow v. Glennon*, 594 F.Supp. 220, 224, affd 757 F.2d 496.

⁶¹ *Tinker v. Des Moines Indep. Community Sch. Dist.*, 393 US 503 (1969)

⁶² See “Action Plan” section of this Guide for strategies to address bullying.

- Keep the computer in a room in your house that is not isolated so computer activities can easily be monitored;
- Talk with your child about cyberbullying and focus on values of being kind and respectful;
- Discuss the concerns of public disclosure of intimate personal information;
- Model appropriate use of cyber tools;
- Teach your child that computer identities can be traced;
- Consider using an Internet Service Provider that offers restricted child access or use filtering or blocking software;
- Have your child demonstrate how to navigate websites, use chat rooms, or other cyber tool functionality, especially if you have minimal computer knowledge;
- Know the websites your child visits and encourage them to discuss their online experiences with you;
- Watch for behavioral signs from your child who doesn't want you to see what is on the monitor, like minimizing the screen when you walk into the room;
- Impose appropriate consequences when your child misuses cyber tools, e.g., loss of use of computer or cell phone;
- Know that teens feel that parents do not understand or know how to respond to cyberbullying and fear their internet access will be unfairly limited if incidents are reported;
- Learn about teenage Internet lingo by going to www.netlingo.com (e.g., Free to Talk-F2T; Best Friends Forever-BFFs; Parents Are Watching-PRW; or Too Late- 2L8.)⁶³

BULLYING OR HARASSMENT THAT IS ALSO CRIMINAL CONDUCT

Is bullying a crime?

In some cases, bullying and harassing behavior constitutes a crime under New York penal laws. Examples:

- Endangering welfare of physically disabled person
- Menacing
- Stalking
- Harassment
- Assault
- Sexual assault
- Cyberbullying (in some counties)

⁶³ *Fact Sheet on Cyberbullying*, New York State Center for School Safety accessed at <http://nyscenterforschoolsafety.org/documents.cfm?id=2700.7970&master=508900&located=1>.

Are schools required to report bullying that is or may constitute criminal conduct?

Yes. The Dignity for All Student Act (DASA) requires a school to report conduct that would constitute a crime to the police. If the conduct involved physical abuse by a school employee or volunteer, the State Education Law requires the District to report the incident(s) to the police and the State Education Department.⁶⁴

Should I report bullying that may be criminal conduct to the police if the school hasn't?

Involving law enforcement is a personal decision that should be made by the student and his or her parents. However, when bullying involves physical or sexual threats or attacks, extortion, stalking, or cyberbullying that threatens physical or sexual harm or involves any inappropriate use of explicit pictures, or otherwise causes or threatens significant harm to the student, filing a report with the police may be necessary.

In most cases, the police will take the report and assess whether the allegations, if true, would constitute a crime. If so, the report will be investigated and, if the investigation provides sufficient evidence, the perpetrator could be arrested and prosecuted.

Even if the police determine that there is insufficient evidence of a crime, the report remains on file. This can be useful if the bully is engaging in the type of crime that requires “a pattern of conduct.” If there are several reports of similar conduct, the police may then have a sufficient basis to seek prosecution of the perpetrator.

Can the student get an Order of Protection against the bully?

An order of protection is an order issued by the court to limit the behavior of someone who harms or threatens to harm another person. It is used to address various types of safety issues. An order of protection may direct the offending person not to injure, threaten or harass you, your family, or any other person(s) listed in the order. In the context of criminal behavior, the Criminal Court would issue the Order of Protection. In order to do so, the offender must be charged with a crime and the Order issued as a condition of bail or release.⁶⁵

CHILD ABUSE BY SCHOOL PERSONNEL

What are my options if bullying and/or harassment is perpetrated by a school employee against a student?

In addition to the protections and school obligations offered by the Dignity for All Students Act and Section 504 of the Rehabilitation Act, New York State Education Law Article 23-B provides a protocol for investigating and responding to incidents of child abuse by school employees in educational settings.

⁶⁴ Education Law §13[1][i]

⁶⁵ For additional information on Orders of Protection, see <http://www.nycourts.gov/faq/orderofprotection.shtml#q1>.

What is the definition of “child abuse” under Education Law article 23-B?

"Child abuse" shall mean any of the following acts committed in an educational setting by an employee or volunteer against a child: (a) intentionally or recklessly inflicting physical injury, serious physical injury or death, or (b) intentionally or recklessly engaging in conduct which creates a substantial risk of such physical injury, serious physical injury or death, or (c) any child sexual abuse . . . , or (d) the commission or attempted commission against a child of the crime of disseminating indecent materials to minors . . .⁶⁶

What is the school’s obligation when child abuse by a school employee is reported?

School employees must, upon a written or oral report of abuse from the student, parent or any other person, promptly complete a written report of the allegation and deliver it to the superintendent. The superintendent then must determine if there is, “reasonable suspicion to believe that an act of child abuse has occurred.”⁶⁷ If the superintendent determines that there is reasonable suspicion that child abuse by a school employee has occurred, he or she must promptly notify the parent and contact the police. If the employee is licensed, the superintendent must also notify the Commissioner of the NYS Education Department.⁶⁸ A school’s failure to comply with these requirements can result in criminal and monetary penalties.⁶⁹

STUDENTS IN PRIVATE SCHOOLS

What anti-bullying and harassment laws apply to students who attend private schools?

Students who attend private schools at private expense (parent’s expense) have somewhat less legal protection than students attending public schools or school placements funded by a public school district. The Dignity for All Students Act does **not** apply to private schools. Section 504 of the Rehabilitation Act of 1973 does offer protection against discrimination resulting from bullying and harassment but only if the private school receives federal funding, either directly or indirectly.⁷⁰

How do I know if my student’s private school receives federal funding?

Many private schools in New York receive federal funding indirectly, and this is sufficient to trigger the protections and obligations of Section 504. Common examples of ways in which schools receive federal funding include: textbooks and/or curriculum materials are supplied by the public school in which the student resides; participation in a free or low-cost milk program; and/or participation in a free or low-cost meal program.

⁶⁶ NY Education Law § 1125(1)

⁶⁷ NY Education Law §§ 1126, 1128.

⁶⁸ NY Education Law §§ 1128, 1128-a.

⁶⁹ NY Education Law § 1129.

⁷⁰ In certain circumstances, the New York Division of Human Rights may have jurisdiction to investigate and adjudicate bullying and/or harassing conduct in private schools that violates the New York Human Rights Law. See Article 15, New York Executive Law

What can I do to address bullying or harassment if my student attends a private school?

If your student is suffering bullying or harassment at his or her private school, document the conduct and notify, in writing, the principal or administrator at the private school. You can follow the guidelines and suggestions detailed in the Action Plan section of this guide, but keep in mind any reference to DASA is probably irrelevant unless the private school has voluntarily adopted DASA. Be sure to request a copy of the school's Code of Conduct and bullying policy, if any.

If the private school receives federal funding directly or indirectly, then it must investigate the alleged harassment and if verified, take prompt and reasonable action to eliminate the harassment and prevent its recurrence.⁷¹ If the private school does not receive federal funding, then it must comply with its own Code of Conduct and related policies and procedures. In either case, you should meet with school administrators to develop a response plan.⁷²

What if the student attending private school has an IEP or 504 Plan?

If the student has an IEP and is significantly impacted by the bullying or harassment to the extent that changes in his IEP are needed, contact the public school in which the private school is located in writing and request a CSE meeting. At least one representative from the private school should be present at this meeting.

If the student has a 504 Plan and the private school receives federal funding directly or indirectly, then the private school is required to assess and address any needed changes to the student's 504 Plan. If the school does not receive federal funding, then it is not required to develop or implement a 504 Plan. In this circumstance, it is best to work directly with the administration and the school's Code of Conduct to secure an appropriate response. Make sure that the response plan is put in writing and reflects the actions the school has agreed to undertake.

⁷¹ See "Laws and School Obligations related to Bullying and Harassment" in this Guide.

⁷² For further information and suggestions for working with school administrators, see the "Action Plan" in this Guide.

WHAT TO DO IF THE MY CHILD IS THE BULLY

It can be upsetting to learn that your student has gotten into trouble for bullying a peer. It is important to deal with the bullying right away because if it is not addressed it will likely result in more aggressive antisocial behavior that interferes with the students success in school. Students that bully are more like to drop out of school, think of suicide, bring weapons to school or drink alcohol/smoke. In a recent study of more than 520,000 3rd-12th graders from 1,593 schools across the U.S., researchers found that overall 20% of girls and 25% of boys had been involved in bullying on a regular basis (2-3 times/month or more often).⁷³

Why is my student bullying?

Bullying is a learned behavior. Students who bully have often been victims of physical abuse or bullying themselves. Bullying is a complex issue with multiple contributory factors such as family, community, school, peers. Students bully for a variety of reasons including a desire to feel in control, popular, or important; feeling insecure; or because they do not know that it is unacceptable to pick on students that are different because of size, look, race, religion or disability. Bullying may be a part of a pattern of defiant or aggressive behavior, or may result when a student copies the behavior of peers. Students that are taunted learn that bullying can translate into control over students that are perceived as weak.

What are appropriate responses to bullying?

It is important to let your student know that bullying, in any form, is unacceptable and that there are serious consequences at home, school and in the community if it continues. It is equally important to try to understand the reasons behind the student's behavior. Some students bully because they have trouble managing strong emotions like anger, frustration, or insecurity. In other cases, bullying occurs because the student has not learned cooperative ways to work out conflicts and understand differences. It is important to understand the function of the bullying and determine if school-wide supports are available to address the behavior.

A school district must take affirmative steps to address bullying and harassment in school. These steps may include action that impacts your student.⁷⁴

What if I suspect that my student's bullying behavior is related to a disability?

If you suspect that your student has a disability and that this disability is manifesting with bullying behaviors you can make a referral for special education supports and services. If your student faces disciplinary action by the school district while the school district is in the process of evaluating for special education supports and services, your student's disability may need to be considered before he or she is subject to disciplinary action.⁷⁵

⁷³ Olweus & Limber (2010)

⁷⁴ See "Laws and School Obligations Related to Bullying and Harassment" in this Guide.

⁷⁵ For more information about how to make a referral and more information about the disciplinary process for students suspected of having a disability see *Special Education in Plain Language* at www.nyspecialedtaskforce.org.

What if my student has an IEP or a 504 Plan?

If the student who is engaging in bullying behavior has an Individualized Education Program (IEP) or a 504 Plan, the school district must take steps to address the behavior through an individualized plan. The student's team, Committee on Special Education (CSE) or 504 team, must determine if there is a need for a behavioral plan to address the bullying behavior. In order to develop a behavior plan the school district must conduct a functional behavioral assessment (FBA). A FBA is an evaluation to determine why a student engages in problem behaviors and is used to develop a behavioral intervention plan (BIP).

What is a Functional Behavioral Assessment?

The FBA is an assessment of the student's behavior that must be based on multiple sources of data including: (1) information obtained from direct observation of the student; (2) information from the student; (3) the student's teacher(s) and/or related service provider(s); (4) a review of available data and information from the student's record and (5) other sources including any relevant information provided by the student's parent. The FBA cannot be based solely on the student's history of presenting problem behaviors.⁷⁶

The FBA must include a baseline of the student's problem behaviors which documents the frequency, duration, intensity and/or latency of the behavior across activities, settings, people and times of the day. The FBA must include enough detail about the student's behavior to form the basis for a behavioral intervention plan for the student that addresses antecedent behaviors, reinforcing consequences of the behavior, recommendations for teaching alternative skills or behaviors and an assessment of student preferences for reinforcement.⁷⁷

Advocacy Tip . . .

Be sure that information about the identified behaviors and function of those behaviors is included in the student's IEP in the "Present Levels of Educational Performance" Section or in the student's 504 Plan. Documenting that certain behavior is related to the student's disability may offer significant protection in the event the student faces disciplinary action for the same or related behaviors in the future.

When must a school district create or amend a BIP?

A BIP is the plan that the school district will use to reduce and eliminate the behaviors that are interfering with the student's ability to learn. A school district must consider the use of a BIP whenever a student with a disability (1) exhibits persistent behaviors that impede his or her learning or that of others, despite consistently implemented general school-wide or classroom-wide interventions; or (2) the student's behavior places the student or others at risk of harm or injury; or (3) the student's IEP team is considering more restrictive programs or placements as a result of the student's behavior; or (4) when a student has been removed/suspended from educational programming pursuant to the school's code of conduct.

⁷⁶ 8 NYCRR 200.22(a)(2).

⁷⁷ 8 NYCRR 200.22(a)(3).

What should be included in a BIP?

A BIP should at least include: a description of your student's problem behaviors; suggestions as to what causes the problem behaviors; and description of strategies that will be used to prevent the behavior in the future. The IEP team must consider strategies including positive behavioral interventions and supports and other strategies to address that behavior. If a particular device or service, including an intervention, accommodation or other program modification is needed to address the student's behavior that impedes his or her learning or that of others, the IEP shall so indicate. A student's need for a behavioral intervention plan shall be documented on the IEP and such plan shall be reviewed at least annually by the CSE or CPSE.⁷⁸

The behavioral intervention plan must also identify:

- (i) the baseline measure of the problem behavior, including the frequency, duration, intensity and/or latency of the targeted behaviors. Such baseline shall, to the extent practicable, include data taken across activities, settings, people and times of the day. The baseline data shall be used as a standard to establish performance criteria and against which to evaluate intervention effectiveness;
- (ii) the intervention strategies to be used to alter antecedent events to prevent the occurrence of the behavior, teach individual alternative and adaptive behaviors to the student, and provide consequences for the targeted inappropriate behavior(s) and alternative acceptable behavior(s); and
- (iii) a schedule to measure the effectiveness of the interventions, including the frequency, duration and intensity of the targeted behaviors at scheduled intervals

Advocacy Tip . . .

If the student has an IEP and the BIP includes improvement of specific skills, be sure that measurable annual goal are developed to address each target skill. If any services, supports or accommodations are needed for the student to achieve the goals or to implement the BIP, these should be included in the IEP as well.

What monitoring must a school district do with a BIP?

A student's BIP must include regular progress monitoring of the frequency, duration and intensity of the behavioral interventions at scheduled intervals, as specified in the behavioral intervention plan and on the student's IEP. The results of the progress monitoring must be documented and reported to the student's parents and to the CSE or CPSE and shall be considered in any determination to revise a student's behavioral intervention plan or IEP.

What if I disagree with the results of a FBA?

If a parent disagrees with a school district evaluation, including a FBA, the parent may seek an independent educational evaluation (IEE) paid for by the school district. The parent must make a written request for an IEE. The parent would be entitled to select a qualified examiner who does not work for the school district or other public agency responsible for the student's education. You may get the IEE paid for by the school district if you disagree with the district's evaluation.

⁷⁸ 8 NYCRR 201.22(b).

The school district must pay for the entire evaluation as long as the fee being charged by the independent evaluator is consistent with equally qualified evaluators charged in the geographic area; the school district cannot place a “cap” on the cost if the cap is less than the going rate in the area.⁷⁹

How can I use the student’s Individualized Education Program (IEP) to address bullying?

See “Working with the CSE or 504 Team” in the “Action Plan” section of this Guide.

Can a student with a disability face disciplinary action for bullying?

Yes, a student with or without a disability may face disciplinary action for bullying that violates the school district’s code of conduct. A school district must follow specific rules when disciplining students including specific rules for students with disabilities.⁸⁰

What can I do at home to address my child’s bullying?

It is important as a parent that you:

- Take bullying seriously –make sure your child understands that you will not tolerate bullying at school, home or in the community. This should include establishing rules about bullying and sticking to these rules. Stop violent behaviors by teaching nonviolent ways to respond, such as walking away. Address cyberbullying (bullying via email, text messages, or a social networking site) by withdrawing phone or computer privileges for a period of time.
- Teach your child to treat others with respect and kindness –teach your student that it is wrong to bullying students for differences such as race, religion, appearance, special needs, gender, and economic status by instilling a sense of empathy for others’ differences. This may be done by getting your child involved in community groups where the child interacts with a more diverse group of children.
- Learn about your child’s social life – being involved and aware of your child’s social life is one way to know what influences your student’s behavior in school. Talk with other parents, school friends/peers, teachers, counselors and the school principal. Do your child’s friends bully? Has your child been a bystander to bullying? Talk with your child about bullying.
- Encourage and reward good behavior – positive reinforcement can be more powerful than reactive negative discipline. This is often referred to as “catching the student at being good” so that when a child handles a situation in an appropriate way he or she is provided constructive positive feedback.

⁷⁹ 8 NYCRR 200.1(z); 8 NYCRR 200.5 (g). For more information about IEE please see *Special Education in Plain Language* found at www.nyspecialtaskforce.org.

⁸⁰ For more information about the process that must be followed see *Special Education in Plain Language* at www.nyspecialtaskforce.org.

- Set a good example – Think carefully before you talk around your student and how you talk with your student about handling conflict and problems with school. If you present an aggressive approach to your student when addressing your conflicts with the school program it is likely that your student will mirror this behavior.
- Consider consulting with your child’s doctor. If your child has a history of arguing, defiance, and trouble controlling anger, consider speaking with your student’s physician about obtaining an evaluation from a mental health professional.

WHAT TO DO IF MY STUDENT WITNESSES BULLYING

What if my student is a witness/bystander to bullying?

Research confirms that many more (two thirds of all students surveyed in several studies) witness bullying.⁸¹ These witnesses or bystanders play a role in the bullying often unwittingly supporting the bullying that they observe through laughter or smiles, or body language. Bystanders may watch but feel disengaged; dislike the bullying that they observe but feel reluctant to take action against it; or they may try to help in some way.⁸²

What happens when a bystander intervenes?

More than 50 percent of bullying situations stop when a peer intervenes.⁸³ Schools that promote peer advocacy –students who speak out against bullying –empower student to protect those targeted by bullying. This peer advocacy works because students are more likely than adults to see bullying and a student telling someone to stop bullying is more likely to stop the bullying than an adult intervention.⁸⁴

⁸¹ *Bullying Prevention and Response: Base Training Module*, http://www.stopbullying.gov/prevention/training-center/prnt_friendly_speaker_notes.pdf.

⁸² Olweus (1993), Rivers, Poteat, Noret, & Ashhurst (2009), Trach, Hymel, Waterhouse, & Neale (2010).

⁸³ *Bullying and Harassment of Students with Disabilities: Top 10 Facts Parents, Educators and Students Need to Know*, <http://www.pacer.org/bullying/resources/students-with-disabilities/>.

⁸⁴ *Peer Advocacy: A Unique Bullying Prevention Model for Students with Disabilities*, <http://www.pacer.org/bullying/resources/students-with-disabilities/peer-advocacy.asp>.

RESOURCES

New York State Resources

Parent Centers of New York State <http://www.p12.nysed.gov/specialed/techassist/parentcenters.htm>

There are 13 Special Education Parent Centers across New York State. These centers will provide parents of children with disabilities with information, resources, and strategies for addressing bullying and harassment in schools.

New York State Parent Network (Federal Parent Centers)

<http://www.nysparentnetwork.org/>

The New York State Parent Network is a coordinated group of organizations that provide support and information for parents of children with disabilities via a seamless delivery system throughout New York State.

Disability Rights New York www.disability-advocates.org

DRNY is New York State's designated Protection and Advocacy System and Client Assistance Program (P&A/CAP).

New York State Education Department Quality Assurance

<http://www.p12.nysed.gov/specialed/quality/>

Special Education Quality Assurance oversees preschool and school-age special education services through a quality assurance review process that emphasizes attainment of positive results for student with disabilities.

Dignity for All Students Act <http://www.p12.nysed.gov/dignityact/>

New York State Education Department's website on DASA.

Alberti Center for Bullying Abuse Prevention <http://gse.buffalo.edu/alberticenter>

Provides evidence-based tools to effectively change the language, attitudes, and behaviors of educators, parents, students, and society.

National Resources for Bullying Prevention

American Academy of Child & Adolescent Psychiatry

http://www.aacap.org/AACAP/Families_and_Youth/Facts_for_Families/Facts_for_Families_Pages/Bullying_80.aspx

The mission of AACAP is to promote the healthy development of children, adolescents, and families through research, training, prevention, comprehensive diagnosis and treatment and to meet the professional needs of child and adolescent psychiatrists throughout their careers.

American Psychological Association <http://www.apa.org/topics/bullying/index.aspx>

The American Psychological Association is the largest scientific and professional organization representing psychology in the United States. APA is the world's largest association of psychologists, with more than 134,000 researchers, educators, clinicians, consultants and students as its members.

Americans with Disabilities Act www.ada.gov
ADA Home Page provides information on the ADA.

Cyberbullying Research Center <http://www.cyberbullying.us/>
The **Cyberbullying Research Center** is dedicated to providing up-to-date information about the nature, extent, causes, and consequences of cyberbullying among adolescents.

Do Something.org <http://www.dosomething.org/tipsandtools/11-facts-about-school-bullying>
DoSomething.org is the country's largest not-for-profit for young people and social change. DoSomething.org spearheads national campaigns so 13- to 25-year-olds can make an impact - without ever needing money, an adult, or a car.

Education Northwest <http://educationnorthwest.org/resource/1351>
Education Northwest now conducts more than 200 projects annually, working with schools, districts, and communities across the country on comprehensive, research-based solutions to the challenges they face.

Homeroom <http://www.ed.gov/blog/?s=bullying>
Official Blog of the United States Department of Education

National Collaborative on Workforce and Disability for Youth www.ncwd-youth.info
NCWD/Youth is your source for information about employment and youth with disabilities.

National Crime Prevention Council <http://www.ncpc.org/topics/bullying>
The National Crime Prevention Council's mission is to be the nation's leader in helping people keep themselves, their families, and their communities safe from crime.

National Dissemination Center for Children with Disabilities
<http://nichcy.org/schoolage/behavior/bullying>
Available until September 2014, provides information and resources on bullying.

National PTA –Connect and Respect
<http://www.pta.org/programs/content.cfm?ItemNumber=3003>
Connect for Respect is National PTA's initiative to encourage PTAs across the country to lead conversations in their school communities about bullying, how it is affecting their communities, and to develop solutions that they can implement collaboratively together.

OLWEUS Bullying Prevention Program <http://www.clemson.edu/olweus/>
http://www.violencepreventionworks.org/public/olweus_bullying_prevention_program.page
The Olweus Program (pronounced Ol-VAY-us) is a comprehensive approach that includes schoolwide, classroom, individual, and community components. The program is focused on long-term change that creates a safe and positive school climate. It is designed and evaluated for use in elementary, middle, junior high and high schools (K-12). This website, maintained by Clemson University, presents basic program information related to bullying prevention research, OBPP training information, and ongoing programming and training support of our National Olweus Trainers.

OvercomeBullying.org <http://www.overcomebullying.org/>
OvercomeBullying.org provides information and resources to help you overcome workplace bullying, school bullying, and mobbing. Speak out now!

PACER www.pacer.org/bullying
www.pacerkidsagainstabullying.org
www.pacerteensagainstabullying.org

PACER is the Minnesota Parent Training and Information Center, funded by the U.S. Department of Education's Office of Special Education Programs. PACER has a National Bullying Prevention Center and PACERKidsAgainstBullying and PACERTeensAgainstBullying.

Stopbullying.gov www.StopBullying.gov

StopBullying.gov provides information from various government agencies on what bullying is, what cyberbullying is, who is at risk, and how you can prevent and respond to bullying.

STOMP Out Bullying www.stompoutbullying.org

A national anti-bullying and cyberbullying program for kids and teens.

The Bullying Project <http://www.thebullyproject.com/>

The Film “Bully” has been screened to over a million kids, teachers, parents and advocates.

UCLA Center Mental Health in Schools Program and Policy Analysis

http://smhp.psych.ucla.edu/qf/bully_qt/

United States Department of Education <http://www.ed.gov/category/keyword/bullying>

Resources on Bullying

Walk a Mile in Their Shoes

<http://www.abilitypath.org/areas-of-development/learning--schools/bullying/>

AbilityPath.org interviewed experts, educators and parents regarding a silent epidemic facing children with special needs - bullying. The result was the report and guide, Walk a Mile in Their Shoes: Bullying and Special Needs. Read, Learn and share its important results and resources.

APPENDIX A

3/5/2014

Dear Colleague letter regarding DisabilityHarassment – Printable



Print

Close
Window

Prohibited Disability Harassment

Reminder of Responsibilities under Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act:

UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON, D.C. 20202

July 25, 2000

Dear Colleague:

On behalf of the Office for Civil Rights (OCR) and the Office of Special Education and Rehabilitative Services (OSERS) in the U.S. Department of Education, we are writing to you about a vital issue that affects students in school - harassment based on disability. Our purpose in writing is to develop greater awareness of this issue, to remind interested persons of the legal and educational responsibilities that institutions have to prevent and appropriately respond to disability harassment, and to suggest measures that school officials should take to address this very serious problem. This letter is not an exhaustive legal analysis. Rather, it is intended to provide a useful overview of the existing legal and educational principles related to this important issue.

Why Disability Harassment Is Such an Important Issue

Through a variety of sources, both OCR and OSERS have become aware of concerns about disability harassment in elementary and secondary schools and colleges and universities. In a series of conference calls with OSERS staff, for example, parents, disabled persons, and advocates for students with disabilities raised disability harassment as an issue that was very important to them. OCR's complaint workload has reflected a steady pace of allegations regarding this issue, while the number of court cases involving allegations of disability harassment has risen. OCR and OSERS recently conducted a joint focus group where we heard about the often devastating effects on students of disability harassment that ranged from abusive jokes, crude name-calling, threats, and bullying, to sexual and physical assault by teachers and other students.

We take these concerns very seriously. Disability harassment can have a profound impact on students, raise safety concerns, and erode efforts to ensure that students with disabilities have equal access to the myriad benefits that an education offers. Indeed, harassment can seriously interfere with the ability of students with disabilities to receive the education critical to their advancement. We are committed to doing all that we can to help prevent and respond to disability harassment and lessen the harm of any harassing conduct that has occurred. We seek your support in a joint effort to address this critical issue and to promote such efforts among educators who deal with students daily.

What Laws Apply to Disability Harassment

Schools, colleges, universities, and other educational institutions have a responsibility to ensure equal educational opportunities for all students, including students with disabilities. This responsibility is based on Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (Title II), which are enforced by OCR. Section 504 covers all schools, school districts, and colleges and universities receiving federal funds.¹ Title II covers all state and local entities, including school districts and public institutions of higher education, whether or not they receive federal funds.² Disability harassment is a form of discrimination prohibited by Section 504 and Title II.³ Both Section 504 and Title II provide parents and students with grievance procedures and due process remedies at the local level. Individuals and organizations also may file complaints with OCR.

States and school districts also have a responsibility under Section 504, Title II, and the Individuals with Disabilities Education Act (IDEA),⁴ which is enforced by OSERS, to ensure that a free appropriate public education (FAPE) is made available to eligible students with disabilities. Disability harassment may result in a denial of FAPE under these statutes. Parents may initiate administrative due process procedures

under IDEA, Section 504, or Title II to address a denial of FAPE, including a denial that results from disability harassment. Individuals and organizations also may file complaints with OCR, alleging a denial of FAPE that results from disability harassment. In addition, an individual or organization may file a complaint alleging a violation of IDEA under separate procedures with the state educational agency.³ State compliance with IDEA, including compliance with FAPE requirements, is monitored by OSERS' Office of Special Education Programs (OSEP).

Harassing conduct also may violate state and local civil rights, child abuse, and criminal laws. Some of these laws may impose obligations on educational institutions to contact or coordinate with state or local agencies or police with respect to disability harassment in some cases; failure to follow appropriate procedures under these laws could result in action against an educational institution. Many states and educational institutions also have addressed disability harassment in their general anti-harassment policies.⁶

Disability Harassment May Deny a Student an Equal Opportunity to Education under Section 504 or Title II

Disability harassment under Section 504 and Title II is intimidation or abusive behavior toward a student based on disability that creates a hostile environment by interfering with or denying a student's participation in or receipt of benefits, services, or opportunities in the institution's program. Harassing conduct may take many forms, including verbal acts and name-calling, as well as nonverbal behavior, such as graphic and written statements, or conduct that is physically threatening, harmful, or humiliating.

When harassing conduct is sufficiently severe, persistent, or pervasive that it creates a hostile environment, it can violate a student's rights under the Section 504 and Title II regulations. A hostile environment may exist even if there are no tangible effects on the student where the harassment is serious enough to adversely affect the student's ability to participate in or benefit from the educational program. Examples of harassment that could create a hostile environment follow.

- Several students continually remark out loud to other students during class that a student with dyslexia is "retarded" or "deaf and dumb" and does not belong in the class; as a result, the harassed student has difficulty doing work in class and her grades decline.
- A student repeatedly places classroom furniture or other objects in the path of classmates who use wheelchairs, impeding the classmates' ability to enter the classroom.
- A teacher subjects a student to inappropriate physical restraint because of conduct related to his disability, with the result that the student tries to avoid school through increased absences.⁷
- A school administrator repeatedly denies a student with a disability access to lunch, field trips, assemblies, and extracurricular activities as punishment for taking time off from school for required related to the student's disability.
- A professor repeatedly belittles and criticizes a student with a disability for using accommodations in class, with the result that the student is so discouraged that she has great difficulty performing in class and learning.
- Students continually taunt or belittle a student with mental retardation by mocking and intimidating him so he does not participate in class.

When disability harassment limits or denies a student's ability to participate in or benefit from an educational institution's programs or activities, the institution must respond effectively. Where the institution learns that disability harassment may have occurred, the institution must investigate the incident(s) promptly and respond appropriately.

Disability Harassment Also May Deny a Free Appropriate Public Education

Disability harassment that adversely affects an elementary or secondary student's education may also be a denial of FAPE under the IDEA, as well as Section 504 and Title II. The IDEA was enacted to ensure that recipients of IDEA funds make available to students with disabilities the appropriate special education and related services that enable them to access and benefit from public education. The specific services to be provided a student with a disability are set forth in the student's individualized education program (IEP), which is developed by a team that includes the student's parents, teachers and, where appropriate, the student. Harassment of a student based on disability may decrease the student's ability to benefit from his or her education and amount to a denial of FAPE.

How to Prevent and Respond to Disability Harassment

Schools, school districts, colleges, and universities have a legal responsibility to prevent and respond to disability harassment. As a fundamental step, educational institutions must develop and disseminate an official policy statement prohibiting discrimination based on disability and must establish grievance procedures that can be used to address disability harassment.¹ A clear policy serves a preventive purpose by notifying students and staff that disability harassment is unacceptable, violates federal law, and will result in disciplinary action. The responsibility to respond to disability harassment, when it does occur, includes taking prompt and effective action to end the harassment and prevent it from recurring and, where appropriate, remedying the effects on the student who was harassed.

The following measures are ways to both prevent and eliminate harassment:

- Creating a campus environment that is aware of disability concerns and sensitive to disability harassment; weaving these issues into the curriculum or programs outside the classroom.
- Encouraging parents, students, employees, and community members to discuss disability harassment and to report it when they become aware of it.
- Widely publicizing anti-harassment statements and procedures for handling discrimination complaints, because this information makes students and employees aware of what constitutes harassment, that such conduct is prohibited, that the institution will not tolerate such behavior, and that effective action, including disciplinary action, where appropriate, will be taken.
- Providing appropriate, up-to-date, and timely training for staff and students to recognize and handle potential harassment.
- Counseling both person(s) who have been harmed by harassment and person(s) who have been responsible for the harassment of others.
- Implementing monitoring programs to follow up on resolved issues of disability harassment.
- Regularly assessing and, as appropriate, modifying existing disability harassment policies and procedures for addressing the issue, to ensure effectiveness.

Technical Assistance Is Available

U.S. Secretary of Education Richard Riley has emphasized the importance of ensuring that schools are safe and free of harassment. Students can not learn in an atmosphere of fear, intimidation, or ridicule. For students with disabilities, harassment can inflict severe harm. Teachers and administrators must take emphatic action to ensure that these students are able to learn in an atmosphere free from harassment.

Disability harassment is preventable and can not be tolerated. Schools, colleges, and universities should address the issue of disability harassment not just when but before incidents occur. As noted above, awareness can be an important element in preventing harassment in the first place.

The Department of Education is committed to working with schools, parents, disability advocacy organizations, and other interested parties to ensure that no student is ever subjected to such conduct, and that where such conduct occurs, prompt and effective action is taken. For more information, you may contact OCR or OSEP through 1-800-USA-LEARN or 1-800-437-0833 for TTY services. You also may directly contact one of the OCR enforcement offices listed on the enclosure or OSEP, by calling (202) 205-5507 or (202) 245-7468 for TTY services.

Thank you for your attention to this serious matter.

Norma V. Cantu,
Assistant Secretary for
Civil Rights

Judith E. Heumann,
Assistant Secretary
Office of Special Education
and Rehabilitative Services

¹ Section 504 provides: "No otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance." 29 U.S.C. § 794(a).

See 34 CFR Part 104 (Section 504 implementing regulations).

² Title II provides that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. Â§ 12132. See 28 CFR Part 35 (Title II implementing regulations).

³ The Department of Education’s Office for Civil Rights (OCR) has issued policy guidance on discriminatory harassment based on race (see 59 Fed. Reg. 11448 (Mar. 10, 1994),) and sex (see 62 Fed. Reg. 12034 (Mar. 13, 1997),). These policies make clear that school personnel who understand their legal obligations to address harassment are in the best position to recognize and prevent harassment, and to lessen the harm to students if, despite their best efforts, harassment occurs. In addition, OCR recently collaborated with the National Association of Attorneys General (NAAG) to produce a guide to raise awareness of, and provide examples of effective practices for dealing with, hate crimes and harassment in schools, including harassment based on disability. See “Protecting Students from Harassment and Hate Crime, A Guide for Schools,” U.S. Department of Education, Office for Civil Rights, and the National Association of Attorneys General (Jan. 1999) (OCR/NAAG Harassment Guide), Appendix A: Sample School Policies. The OCR/NAAG Harassment Guide may be accessed on the internet at www.ed.gov/offices/OCR/archives/Harassment/. These documents are a good resource for understanding the general principle of discriminatory harassment. The policy guidance on sexual harassment will be clarified to explain how OCR’s longstanding regulatory requirements continue to apply in this area in light of recent Supreme Court decisions addressing the sexual harassment of students.

⁴ 20 U.S.C. Â§1400 et seq.

⁵ 34 C.F.R. Â§ 300.660 et seq.

⁶ For more information regarding the requirements of state and local laws, consult the OCR/NAAG Harassment Guide, cited in footnote 3 above.

⁷ Appropriate classroom discipline is permissible, generally, if it is of a type that is applied to all students or is consistent with the Individuals with Disabilities Education Act (IDEA) and Section 504, including the student’s Individualized Education Program or Section 504 plan.

⁸ Section 504 (at 34 CFR Â§ 104.7) and Title II (at 28 CFR Â§ 35.107(a)) require that institutions have published internal policies and grievance procedures to address issues of discrimination on the basis of disability, which includes disability harassment. While there need not be separate grievance procedures designed specifically for disability harassment, the grievance procedures that are available must be effective in resolving problems of this nature.

Enclosure - list of OCR enforcement offices



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

October 26, 2010

Dear Colleague:

In recent years, many state departments of education and local school districts have taken steps to reduce bullying in schools. The U.S. Department of Education (Department) fully supports these efforts. Bullying fosters a climate of fear and disrespect that can seriously impair the physical and psychological health of its victims and create conditions that negatively affect learning, thereby undermining the ability of students to achieve their full potential. The movement to adopt anti-bullying policies reflects schools' appreciation of their important responsibility to maintain a safe learning environment for all students. I am writing to remind you, however, that some student misconduct that falls under a school's anti-bullying policy also may trigger responsibilities under one or more of the federal antidiscrimination laws enforced by the Department's Office for Civil Rights (OCR). As discussed in more detail below, by limiting its response to a specific application of its anti-bullying disciplinary policy, a school may fail to properly consider whether the student misconduct also results in discriminatory harassment.

The statutes that OCR enforces include Title VI of the Civil Rights Act of 1964¹ (Title VI), which prohibits discrimination on the basis of race, color, or national origin; Title IX of the Education Amendments of 1972² (Title IX), which prohibits discrimination on the basis of sex; Section 504 of the Rehabilitation Act of 1973³ (Section 504); and Title II of the Americans with Disabilities Act of 1990⁴ (Title II). Section 504 and Title II prohibit discrimination on the basis of disability.⁵ School districts may violate these civil rights statutes and the Department's implementing regulations when peer harassment based on race, color, national origin, sex, or disability is sufficiently serious that it creates a hostile environment and such harassment is encouraged, tolerated, not adequately addressed, or ignored by school employees.⁶ School personnel who understand their legal obligations to address harassment under these laws are in the best position to prevent it from occurring and to respond appropriately when it does. Although this letter focuses on the elementary and secondary school context, the legal principles also apply to postsecondary institutions covered by the laws and regulations enforced by OCR.

Some school anti-bullying policies already may list classes or traits on which bases bullying or harassment is specifically prohibited. Indeed, many schools have adopted anti-bullying policies that go beyond prohibiting bullying on the basis of traits expressly protected by the federal civil

¹ 42 U.S.C. § 2000d *et seq.*

² 20 U.S.C. § 1681 *et seq.*

³ 29 U.S.C. § 794.

⁴ 42 U.S.C. § 12131 *et seq.*

⁵ OCR also enforces the Age Discrimination Act of 1975, 42 U.S.C. § 6101 *et seq.*, and the Boy Scouts of America Equal Access Act, 20 U.S.C. § 7905. This letter does not specifically address those statutes.

⁶ The Department's regulations implementing these statutes are in 34 C.F.R. parts 100, 104, and 106. Under these federal civil rights laws and regulations, students are protected from harassment by school employees, other students, and third parties. This guidance focuses on peer harassment, and articulates the legal standards that apply in administrative enforcement and in court cases where plaintiffs are seeking injunctive relief.

rights laws enforced by OCR—race, color, national origin, sex, and disability—to include such bases as sexual orientation and religion. While this letter concerns your legal obligations under the laws enforced by OCR, other federal, state, and local laws impose additional obligations on schools.⁷ And, of course, even when bullying or harassment is not a civil rights violation, schools should still seek to prevent it in order to protect students from the physical and emotional harms that it may cause.

Harassing conduct may take many forms, including verbal acts and name-calling; graphic and written statements, which may include use of cell phones or the Internet; or other conduct that may be physically threatening, harmful, or humiliating. Harassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents. Harassment creates a hostile environment when the conduct is sufficiently severe, pervasive, or persistent so as to interfere with or limit a student's ability to participate in or benefit from the services, activities, or opportunities offered by a school. When such harassment is based on race, color, national origin, sex, or disability, it violates the civil rights laws that OCR enforces.⁸

A school is responsible for addressing harassment incidents about which it knows or reasonable should have known.⁹ In some situations, harassment may be in plain sight, widespread, or well-known to students and staff, such as harassment occurring in hallways, during academic or physical education classes, during extracurricular activities, at recess, on a school bus, or through graffiti in public areas. In these cases, the obvious signs of the harassment are sufficient to put the school on notice. In other situations, the school may become aware of misconduct, triggering an investigation that could lead to the discovery of additional incidents that, taken together, may constitute a hostile environment. In all cases, schools should have well-publicized policies prohibiting harassment and procedures for reporting and resolving complaints that will alert the school to incidents of harassment.¹⁰

When responding to harassment, a school must take immediate and appropriate action to investigate or otherwise determine what occurred. The specific steps in a school's investigation will vary depending upon the nature of the allegations, the source of the complaint, the age of the student or students involved, the size and administrative structure of the school, and other factors. In all cases, however, the inquiry should be prompt, thorough, and impartial.

If an investigation reveals that discriminatory harassment has occurred, a school must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile

⁷ For instance, the U.S. Department of Justice (DOJ) has jurisdiction over Title IV of the Civil Rights Act of 1964, 42 U.S.C. § 2000c (Title IV), which prohibits discrimination on the basis of race, color, sex, religion, or national origin by public elementary and secondary schools and public institutions of higher learning. State laws also provide additional civil rights protections, so districts should review these statutes to determine what protections they afford (e.g., some state laws specifically prohibit discrimination on the basis of sexual orientation).

⁸ Some conduct alleged to be harassment may implicate the First Amendment rights to free speech or expression. For more information on the First Amendment's application to harassment, see the discussions in OCR's Dear Colleague Letter: First Amendment (July 28, 2003), available at <http://www.ed.gov/about/offices/list/ocr/firstamend.html>, and OCR's *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties* (Jan. 19, 2001) (*Sexual Harassment Guidance*), available at <http://www.ed.gov/about/offices/list/ocr/docs/shguide.html>.

⁹ A school has notice of harassment if a responsible employee knew, or in the exercise of reasonable care should have known, about the harassment. For a discussion of what a "responsible employee" is, see OCR's *Sexual Harassment Guidance*.

¹⁰ Districts must adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee sex and disability discrimination complaints, and must notify students, parents, employees, applicants, and other interested parties that the district does not discriminate on the basis of sex or disability. See 28 C.F.R. § 35.106; 28 C.F.R. § 35.107(b); 34 C.F.R. § 104.7(b); 34 C.F.R. § 104.8; 34 C.F.R. § 106.8(b); 34 C.F.R. § 106.9

environment and its effects, and prevent the harassment from recurring. These duties are a school's responsibility even if the misconduct also is covered by an anti-bullying policy, and regardless of whether a student has complained, asked the school to take action, or identified the harassment as a form of discrimination.

Appropriate steps to end harassment may include separating the accused harasser and the target, providing counseling for the target and/or harasser, or taking disciplinary action against the harasser. These steps should not penalize the student who was harassed. For example, any separation of the target from an alleged harasser should be designed to minimize the burden on the target's educational program (*e.g.*, not requiring the target to change his or her class schedule).

In addition, depending on the extent of the harassment, the school may need to provide training or other interventions not only for the perpetrators, but also for the larger school community, to ensure that all students, their families, and school staff can recognize harassment if it recurs and know how to respond. A school also may be required to provide additional services to the student who was harassed in order to address the effects of the harassment, particularly if the school initially delays in responding or responds inappropriately or inadequately to information about harassment. An effective response also may need to include the issuance of new policies against harassment and new procedures by which students, parents, and employees may report allegations of harassment (or wide dissemination of existing policies and procedures), as well as wide distribution of the contact information for the district's Title IX and Section 504/Title II coordinators.¹¹

Finally, a school should take steps to stop further harassment and prevent any retaliation against the person who made the complaint (or was the subject of the harassment) or against those who provided information as witnesses. At a minimum, the school's responsibilities include making sure that the harassed students and their families know how to report any subsequent problems, conducting follow-up inquiries to see if there have been any new incidents or any instances of retaliation, and responding promptly and appropriately to address continuing or new problems.

When responding to incidents of misconduct, schools should keep in mind the following:

- The label used to describe an incident (*e.g.*, bullying, hazing, teasing) does not determine how a school is obligated to respond. Rather, the nature of the conduct itself must be assessed for civil rights implications. So, for example, if the abusive behavior is on the basis of race, color, national origin, sex, or disability, and creates a hostile environment, a school is obligated to respond in accordance with the applicable federal civil rights statutes and regulations enforced by OCR.
- When the behavior implicates the civil rights laws, school administrators should look beyond simply disciplining the perpetrators. While disciplining the perpetrators is likely a necessary step, it often is insufficient. A school's responsibility is to eliminate the

¹¹ Districts must designate persons responsible for coordinating compliance with Title IX, Section 504, and Title II, including the investigation of any complaints of sexual, gender-based, or disability harassment. See 28 C.F.R. § 35.107(a); 34 C.F.R. § 104.7(a); 34 C.F.R. § 106.8(a).

hostile environment created by the harassment, address its effects, and take steps to ensure that harassment does not recur. Put differently, the unique effects of discriminatory harassment may demand a different response than would other types of bullying.

Below, I provide hypothetical examples of how a school's failure to recognize student misconduct as discriminatory harassment violates students' civil rights.¹² In each of the examples, the school was on notice of the harassment because either the school or a responsible employee knew or should have known of misconduct that constituted harassment. The examples describe how the school should have responded in each circumstance.

Title VI: Race, Color, or National Origin Harassment

- *Some students anonymously inserted offensive notes into African-American students' lockers and notebooks, used racial slurs, and threatened African-American students who tried to sit near them in the cafeteria. Some African-American students told school officials that they did not feel safe at school. The school investigated and responded to individual instances of misconduct by assigning detention to the few student perpetrators it could identify. However, racial tensions in the school continued to escalate to the point that several fights broke out between the school's racial groups.*

In this example, school officials failed to acknowledge the pattern of harassment as indicative of a racially hostile environment in violation of Title VI. Misconduct need not be directed at a particular student to constitute discriminatory harassment and foster a racially hostile environment. Here, the harassing conduct included overtly racist behavior (e.g., racial slurs) and also targeted students on the basis of their race (e.g., notes directed at African-American students). The nature of the harassment, the number of incidents, and the students' safety concerns demonstrate that there was a racially hostile environment that interfered with the students' ability to participate in the school's education programs and activities.

Had the school recognized that a racially hostile environment had been created, it would have realized that it needed to do more than just discipline the few individuals whom it could identify as having been involved. By failing to acknowledge the racially hostile environment, the school failed to meet its obligation to implement a more systemic response to address the unique effect that the misconduct had on the school climate. A more effective response would have included, in addition to punishing the perpetrators, such steps as reaffirming the school's policy against discrimination (including racial harassment), publicizing the means to report allegations of racial harassment, training faculty on constructive responses to racial conflict, hosting class discussions about racial harassment and sensitivity to students of other races, and conducting outreach to involve parents and students in an effort to identify problems and improve the school climate. Finally, had school officials responded appropriately

¹² Each of these hypothetical examples contains elements taken from actual cases.

and aggressively to the racial harassment when they first became aware of it, the school might have prevented the escalation of violence that occurred.¹³

- *Over the course of a school year, school employees at a junior high school received reports of several incidents of anti-Semitic conduct at the school. Anti-Semitic graffiti, including swastikas, was scrawled on the stalls of the school bathroom. When custodians discovered the graffiti and reported it to school administrators, the administrators ordered the graffiti removed but took no further action. At the same school, a teacher caught two ninth-graders trying to force two seventh-graders to give them money. The ninth-graders told the seventh-graders, "You Jews have all of the money, give us some." When school administrators investigated the incident, they determined that the seventh-graders were not actually Jewish. The school suspended the perpetrators for a week because of the serious nature of their misconduct. After that incident, younger Jewish students started avoiding the school library and computer lab because they were located in the corridor housing the lockers of the ninth-graders. At the same school, a group of eighth-grade students repeatedly called a Jewish student "Drew the dirty Jew." The responsible eighth-graders were reprimanded for teasing the Jewish student.*

The school administrators failed to recognize that anti-Semitic harassment can trigger responsibilities under Title VI. While Title VI does not cover discrimination based solely on religion,¹⁴ groups that face discrimination on the basis of actual or perceived shared ancestry or ethnic characteristics may not be denied protection under Title VI on the ground that they also share a common faith. These principles apply not just to Jewish students, but also to students from any discrete religious group that shares, or is perceived to share, ancestry or ethnic characteristics (e.g., Muslims or Sikhs). Thus, harassment against students who are members of any religious group triggers a school's Title VI responsibilities when the harassment is based on the group's actual or perceived shared ancestry or ethnic characteristics, rather than solely on its members' religious practices. A school also has responsibilities under Title VI when its students are harassed based on their actual or perceived citizenship or residency in a country whose residents share a dominant religion or a distinct religious identity.¹⁵

In this example, school administrators should have recognized that the harassment was based on the students' actual or perceived shared ancestry or ethnic identity as Jews (rather than on the students' religious practices). The school was not relieved of its responsibilities under Title VI because the targets of one of the incidents were not actually Jewish. The harassment was still based on the perceived ancestry or ethnic characteristics of the targeted students. Furthermore, the harassment negatively affected the ability and willingness of Jewish students to participate fully in the school's

¹³ More information about the applicable legal standards and OCR's approach to investigating allegations of harassment on the basis of race, color, or national origin is included in *Racial Incidents and Harassment Against Students at Educational Institutions: Investigative Guidance*, 59

Fed. Reg. 11,448 (Mar. 10, 1994), available at <http://www.ed.gov/about/offices/list/ocr/docs/race394.html>.

¹⁴ As noted in footnote seven, DOJ has the authority to remedy discrimination based solely on religion under Title IV.

¹⁵ More information about the applicable legal standards and OCR's approach to investigating complaints of discrimination against members of religious groups is included in OCR's Dear Colleague Letter: Title VI and Title IX Religious Discrimination in Schools and Colleges (Sept. 13, 2004), available at <http://www2.ed.gov/about/offices/list/ocr/religious-rights2004.html>.

education programs and activities (e.g., by causing some Jewish students to avoid the library and computer lab). Therefore, although the discipline that the school imposed on the perpetrators was an important part of the school's response, discipline alone was likely insufficient to remedy a hostile environment. Similarly, removing the graffiti, while a necessary and important step, did not fully satisfy the school's responsibilities. As discussed above, misconduct that is not directed at a particular student, like the graffiti in the bathroom, can still constitute discriminatory harassment and foster a hostile environment. Finally, the fact that school officials considered one of the incidents "teasing" is irrelevant for determining whether it contributed to a hostile environment.

Because the school failed to recognize that the incidents created a hostile environment, it addressed each only in isolation, and therefore failed to take prompt and effective steps reasonably calculated to end the harassment and prevent its recurrence. In addition to disciplining the perpetrators, remedial steps could have included counseling the perpetrators about the hurtful effect of their conduct, publicly labeling the incidents as anti-Semitic, reaffirming the school's policy against discrimination, and publicizing the means by which students may report harassment. Providing teachers with training to recognize and address anti-Semitic incidents also would have increased the effectiveness of the school's response. The school could also have created an age-appropriate program to educate its students about the history and dangers of anti-Semitism, and could have conducted outreach to involve parents and community groups in preventing future anti-Semitic harassment.

Title IX: Sexual Harassment

- *Shortly after enrolling at a new high school, a female student had a brief romance with another student. After the couple broke up, other male and female students began routinely calling the new student sexually charged names, spreading rumors about her sexual behavior, and sending her threatening text messages and e-mails. One of the student's teachers and an athletic coach witnessed the name calling and heard the rumors, but identified it as "hazing" that new students often experience. They also noticed the new student's anxiety and declining class participation. The school attempted to resolve the situation by requiring the student to work the problem out directly with her harassers.*

Sexual harassment is unwelcome conduct of a sexual nature, which can include unwelcome sexual advances, requests for sexual favors, or other verbal, nonverbal, or physical conduct of a sexual nature. Thus, sexual harassment prohibited by Title IX can include conduct such as touching of a sexual nature; making sexual comments, jokes, or gestures; writing graffiti or displaying or distributing sexually explicit drawings, pictures, or written materials; calling students sexually charged names; spreading sexual rumors; rating students on sexual activity or performance; or circulating, showing, or creating e-mails or Web sites of a sexual nature.

In this example, the school employees failed to recognize that the “hazing” constituted sexual harassment. The school did not comply with its Title IX obligations when it failed to investigate or remedy the sexual harassment. The conduct was clearly unwelcome, sexual (e.g., sexual rumors and name calling), and sufficiently serious that it limited the student’s ability to participate in and benefit from the school’s education program (e.g., anxiety and declining class participation).

The school should have trained its employees on the type of misconduct that constitutes sexual harassment. The school also should have made clear to its employees that they could not require the student to confront her harassers. Schools may use informal mechanisms for addressing harassment, but only if the parties agree to do so on a voluntary basis. Had the school addressed the harassment consistent with Title IX, the school would have, for example, conducted a thorough investigation and taken interim measures to separate the student from the accused harassers. An effective response also might have included training students and employees on the school’s policies related to harassment, instituting new procedures by which employees should report allegations of harassment, and more widely distributing the contact information for the district’s Title IX coordinator. The school also might have offered the targeted student tutoring, other academic assistance, or counseling as necessary to remedy the effects of the harassment.¹⁶

Title IX: Gender-Based Harassment

- *Over the course of a school year, a gay high school student was called names (including anti-gay slurs and sexual comments) both to his face and on social networking sites, physically assaulted, threatened, and ridiculed because he did not conform to stereotypical notions of how teenage boys are expected to act and appear (e.g., effeminate mannerisms, nontraditional choice of extracurricular activities, apparel, and personal grooming choices). As a result, the student dropped out of the drama club to avoid further harassment. Based on the student’s self-identification as gay and the homophobic nature of some of the harassment, the school did not recognize that the misconduct included discrimination covered by Title IX. The school responded to complaints from the student by reprimanding the perpetrators consistent with its anti-bullying policy. The reprimands of the identified perpetrators stopped the harassment by those individuals. It did not, however, stop others from undertaking similar harassment of the student.*

As noted in the example, the school failed to recognize the pattern of misconduct as a form of sex discrimination under Title IX. Title IX prohibits harassment of both male and female students regardless of the sex of the harasser—i.e., even if the harasser and target are members of the same sex. It also prohibits gender-based harassment, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping. Thus, it can be sex discrimination if students are harassed either for exhibiting what is perceived as a stereotypical characteristic for their

¹⁶ More information about the applicable legal standards and OCR’s approach to investigating allegations of sexual harassment is included in OCR’s *Sexual Harassment Guidance*, available at <http://www.ed.gov/about/offices/list/ocr/docs/shguide.html>.

sex, or for failing to conform to stereotypical notions of masculinity and femininity. Title IX also prohibits sexual harassment and gender-based harassment of all students, regardless of the actual or perceived sexual orientation or gender identity of the harasser or target.

Although Title IX does not prohibit discrimination based solely on sexual orientation, Title IX does protect all students, including lesbian, gay, bisexual, and transgender (LGBT) students, from sex discrimination. When students are subjected to harassment on the basis of their LGBT status, they may also, as this example illustrates, be subjected to forms of sex discrimination prohibited under Title IX. The fact that the harassment includes anti-LGBT comments or is partly based on the target's actual or perceived sexual orientation does not relieve a school of its obligation under Title IX to investigate and remedy overlapping sexual harassment or gender-based harassment. In this example, the harassing conduct was based in part on the student's failure to act as some of his peers believed a boy should act. The harassment created a hostile environment that limited the student's ability to participate in the school's education program (e.g., access to the drama club). Finally, even though the student did not identify the harassment as sex discrimination, the school should have recognized that the student had been subjected to gender-based harassment covered by Title IX.

In this example, the school had an obligation to take immediate and effective action to eliminate the hostile environment. By responding to individual incidents of misconduct on an *ad hoc* basis only, the school failed to confront and prevent a hostile environment from continuing. Had the school recognized the conduct as a form of sex discrimination, it could have employed the full range of sanctions (including progressive discipline) and remedies designed to eliminate the hostile environment. For example, this approach would have included a more comprehensive response to the situation that involved notice to the student's teachers so that they could ensure the student was not subjected to any further harassment, more aggressive monitoring by staff of the places where harassment occurred, increased training on the scope of the school's harassment and discrimination policies, notice to the target and harassers of available counseling services and resources, and educating the entire school community on civil rights and expectations of tolerance, specifically as they apply to gender stereotypes. The school also should have taken steps to clearly communicate the message that the school does not tolerate harassment and will be responsive to any information about such conduct.¹⁷

Section 504 and Title II: Disability Harassment

- *Several classmates repeatedly called a student with a learning disability "stupid," "idiot," and "retard" while in school and on the school bus. On one occasion, these students tackled him, hit him with a school binder, and threw his personal items into the garbage. The student complained to his teachers and guidance counselor that he was continually being taunted and teased. School officials offered him counseling services and a*

¹⁷ Guidance on gender-based harassment is also included in OCR's *Sexual Harassment Guidance*, available at <http://www.ed.gov/about/offices/list/ocr/docs/shguide.html>.

psychiatric evaluation, but did not discipline the offending students. As a result, the harassment continued. The student, who had been performing well academically, became angry, frustrated, and depressed, and often refused to go to school to avoid the harassment.

In this example, the school failed to recognize the misconduct as disability harassment under Section 504 and Title II. The harassing conduct included behavior based on the student's disability, and limited the student's ability to benefit fully from the school's education program (e.g., absenteeism). In failing to investigate and remedy the misconduct, the school did not comply with its obligations under Section 504 and Title II.

Counseling may be a helpful component of a remedy for harassment. In this example, however, since the school failed to recognize the behavior as disability harassment, the school did not adopt a comprehensive approach to eliminating the hostile environment. Such steps should have at least included disciplinary action against the harassers, consultation with the district's Section 504/Title II coordinator to ensure a comprehensive and effective response, special training for staff on recognizing and effectively responding to harassment of students with disabilities, and monitoring to ensure that the harassment did not resume.¹⁸

I encourage you to reevaluate the policies and practices your school uses to address bullying¹⁹ and harassment to ensure that they comply with the mandates of the federal civil rights laws. For your convenience, the following is a list of online resources that further discuss the obligations of districts to respond to harassment prohibited under the federal antidiscrimination laws enforced by OCR:

- *Sexual Harassment: It's Not Academic* (Revised 2008):
<http://www.ed.gov/about/offices/list/ocr/docs/ocrshpam.html>
- *Dear Colleague Letter: Sexual Harassment Issues* (2006):
<http://www2.ed.gov/about/offices/list/ocr/letters/sexhar-2006.html>
- *Dear Colleague Letter: Religious Discrimination* (2004):
<http://www2.ed.gov/about/offices/list/ocr/religious-rights2004.html>
- *Dear Colleague Letter: First Amendment* (2003):
<http://www.ed.gov/about/offices/list/ocr/firstamend.html>

¹⁸ More information about the applicable legal standards and OCR's approach to investigating allegations of disability harassment is included in OCR's Dear Colleague Letter: Prohibited Disability Harassment (July 25, 2000), available at <http://www2.ed.gov/about/offices/list/ocr/docs/disabharassltr.html>.

¹⁹ For resources on preventing and addressing bullying, please visit <http://www.bullyinginfo.org>, a Web site established by a federal Interagency Working Group on Youth Programs. For information on the Department's bullying prevention resources, please visit the Office of Safe and Drug-Free Schools' Web site at <http://www.ed.gov/offices/OESE/SDFS>. For information on regional Equity Assistance Centers that assist schools in developing and implementing policies and practices to address issues regarding race, sex, or national origin discrimination, please visit <http://www.ed.gov/programs/equitycenters>.

- *Sexual Harassment Guidance* (Revised 2001):
<http://www.ed.gov/about/offices/list/ocr/docs/shguide.html>
- *Dear Colleague Letter: Prohibited Disability Harassment* (2000):
<http://www.ed.gov/about/offices/list/ocr/docs/disabharassltr.html>
- *Racial Incidents and Harassment Against Students* (1994):
<http://www.ed.gov/about/offices/list/ocr/docs/race394.html>

Please also note that OCR has added new data items to be collected through its Civil Rights Data Collection (CRDC), which surveys school districts in a variety of areas related to civil rights in education. The CRDC now requires districts to collect and report information on allegations of harassment, policies regarding harassment, and discipline imposed for harassment. In 2009-10, the CRDC covered nearly 7,000 school districts, including all districts with more than 3,000 students. For more information about the CRDC data items, please visit <http://www2.ed.gov/about/offices/list/ocr/whatsnew.html>.

OCR is committed to working with schools, students, students' families, community and advocacy organizations, and other interested parties to ensure that students are not subjected to harassment. Please do not hesitate to contact OCR if we can provide assistance in your efforts to address harassment or if you have other civil rights concerns.

For the OCR regional office serving your state, please visit: <http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm>, or call OCR's Customer Service Team at 1-800-421-3481.

I look forward to continuing our work together to ensure equal access to education, and to promote safe and respectful school climates for America's students.

Sincerely,

/s/

Russlynn Ali
Assistant Secretary for Civil Rights



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

AUG 20 2013

Dear Colleague:

The U.S. Department of Education's Office of Special Education and Rehabilitative Services (OSERS) is committed to working with States to ensure that school districts provide all children with positive, safe, and nurturing school environments in which they can learn, develop, and participate. OSERS is issuing this letter to provide an overview of a school district's responsibilities under the Individuals with Disabilities Education Act (IDEA) to address bullying of students with disabilities.¹

As discussed in this letter, and consistent with prior Dear Colleague Letters the Department has published, bullying of a student with a disability that results in the student not receiving meaningful educational benefit constitutes a denial of a free appropriate public education (FAPE) under the IDEA that must be remedied.² However, even when situations do not rise to a level that constitutes a denial of FAPE, bullying can undermine a student's ability to achieve his or her full academic potential. Attached to this letter are specific strategies that school districts and schools³ can implement to effectively prevent and respond to bullying, and resources for obtaining additional information.

Bullying of any student by another student, for any reason, cannot be tolerated in our schools.⁴ Bullying is no longer dismissed as an ordinary part of growing up, and every effort should be made to structure environments and provide supports to students and staff so that bullying does not occur. Teachers and adults should respond quickly and consistently to bullying behavior and

¹ This letter is intended to supplement the July 25, 2000, joint Dear Colleague Letter from OSERS and the Department's Office for Civil Rights (OCR), which addressed disability harassment under Section 504 of the Rehabilitation Act of 1973 (Section 504), Title II of the Americans with Disabilities Act of 1990 (Title II of the ADA), and the IDEA (available at: <http://www.ed.gov/ocr/docs/disabharassltr.html>).

² Some bullying of students with disabilities may also constitute discriminatory harassment and trigger additional responsibilities under the civil rights laws that OCR enforces, including Section 504, Title II of the ADA, Title VI of the Civil Rights Act of 1964, and Title IX of the Education Amendments of 1972. See OCR's October 26, 2010, Dear Colleague Letter on Harassment and Bullying (available at: <http://www.ed.gov/ocr/letters/colleague-201010.html>).

³ In the context of this letter "school" includes public preschools; elementary, middle, and high schools; and public agencies, including the State Educational Agency (SEA), Educational Service Agencies (ESA), Local Educational Agencies (LEA), nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities. See 34 C.F.R. §300.33.

⁴ Although the focus of this letter is peer-to-peer bullying, it is important to acknowledge that it is also intolerable for teachers and school staff to be party to school bullying and disability harassment (*i.e.*, being active participants in bullying), or observers to school bullying without taking action to address the behavior. While teacher-student disability harassment also may constitute a denial of FAPE, those issues are beyond the scope of this letter. We recommend that States and school districts consult with legal counsel regarding their responsibilities and duties in cases of bullying that involve school personnel, including taking the matter seriously, and promptly addressing any problematic behaviors.

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Page 2 - Dear Colleague: Bullying of Students with Disabilities

send a message that bullying is not acceptable. Intervening immediately to stop bullying on the spot can help ensure a safer school environment.

Bullying is characterized by aggression used within a relationship where the aggressor(s) has more real or perceived power than the target, and the aggression is repeated, or has the potential to be repeated, over time. Bullying can involve overt physical behavior or verbal, emotional, or social behaviors (*e.g.*, excluding someone from social activities, making threats, withdrawing attention, destroying someone's reputation) and can range from blatant aggression to far more subtle and covert behaviors. Cyberbullying, or bullying through electronic technology (*e.g.*, cell phones, computers, online/social media), can include offensive text messages or e-mails, rumors or embarrassing photos posted on social networking sites, or fake online profiles.

Addressing and reporting bullying is critical. Students who are targets of bullying behavior are more likely to experience lower academic achievement and aspirations, higher truancy rates, feelings of alienation from school, poor relationships with peers, loneliness, or depression.⁵ Bystanders, or those who only see or hear about bullying, also may be negatively affected as bullying tends to have harmful effects on overall school climate. Bullying can foster fear and disrespect and negatively affect the school experience, norms, and relationships of all students, families, and school personnel.⁶ The consequences may result in students changing their patterns of school participation or schools eliminating school activities (*e.g.*, dances, sporting events) where bullying has occurred. Teachers, school personnel, parents, and students should report bullying when they become aware of it.

Students with disabilities are disproportionately affected by bullying.⁷ For example, students with learning disabilities, attention deficit or hyperactivity disorder, and autism are more likely to be bullied than their peers.⁸ Any number of factors -- physical characteristics, processing and social skills, or intolerant environments -- may increase the risk that students with disabilities will be bullied. Due to the characteristics of their disabilities, students with intellectual, communication, processing, or emotional disabilities may not understand the extent to which bullying behaviors are harmful, or may be unable to make the situation known to an adult who can help. In circumstances involving a student who has not previously been identified as a child with a disability under the IDEA, bullying may also trigger a school's child find obligations under the IDEA. 34 C.F.R. §§300.111, 300.201.

Whether or not the bullying is related to the student's disability, any bullying of a student with a disability that results in the student not receiving meaningful educational benefit constitutes a

⁵ Gini G., & Pozzoli T. (2009). Association between bullying and psychosomatic problems: A meta-analysis. *Pediatrics*, 123(3):1059-1065.

⁶ O'Brennan, L. M., Bradshaw, C. P., & Sawyer, A. L. (2009). Examining developmental differences in the social-emotional problems among frequent bullies, victim, and bully/victims. *Psychology in the Schools*, 46(2), 100-115.

⁷ Swearer, S. M., Wang, C., Maag, J. M., Siebecker, A. B., & Frerichs, L. J. (2012). Understanding the bullying dynamic among students in special and general education. *Journal of School Psychology*, 50, 503-520.

⁸ Twyman, K. A., Saylor, C. F., Saia, D., Macias, M. M., Taylor, L. A., & Spratt, E. (2010). Bullying and ostracism experiences in children with special health care needs. *Journal of Developmental Behavioral Pediatrics*, 31, 1-8.

Page 3 - Dear Colleague: Bullying of Students with Disabilities

denial of FAPE under the IDEA that must be remedied.⁹ States and school districts have a responsibility under the IDEA, 20 U.S.C. § 1400, *et seq.*, to ensure that FAPE in the least restrictive environment (LRE) is made available to eligible students with disabilities. In order for a student to receive FAPE, the student's individualized education program (IEP) must be reasonably calculated to provide meaningful educational benefit.¹⁰

Schools have an obligation to ensure that a student with a disability who is the target of bullying behavior continues to receive FAPE in accordance with his or her IEP. The school should, as part of its appropriate response to the bullying, convene the IEP Team to determine whether, as a result of the effects of the bullying, the student's needs have changed such that the IEP is no longer designed to provide meaningful educational benefit. If the IEP is no longer designed to provide a meaningful educational benefit to the student, the IEP Team must then determine to what extent additional or different special education or related services are needed to address the student's individual needs; and revise the IEP accordingly. Additionally, parents have the right to request an IEP Team meeting at any time, and public agencies generally must grant a parental request for an IEP Team meeting where a student's needs may have changed as a result of bullying. The IDEA placement team (usually the same as the IEP Team) should exercise caution when considering a change in the placement or the location of services provided to the student with a disability who was the target of the bullying behavior and should keep the student in the original placement unless the student can no longer receive FAPE in the current LRE placement. While it may be appropriate to consider whether to change the placement of the child who was the target of the bullying behavior, placement teams should be aware that certain changes to the education program of a student with a disability (*e.g.*, placement in a more restrictive "protected" setting to avoid bullying behavior) may constitute a denial of the IDEA's requirement that the school provide FAPE in the LRE. Moreover, schools may not attempt to resolve the bullying situation by unilaterally changing the frequency, duration, intensity, placement, or location of the student's special education and related services. These decisions must be made by the IEP Team and consistent with the IDEA provisions that address parental participation.

If the student who engaged in the bullying behavior is a student with a disability, the IEP Team should review the student's IEP to determine if additional supports and services are needed to address the inappropriate behavior. In addition, the IEP Team and other school personnel should consider examining the environment in which the bullying occurred to determine if changes to the environment are warranted.

As discussed above, any bullying of a student with a disability that results in the student not receiving meaningful educational benefit from the special education and related services provided by the school is a denial of FAPE. A student must feel safe in school in order to fulfill his or her full academic potential. We encourage States and school districts to alert Boards of Education, school administrators, teachers, and staff that bullying can result in a denial of FAPE

⁹ OCR also has authority to investigate complaints alleging denial of FAPE under Section 504 and Title II. See the July 25, 2000, joint Dear Colleague Letter on Disability Harassment; (available at: <http://www.ed.gov/ocr/docs/disabharassltr.html>); and OCR's October 26, 2010, Dear Colleague Letter on Harassment and Bullying (available at: <http://www.ed.gov/ocr/letters/colleague-201010.html>).

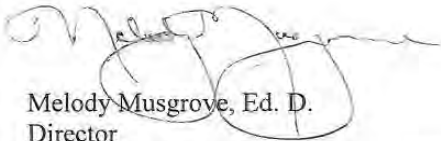
¹⁰ See *Hendrick Hudson Central Sch. Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176, 201 (1982).

Page 4 - Dear Colleague: Bullying of Students with Disabilities

for students with disabilities. We also encourage States and school districts to reevaluate their policies and practices addressing problematic behaviors, including bullying, in light of the information provided in this letter, as well as in OSERS' July 25, 2000, joint Dear Colleague Letter and OCR's October 26, 2010, Dear Colleague Letter. The enclosure to this letter, "Effective Evidence-based Practices for Preventing and Addressing Bullying," includes practices for use as part of any bullying prevention and intervention program to help ensure that school and classroom settings are positive, safe, and nurturing environments for all children and adults.

We look forward to continuing to work with you to ensure that students with disabilities have access to high-quality services in positive, safe, and respectful school environments.

Sincerely,



Melody Musgrove, Ed. D.
Director
Office of Special Education Programs



Michael K. Yudin
Acting Assistant Secretary

Enclosure: Effective Evidence-based Practices for
Preventing and Addressing Bullying

APPENDIX B

Sample Letter

Notice of Bullying & Harassment

Your Mailing Address
Your email address (optional)

Date

Name of School Principal
Address of School

RE: *Name of Child: (Date of Birth)*

Dear *Principal's Name*:

I am writing to report that my child, *name* is being bullied and harassed in school. As you may know, *child's name* has (an IEP or a 504 plan) based on (*specify the diagnosis or disability*). The following is a list of some of the acts of bullying and harassment *name of child* has experienced.

- *List each incident. Include details about **when** and **where** the incident occurred, **who** was involved, **what** happened, **what** was said, and **what** happened after the incident occurred. Note if any witnesses were present.*

This bullying and harassment is having a significant impact on (*child's name*).

Describe how the student is being impacted at school and at home. For example: declining grades, declining attendance, declining participation in class or school activities, declining concentration, physical symptoms (headache, nausea, pain), refusal or resistance to attending school, skipping/ avoiding certain class(es), repeatedly arriving late to class/school or leaving class/school early, social isolation or withdrawal, acting out or behavior problems, injury, and/or anxiety or emotional distress.

Therefore, the bullying and harassment is creating a hostile environment for *child's name* at school.

(Optional) I have attempted to resolve my concerns by (explain how you have tried to resolve the problem, who you talked to, and any response to your concerns).

I believe the bullying and harassment my child is experiencing may violate the Dignity for All Students Act and Section 504 of the Rehabilitation Act. I am requesting that you investigate these incidents promptly and thoroughly. I would like to meet with you personally (*or by phone - if you cannot meet in person*) to review the findings of your investigation and work collaborative with you and my child's team to discuss the steps that will be taken to address the bullying and harassment and prevent future incidents.

In addition, I am requesting an emergency meeting of (*if child has IEP - the Committee on Special Education (CSE); if child has 504 Plan - the 504 Team*) to discuss the impact of the bullying and harassment on my child's disability-related needs and determine if the any changes to my child's (*IEP or 504 Plan*) are needed.

For the purpose of scheduling meetings, I can arrange to be available on *(list days available)* between *(give a range of time, such as between 8:00 and 11:00 a.m. – hours will likely need to be within the school day)*. Please let me know the earliest dates available for these meetings as soon as possible.

Thank you for your attention to this matter. I look forward to working with you to resolve these problems.

Sincerely,

Your Name

cc:

Name of School District Superintendent

Address

Name of CSE Chairperson or 504 Coordinator

Address

APPENDIX C

CSE or 504 Plan Meeting Agenda

Your Concern Focus on student – Examples: He is afraid to go to school. She can't concentrate.	Evidence/Observations Supporting Your Concern	Questions for Discussion at Meeting Related to Concern Examples: What can be done to reduce his fear? What skills would help her report bullying?

