



California's Protection & Advocacy System

Bullying & Disability Harassment of Students with Disabilities

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Frequently Asked Questions

Bullying can have a profound impact on students with disabilities, who are often targeted for bullying. This publication addresses school district's legal obligations under Federal and California law to address and prevent bullying and disability harassment of students with disabilities. This publication also identifies possible strategies to address bullying through the IEP process and other procedures.

(1) What is bullying?

Bullying involves a combination of an imbalance of power, an intent to cause harm, and repetition.¹ Bullying exists in many forms:

- Verbal bullying: taunting, teasing, name calling, and threatening;
- Physical bullying: hitting, tripping, kicking, spitting, and pushing;
- Social bullying: spreading rumors, manipulating social relationships, demanding money or property, or intimidation; and
- Cyber-bullying: electronic acts including use of texting, social media websites such as Facebook or YouTube, and email to humiliate targets.

(2) What is disability harassment?

Department of Education Office of Civil Rights has stated that disability harassment is conduct that creates a hostile environment which limits people with disabilities from participating in or benefiting from school activities or services.² Harassment can be physical or verbal abuse and intimidation. Disability harassment, unlike bullying, may also include conduct that is not directed at a specific target, is not motivated by intent to

¹ <http://www.stopbullying.gov/>

² <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>

cause harm, and involves isolated incidents.³ However, bullying can be disability harassment if the bullying is on the basis of disability and/or targets people with disabilities. Disability harassment can be perpetrated by students and peers, and even by school employees, such as teachers and administrators.⁴

(3) What laws govern bullying and disability harassment at school?

Bullying, disability harassment, and anti-discrimination laws

Under federal law, Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 prohibit discrimination on the basis of disability by school districts receiving federal funds and by governmental entities. Bullying and disability harassment can be a form of discrimination on the basis on disability. The U.S. Department of Education Office of Civil Rights has stated that disability harassment is a form of discrimination which violates Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act.⁵

California law also prohibits discrimination on the basis of disability in schools.⁶ All pupils have the right to participate fully in the educational process, free from discrimination and harassment. California's public schools have an affirmative obligation to combat racism, sexism, and other forms of bias, and a responsibility to provide equal educational opportunity. Harassment on school grounds directed at an individual on the basis of personal characteristics or status creates a hostile environment and jeopardizes equal educational opportunity as guaranteed by the California Constitution and the United States Constitution⁷.

A school has notice of harassment if a responsible employee, such as a teacher or administrator, knew about the harassing conduct or would have known about the conduct if they were acting reasonably. School districts have an obligation to address discriminatory harassment that they know about, or reasonably should have known about.⁸

Bullying and Individuals with Disabilities Education Act

Furthermore, under the Individuals with Disabilities Education Act (IDEA), school districts have a responsibility to provide free and appropriate public education (FAPE) to students with disabilities who are eligible for special education. The U.S. Department of Education Office of Civil Rights has stated that disability harassment may decrease

³ <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>

⁴ <http://www2.ed.gov/about/offices/list/ocr/docs/disabharassltr.html>

⁵ <http://www2.ed.gov/about/offices/list/ocr/docs/disabharassltr.html>

⁶ Cal. Ed. Code Sec. 220.

⁷ Cal. Ed. Code Sec. 201(a)-(c).

⁸ See footnote 9, <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>

students with disabilities' ability to benefit from public education and deny them of their right to FAPE.⁹

(4) What are the school district's responsibilities with regards to addressing bullying and disability harassment at school?

Hostile learning environment

School districts may violate federal law 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.¹⁰ A number of courts have held that severe and pervasive harassment on the basis of disability may create a hostile learning environment in violation of the ADA and Section 504 of the Rehabilitation Act.¹¹ 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.

Discipline

Under California law, students can be suspended or expelled if they engage in bullying. This includes cyberbullying.¹²

A student can be suspended or recommended for expulsion if the superintendent or the principal of the school determines that the student has intentionally engaged in harassment, threats or intimidation "that is sufficiently severe or pervasive to have the actual and reasonably expected effect of materially disrupting class work, creating substantial disorder, and invading the rights of either school personnel or pupils by creating an intimidating or hostile educational environment."¹³

Anti-bullying policy

California law requires school districts to adopt policies prohibiting discrimination, harassment, intimidation, and bullying in school.¹⁴ School district must also adopt a complaint process for receiving and investigating complaints of discrimination, harassment, intimidation, and bullying.¹⁵

⁹ <http://www2.ed.gov/about/offices/list/ocr/docs/disabharassltr.html>

¹⁰ 34 C.F.R. parts 100, 104, and 106.

¹¹ See, *Guckenberger v. Boston University*, 957 F. Supp. 306, 314 (D. Mass. 1997); *Pell v. the Trustees of Columbia University*, 1998 U.S. Dist. Lexis 407, 56 (S.D.N.Y. 1998); and *Rick C. v. Lodi School District*, 32, Individuals with Disabilities Education Law Report, 232.

¹² Cal. Ed. Code Sec. 48900.

¹³ Cal. Ed. Code Sec. 48900.4.

¹⁴ Cal. Ed. Code Sec. 234.1(a)

¹⁵ Cal. Ed. Code Sec. 234.1(b)

Districts must ensure that people who report discrimination, harassment, intimidation, and bullying in school are protected from retaliation and their identity remains confidential, as appropriate.¹⁶ Districts are also required to include in their complaint process, a requirement that school personnel take immediate steps to intervene, if they witness an act of discrimination, harassment, intimidation, or bullying, if it is safe to do so.¹⁷

You can request a copy of your school district's discrimination, harassment, intimidation and bullying policy and complaint process; your school district should make this information available to you. If your primary language is not English, this information should be translated into your primary language.¹⁸

(5) How can parents tell if their child is being bullied?

Pay attention to your child and any changes in behavior, mood, or appearance such as:

- Changes in eating and sleeping habits
- Dropping grades and academic performance
- Avoiding school, truancy, tardiness or otherwise expressing dislike of school.
- Evidence of physical altercations or injury, such as cuts, bruises, or torn clothing.
- Depression, anxiety, loneliness, or low self-esteem.

Sometimes students with disabilities are not aware that they are being bullied, so it is important to communicate with your child, ask them about their relationships with their peers.

(6) How can parents use the IEP process to address bullying?

If you suspect or have knowledge that your child with a disability is having issues with bullying in school, you should notify your school immediately. You may also want to request an IEP meeting. An IEP meeting is a good opportunity to speak with school staff about your concerns regarding bullying.

If you believe that bullying may be having an impact on your child's emotional and social well-being and/or academic performance, you may also wish to make a written request for assessment of your child's mental and emotional condition. This assessment may assist you and the IEP team in identifying appropriate services to address the impact bullying has on your child and his/her education.

At the IEP meeting, it is important to emphasize that bullying or disability harassment impacts your child's ability to benefit from his education, and that it is necessary to address bullying in the IEP for your child to receive FAPE.

¹⁶ Cal. Ed. Code Sec. 234.1(f)

¹⁷ Cal. Ed. Code Sec. 234.1(b)(1)

¹⁸ Cal. Ed. Code Sec. 234.1(c)

There are many goals, accommodations, and services which can be incorporated into your child's IEP to address bullying. Here are some examples of IEP goals and interventions which can address issues with bullying:

- **Building social skills.** A student can learn about appropriate social interaction, and learn to identify inappropriate social interactions and bullying behavior. Sometimes students who are bullied do not know it is inappropriate to bully other students or they react aggressively to bullying.
- **Developing positive interpersonal relationships.** Students who are able to develop positive relationships and friendships more likely to have confidence and are better equipped to handle bullying or harassing behavior
- **Developing self-advocacy skills.** Children can learn appropriate responses to bullying, including how and when to notify appropriate adults, to say "Stop," or walk away from or avoid stressful situations.
- **Supervision or separation from bullies.** The IEP can provide accommodations so that the student can be monitored or shadowed by school staff, separated from bullies, or to allow the student avoid stressful or charged situations or environments (for example, hallways or the back of the bus). However, be careful that these measures do not "punish" your child, place them in an overly restrictive environment, or deprive them of opportunities for positive peer interaction.
- **Counseling or other supportive services.** This can be counseling through a school psychologist or informal check-ins with a teacher, guidance counselor, or principal who the student can turn to when they are being bullied or harassed.
- **Parent counseling and training.** Parent counseling may help parents understand the special needs of their child, and help them acquire the skills that would allow them to support the implementation of the child's IEP.
- **Educating school staff and/or peers.** School staff can be educated as to the school's bullying policy and complaint and reporting procedures. If appropriate, staff can be educated to better understand and be sensitive to the student's disability.

This list is not exhaustive. Like any aspect of an IEP, goals, accommodations, and services should be designed for your child's unique needs.

(7) What procedures are available to obtain relief when a school district fails to protect a student with a disability against bullying?

If the school district is not following special education laws or procedures or has not implemented what was agreed upon in your child's IEP, you may file a compliance complaint with the California Department of Education.

However, if you have a disagreement with the school district regarding what should go into your child's IEP, you may wish to request a due process hearing.

You may also file a complaint with the Office of Civil Rights (OCR) with the U.S. Department of Education regarding allegations of discrimination in education on the basis of disability that may constitute a violation of Section 504 of the Rehabilitation Act.

You can find more information regarding due process and complaint procedures in the Special Education Rights and Responsibilities publication, available online at:
<http://www.disabilityrightsca.org/pubs/504001SERR.htm>