

14-3078

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

T.K., S.K., individually and on behalf of L.K.,

Plaintiffs-Appellees

v.

NEW YORK CITY DEPARTMENT OF EDUCATION,

Defendant-Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

BRIEF OF THE UNITED STATES AS AMICUS CURIAE
SUPPORTING APPELLEES

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INTEREST OF THE UNITED STATES

The United States files this brief pursuant to Federal Rule of Appellate Procedure 29(a).

This case addresses the relationship between a school district's obligations to respond to student-on-student bullying of a child with a disability and to ensure that the student receives the free appropriate public education (FAPE) required under the IDEA. The United States Department of Education (ED) has issued guidance interpreting Part B of the Individuals with Disabilities Education Act

(IDEA), 20 U.S.C. 1400 *et seq.*, and ED’s IDEA regulations. In that guidance, ED explains that a school district has an obligation (a) to address serious student-on-student bullying and its effects on a student’s special education program and (b) to respond to parents’ reasonable requests regarding their child’s special education program. The ED’s guidance also explains that a FAPE can include not only academic, but also nonacademic, programs and services. The ED has authority to issue regulations and policy guidance to implement the IDEA, withhold IDEA funds from States that fail to comply with the IDEA’s requirements, and refer matters to the Department of Justice for enforcement, and therefore has an interest in the issues in this case. 20 U.S.C. 1406, 1416(e)(2)-(3), 1417.

STATEMENT OF THE ISSUE

The United States will address the following issue:

Whether the school district violated the IDEA, 20 U.S.C. 1400 *et seq.*, when it refused the parents’ request to discuss serious bullying and its effects on the student during meetings specifically called to address her special education program.

STATEMENT OF THE CASE

1. The IDEA And ED’s Guidance

a. Congress enacted the IDEA to ensure that children with disabilities are provided a “free appropriate public education that emphasizes special education

and related services designed to meet their unique needs.” 20 U.S.C.

1400(d)(1)(A); see 20 U.S.C. 1401(3)(A), 1412(a)(1). A FAPE for each qualified child is implemented through an individualized education program (IEP). 20

U.S.C. 1401(9)(D), 1414(d)(1)(A). An IEP team, composed of appropriate school personnel and the child’s parents, develop the IEP that the school district

implements. 20 U.S.C. 1414(d)(1)(A), (B) and (2)(A). An IEP identifies a child’s

(a) educational abilities, (b) annual goals, (c) the instruction and related services

the school will provide the child and (d) the methods by which the school will

measure the child’s progress towards the goals. 20 U.S.C. 1414(d)(1)(A).

Instructional topics in an IEP can include academic and nonacademic skills,

including communication, behavior management, and socialization skills. See,

e.g., *M.H. v. New York City Dep’t of Educ.*, 685 F.3d 217, 248-249 (2d Cir. 2012).

The ED has issued guidance that explains an IEP must address all of a child’s

needs, academic and behavioral, including socialization. *E.g.*, *Letter to*

Anonymous, 55 IDELR 172, 2 (Jan. 13, 2010),

http://www.flspedlaw.com/letter_to_anonymous.pdf.

The IDEA requires the school, by the IEP team, to review an IEP at least annually and more frequently if necessary, including when a parent makes a

reasonable request to revisit the IEP. 20 U.S.C. 1414(d)(1)(B) and (4)(A); 34

C.F.R. 300.324(b)(1) (2014); 34 C.F.R. Pt. 300, App. A at 110 (2006) (Question

20). If an IEP is not written or revised appropriately to ensure that the child receives a FAPE, the school district has violated the IDEA. See 20 U.S.C. 1414(d)(4)(A). In addition, if the local school district cannot provide the services that meet the child's needs, it must pay for appropriate special education services elsewhere, including at a private school. 20 U.S.C. 1412(a)(10)(B); 34 C.F.R. 300.145-147.

The IDEA envisions collaborative consultation between parents and school officials, particularly in developing and revising an IEP. 20 U.S.C. 1414(c)(1)(B); 20 U.S.C. 1414(d)(1)(B), (3)(A)(ii) and (4)(A)(ii)(III). The IDEA "guarantee[s] procedural safeguards" for parents and children, including prior notice of a district's proposal for, or refusal to initiate or change, IDEA services. 20 U.S.C. 1415(a) and (b)(3); see generally 20 U.S.C. 1415.

A parent challenging a school's decisions and actions regarding the child's special education program must first seek state administrative review. 20 U.S.C. 1415(b)(6)(A); see 20 U.S.C. 1415(c)(2) and (f)-(i). Any party aggrieved by the final administrative decision may bring a civil action in state or federal court. 20 U.S.C. 1415(i)(2)(A). If parents believe that a school has denied their child a FAPE, they, after notice to the district, may remove their child from the public school, place her in a private school, and seek reimbursement for that placement.

School Comm. of Burlington v. Department of Educ., 471 U.S. 359, 369-370 (1985); 20 U.S.C. 1412(a)(1)(C)(ii).

b. Over the past 15 years, the ED has issued several policy letters (Dear Colleague Letters (DCLs)) and other guidance addressing school districts' obligations under the IDEA and other civil rights laws to respond to harassment and bullying of students, including students with disabilities.¹ The terms "bullying" and "harassment" address similar conduct that is based on different motivations. "Harassment" is conduct based on an individual's characteristic that is protected by civil rights laws (*e.g.*, race, sex, national origin or disability); "bullying" can be motivated by any reason. The ED's guidance explains how bullying and harassment can adversely affect any student's academic and nonacademic performance or behavior and interfere with the student's ability to participate in and benefit fully from his or her educational program, special

¹ These DCLs are available online and in the United States' Addendum (U.S.Add.). Office for Civil Rights, DCL on Section 504 and Bullying of Students with Disabilities (Oct. 21, 2014) (2014 DCL), <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-bullying-201410.pdf>; Office of Special Education and Rehabilitative Services (OSERS), DCL on Bullying and the IDEA (August 20, 2013) (2013 DCL), <http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/bullyingdcl-8-20-13.pdf>; Office for Civil Rights, DCL on Harassment and Bullying (Oct. 26, 2010) (2010 DCL), www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf; and Office for Civil Rights and OSERS, DCL on Prohibited Disability Harassment (July 25, 2000) (2000 DCL), available at www2.ed.gov/about/offices/list/ocr/docs/disabharassltr.html.

education or not. U.S.Add. 6, 9-11 (2014 DCL), 15 (2013 DCL). This is particularly true, as here, when harassment or bullying is directed at a child with a behavioral disability.

2. *Factual Background*

a. L.K. was diagnosed with Autism Spectrum Disorder. R.25:SPA61.²

L.K.'s local education agency is the New York City Department of Education (school district or district). In 2007-2008, when L.K. was in third grade (age 9), she needed substantial adult support to stay on task in class. R.25:SPA61, SPA63. Her IEP required a 1:1 special education itinerant teacher (SEIT), and speech, physical, and occupational therapy. See R.25:SPA61.

b. The record describes several specific incidents and repeated bullying by L.K.'s classmates and limited action by school officials. For example, "J" physically bullied L.K. in May and November 2007 by pinching her hard enough to cause a bruise and "stomp[ing]" on her toes. R.25:SPA61-62. L.K.'s parents immediately informed school officials of both events, yet the parents were never notified of any action taken, if any, nor did school officials seek information from L.K. or her parents. R.25:SPA61-62; R.29:A6385; R.30:A6552-6553; R.31:A6789-6794, 6801-6802. In another incident, several classmates refused to

² "R.___:A __" refers, respectively, to the document recorded on this court's docket sheet and the page number of the parties' Joint Appendix. "SPA __" refers to the page of the Special Appendix.

touch a pencil that L.K. had used. R.30:A6667, A6706. The teacher put a label on the pencil to reflect it was L.K.'s – which ensured the classmates could avoid it.

R.25:SPA76; R.30:A6706-6708.

L.K.'s three SEITs testified that classmates constantly teased L.K., including pushing, tripping, or laughing at her, or refusing to have contact with her.

R.25:SPA62; R.30:A6667-6669, A6686, A6688-6690, A6699-6700, A6705,

A6714. One SEIT who began working with L.K. in November 2007 described the

classroom at that time as a “hostile environment” for L.K., as L.K.'s classmates

ostracized and teased her. R.25:SPA62-63; R.30:A6705. Two SEITs stated that

L.K.'s classroom teacher ignored their concerns about students' continuous

bullying of L.K. R.25:SPA63; R.30:A6706-6708, A6689-6691. In April 2008, a

student drew a demeaning picture of L.K. that, among other things, labeled her fat

and ugly. R.29:A6363; R.31:A6742. The teacher's assistant spoke “brief[ly]” to

the student who made the drawing and put the picture in the trash. R.30:A6666.

The SEIT retrieved the picture from the garbage and gave it to L.K.'s parents,

which is how they learned of this incident. R.30:A6666; R.31:A6742. L.K. told a

SEIT that she was bullied, including being called “fat,” “ugly,” and “stupid.”

R.30:A6718. In May 2008, a neuro-developmental pediatrician observed that other

students constantly ignored L.K. and found that L.K. had “minimal interactions

with her classmates [and t]hese were mostly negative.” R.29:A6347-6348.

As the school year progressed, L.K. became more unhappy, withdrawn, and, as L.K.'s father described, "emotionally unavailable to learn" due to classmates' bullying. R.30:A6728-6729; R.31:A6742. L.K. came home crying and complained to her parents on an almost daily basis about being bullied by other students. R.30:A6734, A6740. L.K. was tardy 16 times during the spring semester, twice as many as the fall, due to fear of being ostracized by others. R.29:A6314, A6317; R.30:A6728; R.31:A6811. She was absent 15 days in the spring, twice as many days as the fall. R.29:A6314, A6317. In the spring, L.K. brought dolls to school for support on a more frequent basis due to the bullying and ostracism by others. R.29:A6352-6355; R.30:A6692, A6729, A6740.

One SEIT explained that the bullying adversely affected L.K.'s "academics, her social and emotional well-being." R.30:A6701. Another SEIT reported that L.K.

internalizes negative comments by peers, which she has experienced in school this year. Over the course of this academic year, [L.K.] has continuously expressed her sadness, frustration, anxiety and discomfort with her being bullied * * * . This bullying has negatively affected [L.K.'s] ability to initiate, concentrate, attend and stay on task with her homework assignments and activities after school, which has affected her academic performance * * * [and] negatively affected her confidence and self-image.

R.29:A6331; see R.30:A6718, A6721 (the SEIT and L.K. would count the days to the end of the school year).

A doctor familiar with L.K. stated that her behavior had worsened from the prior year. She “seemed anxious, sad, and frustrated * * * [h]er head was often down. She was not volunteering, as she had done last year,” and she needed more prompting from an aide. R.29:A6348; see R.30:A6674. Moreover, the expert observed that the teachers neither intervened nor “deliver[ed] consequences to students.” R.29:A6348-6349.

c. In November 2007 a private physician who knew L.K. for several years assessed her and recommended a different, more supportive educational environment than her current classroom. R.25:SPA63. In February 2008, L.K.’s parents applied for L.K.’s admission to the Summit School, a private school, for 2008-2009. R.25:SPA63. L.K. was accepted in March 2008 and her parents made a deposit. R.25:SPA63.

d. In March 2008 school representatives met with L.K.’s parents to discuss a behavior intervention plan (BIP) for L.K. that would create strategies for her behavioral difficulties that interfered with learning. R.25:SPA63-64; see 20 U.S.C. 1414(d)(3)(B)(i). While the parents had requested copies of any incident reports regarding harassment of L.K., none were provided. R.25:SPA64; see R.30:A6716. The school officials rejected L.K.’s parents’ attempt to discuss the bullying. R. 31:A6799-6800. At a meeting in May 2008, the principal refused to discuss classmates’ bullying with L.K.’s parents, ostensibly due to L.K.’s presence, and

did not identify any alternative time to discuss it. R.25:SPA76; R.30:A6656, A6691-6696, A6730-6732; R.31:A6769.

e. On June 4, 2008, the IEP team met to develop L.K.'s IEP for 2008-2009. During this meeting, school officials again refused to discuss the bullying. R.30:A6696-6697, A6710, A6732-6733; R.31:A6742-6743. The parents objected generally to L.K.'s same type of placement, and specifically to placement with the same students who were bullying her. R.25:SPA64. No other placement was offered and L.K.'s parents were not aware of any option other than the same class L.K. attended in 2007-2008. R.25:SPA64; R.31:A6794-6795. The parents rejected the IEP and placed L.K. at the Summit School in 2008-2009. R.25:SPA64.

3. *Procedural History*

The United States refers this Court to the appellees' discussion of the procedural history of this case. Appellees' Br. 16-22.

4. *The 2014 District Court Opinion*

The district court ruled for the plaintiffs (R.25:SPA58-88, 90), holding that the bullying created a hostile environment for L.K. and substantially restricted her overall special education program. R.25:SPA74-76. While noting that L.K. "improved academically," the court concluded that "academic growth is not an all-or-nothing proposition" and that the bullying affected her academic progress.

R.25:SPA75-76 (quoting *T.K. v. New York City Dep't of Educ.*, 779 F. Supp. 2d 289, 318 (E.D.N.Y. 2011), also at R.25:SPA50).

The court ruled that in 2007-2008, the school was deliberately indifferent to the bullying and its effects on L.K., denying L.K. a FAPE (R.25:SPA76-79), and that the proffered 2008-2009 IEP did not address the impact of the bullying on L.K. R.25:SPA78-79. The court held, “[w]here there is a substantial probability that bullying will severely restrict a disabled student’s educational opportunities, as a matter of law an anti-bullying program is required to be included in the IEP. An educational plan that fails to acknowledge a serious problem being faced by a disabled child cannot be said to have been reasonably calculated to offer her a FAPE.” R.25:SPA80. The court further held that the school officials’ refusal to discuss the bullying at the 2008 IEP meeting denied L.K.’s parents their right to meaningfully participate in the development of L.K.’s IEP. R.25:SPA78, 84. This procedural error supported the court’s conclusion that the district denied L.K. a FAPE. R.25:SPA74-84.

In granting the parents’ request for reimbursement, the district court concluded that Summit School was an appropriate private placement for L.K. and that her parents acted reasonably in deciding to take L.K. out of the public school when the school district failed to discuss and address the bullying. R.25:SPA87-88.

SUMMARY OF ARGUMENT

The IDEA establishes that parents are requisite members of the IEP team. 20 U.S.C. 1414(d)(1)(B)(i). They must have the opportunity to fully participate in the development and review of their child's special education program. An IEP must address all of the facets of a student's educational development and special education program. Bullying and its effects can have a significant impact on a child's ability to benefit from her special education program. Any topic reasonably related to the child's special education program that a parent raises – including bullying and its effects – is an appropriate and required topic for discussion at an IEP team meeting. When parents make a reasonable request to discuss serious bullying and its effects on their child during her IEP meeting, school officials must grant that request. Here, the school officials' refusal to discuss bullying and its effects on L.K. at her IEP meeting significantly impeded her parents' ability to participate in the IEP process and therefore denied a FAPE. 20 U.S.C. 1415(f)(3)(E)(ii).

In assessing whether plaintiffs established a substantive denial of a FAPE based on the serious bullying and its effects on L.K., and the school's response, the Court may consider that evidence in addition to the procedural violation. See *C.F. v. New York City Dep't of Educ.*, 746 F.3d 68, 81 (2d Cir. 2014). The Court's assessment of a substantive violation must determine whether the serious bullying

and its effects interfered with L.K.'s special education program, including her academic and nonacademic developments, in a way that prevents the child from obtaining a meaningful educational benefit and thus denies her a FAPE; and whether the school district's response ensured or denied L.K.'s continuing receipt of a FAPE.

ARGUMENT

THE SCHOOL DISTRICT'S REFUSAL TO DISCUSS BULLYING AND ITS EFFECTS ON L.K. VIOLATED THE IDEA

A. Standard Of Review

This Court reviews the district court's decision under a modified *de novo* standard, and considers the district court's conclusions in light of, and with deference to, the administrative officials' findings and conclusions. *C.F. v. New York City Dep't of Educ.*, 746 F.3d 68, 77 (2d Cir. 2014); see *M.W. v. New York City Dep't of Educ.*, 725 F.3d 131, 138 (2d Cir. 2013).

B. Procedural Denials And Substantive Failure In Devising An IEP May Deny A FAPE

To succeed on a claim of reimbursement for a child's special education placement in a private school, a parent must satisfy the *Burlington/Carter* test by proving that (1) the school district did not offer a FAPE, (2) the private placement is appropriate, and (3) the equities favor reimbursement. *Florence Cnty. Sch. Dist.*

Four v. Carter, 510 U.S. 7, 12-16 (1993); *School Comm. of Burlington v. Department of Educ.*, 471 U.S. 359, 369-370 (1985); *C.F.*, 746 F.3d at 71, 73.³

Each child's FAPE is provided through the child's IEP. 20 U.S.C. 1401(9)(D); 34 C.F.R. 300.17(d). An IEP provides a FAPE when it identifies special education and related services that are "reasonably calculated to provide some 'meaningful' [educational] benefit," *Mrs. B. v. Milford Bd. of Educ.*, 103 F.3d 1114, 1120 (2d Cir. 1997) (citing *Board of Educ. v. Rowley*, 458 U.S. 176, 189, 192 (1982)); see *R.E. v. New York City Dep't of Educ.*, 694 F.3d 167, 175 (2d Cir. 2012), cert. denied, 133 S. Ct. 2802 (2013). The IEP's programs and services must provide an opportunity for the student to progress. *C.F.*, 746 F.3d at 72.

This Court has found that deficiencies or omissions in an IEP deny a FAPE when the flaws are integral to or substantially affect the child's overall participation or opportunities in her special education program in a way that prevents the child from obtaining a meaningful educational benefit. *E.g.*, *C.F.*, 746 F.3d at 81; *R.E.*, 694 F.3d at 194; *M.H. v. New York City Dep't of Educ.*, 685 F.3d 217, 247-249 (2d Cir. 2012). Not every deficiency denies a child a FAPE, of course; minimal negative effects are not enough. In *M.H.*, this Court found a FAPE was not provided when an IEP's short-term objectives were generic, did not

³ The United States is addressing only the first prong of the *Burlington/Carter* test.

correlate with the annual goals, and did not identify means to measure or track the child's progress, and non-academic goals were not based on the child's actual grade in school. 685 F.3d at 247-249. Moreover, this Court held that the IEP's failure to provide a certain type of therapy for the child when the evidence established that such therapy was "imperative . . . to prevent [the child's] regressions" also established a denial of a FAPE. *Id.* at 251-252. Similarly, in *C.F.*, this Court held that a FAPE was denied when the IEP failed to provide a full-time aide for a student with significant maladaptive behaviors. 746 F.3d at 81.

This Court reviews a challenge to an IEP under a two-part inquiry. See, *e.g.*, *C.F.*, 746 F.3d at 78-79; *R.E.*, 694 F.3d at 189-190; *M.H.*, 685 F.3d at 225-226, 245. The Court will first determine whether the school district violated the IDEA procedurally, and second whether the IEP is substantively adequate – whether it provided a FAPE. See *R.E.*, 694 F.3d at 190. "Substantive inadequacy automatically entitles the parents to reimbursement [for a private placement]. Procedural violations, however, only do so if they 'impeded the child's right to a [FAPE],' 'significantly impeded the parents' opportunity to participate in the decisionmaking process,' or 'caused a deprivation of educational benefits.'" *Ibid.* (quoting 20 U.S.C. 1415(f)(3)(E)(ii)); see *C.F.*, 746 F.3d at 81 (same); 34 C.F.R. 300.513(a)(2).

The IDEA's procedures, and IEP development in particular, are based on required communication and collaboration between education professionals *and parents*. *E.g.*, 20 U.S.C. 1414(d)(1)(B), (3) and (4)(A). Parents are required members of an IEP team. 20 U.S.C. 1414(d)(1)(B)(i). The IDEA establishes that an IEP team must consider information parents provide when developing and reevaluating the IEP. 20 U.S.C. 1414(c)(1)(A)(i) and (d)(3)(A)(ii); 34 C.F.R. 300.324(a)(1)(ii) and (b)(1)(ii)(C) (parental participation in IEP development and revision). Parents, of course, have a "unique perspective of their child's special needs." *Amanda J. v. Clark Cnty. Sch. Sys.*, 267 F.3d 877, 892 (9th Cir. 2001). Given their mandatory presence and role as a member of the team, they must be able to participate substantively at an IEP meeting. See generally 20 U.S.C. 1414(d)(1)(B)(i) and (3)(A)(ii).

In analyzing the first prong of the *Burlington/Carter* test, a court's inquiry may stop upon concluding that a procedural violation substantially interfered with parents' rights to participate in the IEP process and therefore denied the student a FAPE. In *Deal v. Hamilton County Board of Education*, the court held that the school district's predetermination of an IEP's terms – the teaching method for a child with autism – prior to the IEP meeting denied the parents a "meaningful opportunity to participate, * * * [which] amounts to denial of a FAPE" even though the parents were at the meeting. 392 F.3d 840, 855-859 (6th Cir. 2004),

cert. denied, 546 U.S. 936 (2005). The violation was based on the school district's refusal to consider whether an alternative teaching program was appropriate for the child. See *ibid.* "A procedural violation can cause substantive harm when it seriously infringes upon the parents' opportunity to participate in the IEP process." *Id.* at 859. In *Amanda J.*, 267 F.3d at 891-894, a school district's procedural violation of withholding from parents information regarding their child's potential diagnosis of autism prevented parents from making an informed decision regarding the terms of the IEP, and therefore denied the child a FAPE. In *M.H.*, 685 F.3d at 247-252, this Court held that, in addition to a substantive violation, procedural omissions and flaws in elements in the IEP also denied the child a FAPE.

Alternatively, this Court may evaluate a procedural violation in conjunction with evidence of a related but separate substantive violation. *C.F.*, 746 F.3d at 81; *R.E.*, 694 F.3d at 190, 194. In *C.F.*, the procedural error of not conducting an appropriate behavioral assessment "inform[ed]" and supported this Court's finding a substantive violation; the IEP could not assess the appropriate teacher:student ratio because of the absence of the behavioral assessment. 746 F.3d at 80-81. Similarly, in *R.E.*, the procedural lack of a functional behavioral assessment "compounded" the substantive violation of not identifying in the IEP the appropriate teacher:student ratio. 694 F.3d at 194.

C. An IEP Must Address Academic And Nonacademic Development, As Appropriate

An IEP must address a child's current abilities, needs and goals and sets out the special education and related services that will address the child's academic *and* nonacademic needs and the means to measure the child's progress. 20 U.S.C. 1414(d)(1)(A). The elements of an IEP are as varied as children themselves, and can include academic programs, behavior and socialization plans, self-help training, speech therapy, communication, and training in fine or gross motor skills. See, *e.g.*, *M.H.*, 685 F.3d at 248-249 (a child's IEP must address fully the child's academic and non-academic, social development needs); see also 20 U.S.C. 1400(d)(1)(A) (a FAPE addresses children's individual needs, including skills for employment and independent living).

An IEP team also must consider "positive behavioral interventions and supports, and other strategies" to address how a child's behavior interferes with learning. 20 U.S.C. 1414(d)(3)(B)(i); see *R.E.*, 694 F.3d at 190-191, 193-194 (discussing New York's regulations and standards for a functional behavioral assessment). A student with a disability may be eligible under the IDEA to receive a FAPE (and therefore an IEP), even if the child has passing grades. See 34 C.F.R. 300.101(c)(1).

Consistent with these statutory and regulatory provisions, the ED has repeatedly explained that a school district must provide special education and

related services to address a covered student's nonacademic needs, in addition to academic needs, in order to fully provide the student a "meaningful educational benefit." *E.g.*, *Letter to Anonymous*, 60 IDELR 47, 1 (Feb. 29, 2012), available at www2.ed.gov/policy/speced/guid/idea/letters/2012-1/redacted022912fape1q2012.doc ("A State has an obligation to make FAPE available to an eligible child with a disability even if that child meets the State's academic achievement standards."); *Letter to Anonymous*, 55 IDELR 172, 2 (Jan. 13, 2010), http://www.flspedlaw.com/letter_to_anonymous.pdf (students with "high cognition," including children on the autism spectrum, may need special education and related services "in the affective areas, social skills and classroom behavior").

D. Serious Bullying And Its Effects Are A Required Topic To Discuss At An IEP Meeting When Parents Make A Reasonable Request

As discussed below, serious bullying and its effects can interfere with a student's special education program and deny the student a FAPE. See pp. 20-23, *infra*. Accordingly, when an IEP Team member – including a parent – reasonably requests that the team discuss serious bullying and its effects on a child during the child's IEP or related BIP meeting, this is a mandatory topic for discussion. A school district violates the IDEA when it refuses to discuss with parents the very topics – including bullying – that are essential to developing an IEP or evaluating

whether an IEP remains appropriate for the child's needs. See 20 U.S.C.

1414(d)(4)(A), 1415(f)(3)(E)(ii).

1. *The Interrelationship Of Student-On-Student Bullying, Harassment And A FAPE*

a. It is the ED's longstanding position that student-on-student harassment or bullying can interfere with a student's ability and opportunity to receive a FAPE.

U.S.Add. 14-16 (2013 DCL), 20 (2000 DCL); see 20 U.S.C. 1414(d)(4).⁴

Significant bullying can have a devastating impact on students. See generally R.25:SPA12-14, SPA19, SPA25-26. Serious and repeated bullying of a student with a disability, as here, easily may adversely and significantly affect the student's academic or nonacademic performance or behavior. A student who is constantly harassed or bullied may have a substantive decline in academic and/or nonacademic performance; be unable to concentrate on classroom activities; stop

⁴ The ED's positions set forth in its policy letters and other interpretations of its regulations are entitled to deference when, as here, they are consistent with the IDEA, its purposes and principles, and the ED's regulations. *Honig v. Doe*, 484 U.S. 305, 326 n.8 (1988) (given the ED's authority to "monitor[] and enforce[]" the IDEA, deference is owed to the ED's policy letter interpreting the IDEA when its approach "comports fully with the purposes of the statute"); *Taylor v. Vermont Dep't of Educ.*, 313 F.3d 768, 779-780 (2d Cir. 2002). In *Taylor*, the court gave *Auer v. Robbins*, 519 U.S. 452, 461 (1997) deference to an ED policy letter interpreting its IDEA regulation defining "parent" because, *inter alia*, it was "perfectly consistent with * * * the gap left in the regulations." *Ibid*. Similarly, deference is owed to amplification of ED's views in an amicus brief that are "fair and considered." *Chase Bank USA, N.A. v. McCoy*, 562 U.S. 195, 209 (2011).

participating fully in classes, extracurricular activities, therapy sessions or other IDEA service offerings; withdraw from peers; or become depressed, agitated, or frustrated. U.S.Add. 6, 9-11 (2014 DCL), 15 (2013 DCL), 23-26 (2010 DCL).

Bullying also may cause students to avoid school altogether or be frequently tardy, and interfere with or prevent a student from achieving behavioral goals in an IEP.

See generally R.25:SPA19, SPA25-26.

A court's assessment of whether bullying and its effects deny a child a FAPE must consider whether, because of the bullying, the child has been denied a meaningful educational benefit. See U.S.Add. 16 (2013 DCL). When serious bullying and its effects significantly interfere with an integral element of, or the student's overall participation in, her academic and nonacademic programs in a way that prevents the child from obtaining a meaningful educational benefit, the student is denied a FAPE. This approach is consistent with this Court's assessment of the severity of the deficiency, the child's needs, and the child's overall educational program when it reviews FAPE claims in other circumstances. See, *e.g.*, *C.F.*, 746 F.3d at 81; *R.E.*, 694 F.3d at 194; *M.H.*, 685 F.3d at 247-249.

For example, a student is likely to establish a denial of a FAPE due to bullying and its effects when there is a significantly measurable change in her academic performance over several classes or an extended period of time, or when her behavior is affected significantly and on a constant basis such that she is unable

to concentrate in class, communicate with peers, or participate substantially in her academic and socialization activities. U.S.Add. 14-16 (2013 DCL), 30 (2000 DCL). Consistent with the principles of a meaningful educational benefit, while there must be a substantial effect, there need not be an all-or-nothing impact on a student's academic performance before a student is denied a FAPE. U.S.Add. 14-16 (2013 DCL); see U.S.Add. 6, 9-11 (2014 DCL). That is particularly true where, as here, the child's disability manifests itself in behavioral and socialization issues, in addition to academic ones.

Several studies address how students with a disability are more likely to be targeted for bullying than students without a disability. See R.25:SPA22-24; U.S.Add. 15 (2013 DCL) (studies cited). For example, a study conducted by the Interactive Autism Network (IAN) found that 63% of students with autism spectrum disorder ages six to 15 were harassed at some point, and were more than three times likely to be bullied than their nondisabled siblings. IAN Research Report: *Bullying And Children With ASD*, Rev. Oct. 7, 2014, available at www.iancommunity.org/print/13429. Moreover, many students with disabilities are more vulnerable than others to the damaging effects of bullying. U.S.Add. 15 (2013 DCL).

b. Not every act of bullying or its adverse effects on a student, of course, will deny a FAPE. A brief or minimal drop in a student's academic performance

in one class, or atypical sullen behavior for a short, limited time, does not reflect a substantial impact on the student's overall program or significant interference with an integral part of the student's academic or behavioral program. Bullying and its effects will deny a student a FAPE only if they prevent the student from obtaining a meaningful educational benefit. Whether a student's withdrawal from participating in IDEA services or other school activities deny a FAPE will depend, in part, on whether the change significantly affects an essential or integral part of the student's special education program in a way that prevents the child from obtaining a meaningful educational benefit.

c. An assessment of liability under the IDEA is different from the assessment in a private action seeking compensatory damages under other civil rights laws including Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.*, and Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.*⁵ In concluding that the school district must address bullying and its effects on L.K., the district court relied, in part, on terms and standards for assessing liability under other civil rights laws. The district court held that a "disabled student is deprived

⁵ We address here only the legal standard applied in a private damages action against a school district alleging deliberate indifference to student-on-student harassment. This case does not implicate, nor do we address, the standard applicable in other cases, including those seeking only injunctive relief and administrative or judicial actions brought by the Departments of Education or Justice.

of a FAPE when school personnel are *deliberately indifferent* to or fail to take reasonable steps to prevent bullying that substantially restricts a child with learning disabilities in her educational opportunities.” R.25:SPA72 (emphasis added). Title VI and Title IX liability based on deliberate indifference requires actual notice of harassment that is based on a protected status (*e.g.*, race, sex, or disability) and an absent or unreasonably lax response by school officials. See *Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 647-648 (1999); *Zeno v. Pine Plains Cent. Sch. Dist.*, 702 F.3d 655, 665-666 (2d Cir. 2012).

A denial of a FAPE does not require “deliberate indifference” as that term is used in Title IX or Title VI cases. *E.g.*, *M.H.*, 685 F.3d at 247-249; *Amanda J.*, 267 F.3d at 892. The standards for “deliberate indifference” that require actual notice of the cause of the harassment do not define a denial of a FAPE. That denial is based on the school’s failure to address bullying and its effects on the child’s education program; the question under the IDEA is whether there is significant bullying that denies a child a FAPE, not why there is bullying. Moreover, under Title VI and Title IX, the focus is solely on whether school officials took appropriate steps to try to stop the bullying, while under the IDEA, the focus must be on whether the IEP provides the appropriate programs and services to address the needs of the child being bullied, and may including efforts to try to stop the bullying.

d. If bullying has denied the child a FAPE, the IEP team must revise the IEP and identify appropriate special education and related services to address the impact of the bullying and ensure prospectively that the student is receiving a FAPE. U.S.Add. 16 (2013 DCL); see 20 U.S.C. 1414(d)(4)(A); U.S.Add. 5-12 (2014 DCL). If a child's IEP does not provide appropriate programs or services that redress the effects of the bullying, and if the IEP and placement process do not reasonably address the bullying prospectively, the school has continued to deny a FAPE. 20 U.S.C. 1414(d)(4); U.S.Add. 16 (2013 DCL).

Because all programs and services are tailored to the child's "unique" needs, 20 U.S.C. 1401(29), there is no one-size-fits-all IEP that addresses bullying and its effects. As in all instances when an IEP team is faced with a substantial change in circumstances, the team must identify what different or additional needs the student has as a result of bullying and its effects, and the programs or services that are most appropriate for those needs.

In addition, in circumstances where bullying is an ongoing problem that denies a FAPE, school officials must take steps to try to address the bullying and may not unilaterally change the placement or location of the student's special education and related services. U.S.Add.16 (2013 DCL). Such steps may include training for the child's teachers and service providers on how to discover and stop bullying, which also would be identified in the child's IEP. See 20 U.S.C.

1414(d)(1)(A)(i)(IV) (an IEP includes “a statement of the program modifications or supports for school personnel that will be provided for the child” to assist her in attaining her annual goals); 34 C.F.R. 300.320(a)(4) (same). A school district’s efforts to stop bullying also could include training for all students on why bullying of other students is unacceptable and how to report bullying if it happens, dissemination of policies and procedures addressing bullying, and disciplining students who engage in bullying. U.S.Add. 16-17 (2013 DCL); see U.S.Add. 10 (2014 DCL). Of course, these latter elements would not be included in the child’s IEP and the school has significant discretion on how best to try to stop the bullying in the child’s current placement.

The ED’s guidance and positions set forth here on when and what steps school districts must take in the context of bullying and harassment to avoid IDEA liability not only fills a gap left by the statute and regulations, but also is wholly consistent with IDEA’s principles, including a meaningful educational benefit and full parental participation in the IEP process. Accordingly, deference is appropriate. *Chase Bank USA, N.A. v. McCoy*, 562 U.S. 195, 209 (2011); *Taylor*, 313 F.3d at 779-780.

E. The District’s Failure To Discuss Serious Bullying With L.K.’s Parents Violated The IDEA

The school district’s refusal to discuss the serious bullying and its effects on L.K., despite the parents’ repeated, reasonable requests to do so as part of the

development of her IEP, “significantly impeded” L.K.’s parents’ ability to participate in the decision making process and therefore denied a FAPE. 20 U.S.C. 1415(f)(3)(E)(ii); 34 C.F.R. 300.513(a)(2); see *Deal*, 392 F.3d at 855-859 (predetermined conclusions prior to an IEP meeting violated the IDEA); *Amanda J.*, 267 F.3d at 891-894 (failure to inform parents regarding a possible autism diagnosis violated the IDEA). “Procedural violations that interfere with parental participation in the IEP formulation process undermine the very essence of the IDEA.” *Amanda J.*, 267 F.3d at 892; see *Deal*, 392 F.3d at 858 (parental “[p]articipation must be more than a mere form; it must be *meaningful*”).

A reasonableness standard certainly permeates the communication anticipated between parents and school officials. See 34 C.F.R. Pt. 300, App. A at 110 (2006) (Question 20) (“Public agencies should grant any reasonable parent request for an IEP meeting.”); Final Rule, IDEA Parts B and C, 64 Fed. Reg. 12,581 (Mar. 12, 1999) (“A provision is not necessary to clarify that public agencies will honor ‘reasonable’ requests by parents for a meeting to review their child’s IEP. Public agencies are required under the statute and these final regulations to be responsive to parental requests for such reviews.”); *Letter to Slatkin*, 213 IDELR 128, 2 (Apr. 15, 1988) (parents’ request for an IEP meeting to address additional medical and psychological data regarding their child was reasonable and the LEA violated the IDEA by refusing to convene the meeting).

Certainly, information can and should be shared between parents and school officials, and in certain circumstances, mutually-agreed-upon changes can be made to an IEP without an IEP meeting. 34 C.F.R. 300.324(a)(4). When, as here, parents have reasonable concerns that their child's behaviors are regressing substantially as a result of significant bullying, the district must honor the parents' request to discuss these issues at an IEP team meeting. 20 U.S.C. 1414(d)(4)(A); 34 C.F.R. 300.324(b)(1)(ii)(C); U.S.Add. 16 (2013 DCL).

Here, the district was aware that L.K. had been repeatedly bullied by other students. R.25:SPA74. There is ample evidence of significant bullying and its effects on L.K.'s academic and nonacademic program. See pp. 6-9, *supra*. L.K.'s parents tried to discuss the bullying at L.K.'s IEP and BIP meetings but were rebuffed. See pp. 9-10, *supra*. School district officials refused to discuss L.K.'s bullying and its impact at the March 2008 BIP meeting, the June 2008 IEP meeting, and another meeting with the school principal. See pp. 9-10, *supra*. In the face of L.K.'s parents' reasonable request, the school district's refusal to discuss the serious bullying significantly impeded their opportunity to participate in the IEP development. The refusal thus denied L.K. a FAPE. 20 U.S.C. 1415(f)(3)(E)(ii); U.S.Add. 4-7 (2014 DCL), 15-17 (2013 DCL); cf. *Deal*, 392 F.3d at 858; *Amanda J.*, 267 F.3d at 891-894.

The district court held that “[t]he [school] district failed to fulfill[] IDEA’s procedural obligations by effectively precluding all discussion of the critical issue of bullying during the June 2008 [IEP] meeting.” R.25:SPA78. The court identified this error as one of several that established a substantive denial of a FAPE. R.25:SPA74-84. As discussed herein, this Court may also conclude that this procedural error is sufficient, standing alone, to establish a violation. 20 U.S.C. 1415(f)(3)(E)(ii).

F. In Determining Whether Bullying And Its Effects Denied L.K. A FAPE, The Court Must Assess Evidence Of L.K.’s Academic And Nonacademic Advancement And Regression, And Consider Whether The Proposed IEP Adequately Addressed Those Issues

If this Court further evaluates whether plaintiffs have proven a substantive denial of a FAPE, the Court should consider what effects the bullying had on L.K. and whether the school district appropriately addressed those effects in its proposed 2008-2009 IEP. In evaluating the effects on L.K., the Court should consider not only the degree of L.K.’s academic development, but equally important, evidence of: (a) changes in L.K.’s demeanor, (b) regressions in her behavior, (c) gains or regressions in L.K.’s interactions with peers, (d) her absences and tardiness to school, and (e) her concentration and participation in class, or lack thereof. See pp. 7-9, *supra*; cf. *M.H.*, 685 F.3d at 247-249 (flaws in child’s social and nonacademic goals denied a FAPE). The Court’s assessment of

the evidence of L.K.'s social improvements should also focus on her interactions, or lack thereof, with peers.

This Court also should assess whether the proposed 2008-2009 IEP was “reasonably calculated” to provide L.K. a FAPE. *R.E.*, 694 F.3d at 175. The Court should evaluate whether the proposed IEP’s specific programs and services addressed any needs identified as a result of the bullying and its effects. See 20 U.S.C. 1414(d)(4)(A); U.S.Add. 16 (2013 DCL); pp. 24-26, *supra*. This Court may also consider whether the IEP identifies appropriate goals and specific strategies that will help L.K. learn skills to achieve her socialization and behavioral goals. See *M.H.*, 685 F.3d at 247-249; 20 U.S.C. 1414(d)(1)(A). In reaching a determination, this Court should consider the effects of the bullying and the district’s actions, in light of the district’s refusal to discuss the allegations of serious bullying at the IEP meetings. *C.F.*, 746 F.3d at 81. If the Court concludes that the bullying and its effects were serious enough to deny L.K. a FAPE and the IEP did not adequately address those effects, the parents have established a substantive violation of the IDEA.

CONCLUSION

This Court should conclude that the school district's refusal to discuss bullying and its effects at the IEP meeting significantly impeded the parents' right to participate in the IEP process and therefore violated the IDEA.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify, pursuant to Federal Rule of Appellate Procedure 32(a)(7)(C), that the foregoing Brief Of The United States As Amicus Curiae Supporting Appellees:

(1) complies with Federal Rules of Appellate Procedure 29(d) and 32(a)(7)(B), because it contains 6,821 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii); and

(2) complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Word 2007, in 14-point Times New Roman font.

s/ Jennifer Levin Eichhorn
JENNIFER LEVIN EICHHORN
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Dated: March 6, 2015

CERTIFICATE OF SERVICE

I hereby certify that on March 6, 2015, I electronically filed the foregoing Brief Of The United States As Amicus Curiae Supporting Appellees with the Clerk of the Court for the United States Court of Appeals for the Second Circuit by using the appellate CM/ECF system. I further certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system. Finally, I certify that six paper copies of the foregoing Brief were sent via certified mail to the Clerk of the Court.

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ADDENDUM

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UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

October 21, 2014

Dear Colleague:

While there is broad consensus that bullying is wrong and cannot be tolerated in our schools, the sad reality is that bullying persists in our schools today, and especially so for students with disabilities.¹ In recent years, the Office for Civil Rights (OCR) in the U.S. Department of Education (Department) has received an ever-increasing number of complaints concerning the bullying of students with disabilities and the effects of that bullying on their education, including on the special education and related services to which they are entitled. This troubling trend highlights the importance of OCR's continuing efforts to protect the rights of students with disabilities through the vigorous enforcement of Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (Title II). It also underscores the need for schools to fully understand their legal obligations to address and prevent disability discrimination in our schools.

Today's guidance follows a long history of guidance issued by the Department in this critical area of disability discrimination. In 2000, OCR and the Office of Special Education and Rehabilitative Services (OSERS) issued joint guidance informing schools that disability-based harassment may deny a student equal educational opportunities under Section 504 and Title II.² The 2000 guidance also noted the responsibilities of schools under Section 504 and the Individuals with Disabilities Education Act (IDEA) to ensure that students receive a free appropriate public education (FAPE),

¹ These students are bullied or harassed more than their nondisabled peers. *See* Office of Special Education and Rehabilitative Services (OSERS) 2013 Dear Colleague Letter on Bullying of Students with Disabilities, <http://www.ed.gov/policy/speced/guid/idea/memosdcltrs/bullyingdcl-8-20-13.doc>, at page 2 ("Students with disabilities are disproportionately affected by bullying."). That letter explains that, "[b]ullying 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." *Id.* Throughout this guidance, the terms "bullying" and "harassment" are used interchangeably to refer to these types of conduct. *See* Office for Civil Rights (OCR) 2010 Dear Colleague Letter on Harassment and Bullying, <http://www.ed.gov/ocr/letters/colleague-201010.pdf>, at page 3 ("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.").

² OCR-OSERS 2000 Dear Colleague Letter: Prohibited Disability Harassment, <http://www.ed.gov/ocr/docs/disabharassltr.html>.

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and alerted schools that harassment of a student based on disability may adversely impact the school's provision of FAPE to the student.³ In 2010, OCR issued a Dear Colleague Letter on Harassment and Bullying that provided further guidance concerning when a school's inappropriate response to bullying or harassment of a student based on disability constitutes a disability-based harassment violation under Section 504 and Title II.⁴ In 2013, OSERS issued a Dear Colleague Letter on Bullying of Students with Disabilities that, in turn, provided additional guidance to schools that the bullying of a student with a disability on *any* basis can result in a denial of FAPE under IDEA that must be remedied.⁵

Building on OSERS's 2013 guidance, today's guidance explains that the bullying of a student with a disability on *any* basis can similarly result in a denial of FAPE under Section 504 that must be remedied; it also reiterates schools' obligations to address conduct that may constitute a disability-based harassment violation and explains that a school must also remedy the denial of FAPE resulting from disability-based harassment. Following an overview of the federal protections for students with disabilities in schools, the guidance elaborates on the elements of a disability-based harassment violation and a FAPE violation, discusses how OCR generally analyzes complaints involving bullying of students with disabilities on each of these bases, and then concludes with a series of hypothetical examples that illustrate varying circumstances when conduct may constitute both a disability-based harassment violation and FAPE violation, a FAPE violation, or neither. Although by no means exhaustive, in the context of this discussion, the guidance also offers some insight into what OCR might require of a school to remedy instances of bullying upon a finding of disability discrimination. OCR urges schools to consider these hypothetical resolution agreement provisions in proactively working to ensure a safe school environment, free from discrimination, for all students.⁶

I. Overview of Federal Protections for Students with Disabilities in Schools

OCR enforces Section 504 and Title II, both of which prohibit disability discrimination. Section 504 prohibits disability discrimination by recipients of Federal financial assistance.⁷ OCR enforces Section 504 against entities that receive Federal financial assistance from the Department, including all public schools and school districts as well as all public charter schools and magnet schools. Under Section 504, recipients that operate a public elementary or secondary education program must

³ The terms "school" and "school district" are used interchangeably in this letter and refer to public elementary and secondary schools that receive financial assistance from the Department.

⁴ OCR 2010 Dear Colleague Letter on Harassment and Bullying, <http://www.ed.gov/ocr/letters/colleague-201010.pdf>.

⁵ OSERS 2013 Dear Colleague Letter on Bullying of Students with Disabilities, <http://www.ed.gov/policy/speced/guid/idea/memosdcltrs/bullyingdcl-8-20-13.doc>.

⁶ This guidance addresses only student-on-student bullying and harassment. Under Section 504 and Title II, students with disabilities are also protected from bullying by teachers, other school employees, and third parties. Such bullying can trigger a school's obligation to address disability-based harassment, remedy a denial of FAPE, or both. *See* 34 C.F.R. §§ 104.4, 104.33; 28 C.F.R. pt. 35. OCR recommends that States and school districts consult with legal counsel regarding their responsibilities and duties in cases of bullying that involve school personnel.

⁷ 29 U.S.C. § 794; 34 C.F.R. pt. 104.

provide students with disabilities equal educational opportunities. Among other things, this means they must ensure that students with disabilities receive FAPE, defined as the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met and that satisfy certain requirements concerning educational setting, evaluation, placement, and procedural safeguards.⁸ Schools also have an obligation under Section 504 to evaluate students who need or are believed to need special education or related services. Further, schools have an obligation to ensure that Section 504 FAPE services are provided in an educational setting with persons who do not have disabilities to the maximum extent appropriate to the needs of the student with a disability.⁹ Schools often document these services in written plans, sometimes referred to as Section 504 plans, or, if the child is receiving IDEA FAPE services, through the required individualized education program (IEP).¹⁰

Title II prohibits disability discrimination by public entities, including all public schools and school districts, as well as all public charter schools and magnet schools, regardless of whether they receive Federal financial assistance.¹¹ OCR, along with the U.S. Department of Justice (DOJ), enforces Title II in public elementary and secondary schools. Title II is generally construed to provide no less protection than Section 504. Therefore, violations of Section 504, including the failure to provide needed regular or special education and related aids and services to students with disabilities, also constitute violations of Title II.¹²

IDEA is another key Federal law addressing the needs of students with disabilities. OSERS, not OCR or DOJ, administers IDEA.¹³ OCR, however, enforces the Section 504 and Title II rights of IDEA-eligible students.¹⁴ Under Part B of IDEA, the Department provides Federal funds to State educational agencies and through them to local educational agencies (school districts), to assist

⁸ For Section 504 and Title II, the term “disability” means a physical or mental impairment that substantially limits one or more major life activities of an individual; a record of such an impairment; or being regarded as having such an impairment. 29 U.S.C. § 705(9)(B), (20)(B); 42 U.S.C. § 12102. The Americans with Disabilities Act Amendments Act (Amendments Act), Pub. Law No. 110-325, amended the disability definition for Section 504 and Title II. Most notably, the Amendments Act required that “disability” under these statutes be interpreted broadly. More information about the Amendments Act is available from OCR’s website at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201109.html> and <http://www.ed.gov/ocr/docs/dcl-504faq-201109.html>.

⁹ In this letter, the term “Section 504 FAPE services” is used to refer to the regular or special education and related aids and services provided to students with disabilities as specified in 34 C.F.R. § 104.33(b). The term “IDEA FAPE services” is used in this letter to refer to the special education and related services provided to students with disabilities that meet the requirements of 34 C.F.R. pt. 300, as specified in 34 C.F.R. §§ 300.17 (FAPE), 300.39 (special education), and 300.34 (related services).

¹⁰ Students with disabilities who are IDEA-eligible also have rights under Section 504 and Title II. The Department’s Section 504 regulations provide that implementation of an IEP developed in accordance with IDEA is one means of providing Section 504 FAPE services. 34 C.F.R. § 104.33(b)(2).

¹¹ 42 U.S.C. §§ 12131-12134; 28 C.F.R. pt. 35.

¹² 42 U.S.C. § 12201(a). To the extent that Title II provides greater protection than Section 504, covered entities must comply with Title II’s requirements.

¹³ For more information about OSERS, please visit <http://www.ed.gov/osers>.

¹⁴ This letter only addresses Federal law; other State or local laws and policies may apply.

school districts in providing FAPE to eligible children with disabilities through the provision of special education and related services.¹⁵ School districts must ensure that IDEA FAPE services in the least restrictive environment are made available to all eligible children with disabilities through a properly developed IEP that provides a meaningful educational benefit to the student. In addition, school districts must locate, identify, and evaluate children suspected of having disabilities who may need special education and related services.

II. Schools' Obligations to Address Disability-Based Harassment

Bullying of a student on the basis of his or her disability may result in a disability-based harassment violation under Section 504 and Title II.¹⁶ As explained in OCR's 2010 Dear Colleague Letter on Harassment and Bullying, when a school knows or should know of bullying conduct based on a student's disability, it must take immediate and appropriate action to investigate or otherwise determine what occurred.¹⁷ If a school's investigation reveals that bullying based on disability created a hostile environment—i.e., the conduct was sufficiently serious to interfere with or limit a student's ability to participate in or benefit from the services, activities, or opportunities offered by a school—the school must take prompt and effective steps reasonably calculated to end the bullying, eliminate the hostile environment, prevent it from recurring, and, as appropriate, remedy its effects. Therefore, OCR would find a disability-based harassment violation under Section 504 and Title II when: (1) a student is bullied based on a disability; (2) the bullying is sufficiently serious to create a hostile environment; (3) school officials know or should know about the bullying; and (4) the school does not respond appropriately.¹⁸

As explained in Section III, below, for the student with a disability who is receiving IDEA FAPE services or Section 504 FAPE services, a school's investigation should include determining whether

¹⁵ 20 U.S.C. §§ 1400-1419; 34 C.F.R. pt. 300. IDEA establishes 13 disability categories: autism, deaf-blindness, deafness, emotional disturbance, hearing impairment, intellectual disability, multiple disabilities, orthopedic impairment, other health impairment, specific learning disability, speech or language impairment, traumatic brain injury, and visual impairment. 34 C.F.R. § 300.8(c).

¹⁶ These legal protections extend to all students with disabilities, including students who are regarded as having a disability or who have a record of a disability and students with disabilities who are not receiving services under Section 504 or IDEA. In addition to being protected from harassment on the basis of disability, students with disabilities, like all students, are entitled to protection from harassment on the basis of race, color, national origin, sex (including sexual violence), and age under the Federal civil rights laws that OCR enforces. For more information about other types of discriminatory harassment, see [OCR's 2010 Dear Colleague Letter](#) referenced in note 4.

¹⁷ Schools know or should know about disability-based harassment when, for example, a teacher or other responsible employee of the school witnesses the conduct. For more information about how to determine when knowledge of such conduct will be imputed to schools, refer to the OCR 2001 Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, <http://www.ed.gov/ocr/docs/shguide.pdf> at page 13; and [OCR 2010 Dear Colleague Letter on Harassment and Bullying](#), at page 3 and note 11.

¹⁸ This is the standard for administrative enforcement of Section 504 and in court cases where plaintiffs are seeking injunctive relief. It is different from the standard in private lawsuits for money damages, which, many courts have held, requires proof of a school's actual knowledge and deliberate indifference. See *Long v. Murray Cnty. Sch. Dist.*, 522 Fed. Appx. 576, 577 & n. 1 (11th Cir. 2013) (applying the test enunciated in *Davis v. Monroe Cnty. Bd. of Ed.*, 526 U.S. 629, 643 (1999)).

that student's receipt of appropriate services may have been affected by the bullying.¹⁹ If the school's investigation reveals that the bullying created a hostile environment and there is reason to believe that the student's IDEA FAPE services or Section 504 FAPE services may have been affected by the bullying, the school has an obligation to remedy those effects on the student's receipt of FAPE.²⁰ Even if the school finds that the bullying did not create a hostile environment, the school would still have an obligation to address any FAPE-related concerns, if, for example, the school's initial investigation revealed that the bullying may have had some impact on the student's receipt of FAPE services.

III. Bullying and the Denial of a Free Appropriate Public Education

The bullying on *any* basis of a student with a disability who is receiving IDEA FAPE services or Section 504 FAPE services can result in the denial of FAPE that must be remedied under Section 504. The OSERS 2013 Dear Colleague Letter clarified that, under IDEA, as part of a school's appropriate response to bullying on any basis, the school should convene the IEP team²¹ 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 a meaningful educational benefit. If the IEP is no longer designed to provide a meaningful educational benefit to the student, the IEP team must determine the extent to which additional or different IDEA FAPE services are needed to address the student's individualized needs and then revise the IEP accordingly. Any decisions made by the IEP team must be consistent with the IDEA provisions addressing parental participation and should keep the student with a disability in the original placement or setting (e.g., the same school and classroom) unless the student can no longer receive FAPE in that placement or setting. Under IDEA, schools have an ongoing obligation to ensure that a student with a disability who is the target of bullying continues to receive FAPE in accordance with his or her IEP—an obligation that exists whether the student is being bullied based on his or her disability or is being bullied based on other reasons.

Similarly, under Section 504, schools have an ongoing obligation to ensure that a qualified student with a disability who receives IDEA FAPE services or Section 504 FAPE services and who is the target of bullying continues to receive FAPE—an obligation that exists regardless of why the student

¹⁹ As stated in [OCR 2010 Dear Colleague Letter on Harassment and Bullying](#) at page 2, "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." When a student with a disability who receives Section 504 FAPE services is being bullied, an appropriate "other factor" is whether that student's receipt of services has been affected by the bullying.

²⁰ When a student with a disability has engaged in misconduct that is caused by his or her disability, the student's own misconduct would not relieve the school of its legal obligation to determine whether that student's civil rights were violated by the bullying conduct of the other student. For example, if a student, for reasons related to his disability, hits another student and other students then call him "crazy" on a daily basis, the school should, of course, address the conduct of the student with a disability. Nonetheless, the school must also consider whether the student with a disability is being bullied on the basis of disability under Section 504 and Title II.

²¹ The IEP team is the group of persons specified in IDEA that determines the appropriate IDEA FAPE services for an IDEA-eligible student. 34 C.F.R. § 300.321(a).

is being bullied.²² Accordingly, under Section 504, as part of a school's appropriate response to bullying on *any* basis, the school should convene the IEP team or the Section 504 team²³ to determine whether, as a result of the effects of the bullying, the student's needs have changed such that the student is no longer receiving FAPE. The effects of bullying could include, for example, adverse changes in the student's academic performance or behavior. If the school suspects the student's needs have changed, the IEP team or the Section 504 team must determine the extent to which additional or different services are needed,²⁴ ensure that any needed changes are made promptly, and safeguard against putting the onus on the student with the disability to avoid or handle the bullying.²⁵ In addition, when considering a change of placement, schools must continue to ensure that Section 504 FAPE services are provided in an educational setting with persons who do not have disabilities to the maximum extent appropriate to the needs of the student with a disability.

Although there are no hard and fast rules regarding how much of a change in academic performance or behavior is necessary to trigger the school's obligation to convene the IEP team or Section 504 team, a sudden decline in grades, the onset of emotional outbursts, an increase in the frequency or intensity of behavioral interruptions, or a rise in missed classes or sessions of Section 504 services would generally be sufficient.²⁶ By contrast, one low grade for an otherwise straight-A student who shows no other changes in academic progress or behavior will generally not, standing alone, trigger the school's obligation to determine whether the student's needs are still being met. Nonetheless, in addition to addressing the bullying under the school's anti-bullying policies, schools should promptly convene the IEP team or Section 504 team to determine whether FAPE is being provided

²² At the elementary and secondary educational level, a "qualified student with a disability" is a student with a disability who is: of an age at which students without disabilities are provided elementary and secondary educational services; of an age at which it is mandatory under State law to provide elementary and secondary educational services to students with disabilities; or a student to whom a State is required to provide FAPE under IDEA. 34 C.F.R. § 104.3(l). In addition to the provision of regular or special education and related aids and services pursuant to 34 C.F.R. § 104.33, FAPE protections extend to educational setting, evaluation and placement, and procedural safeguards. 34 C.F.R. §§ 104.34-.36.

²³ The Section 504 team is the group of knowledgeable persons that determines the appropriate Section 504 FAPE services for a qualified student with a disability under Section 504.

²⁴ A reevaluation would not be needed unless there is a reason to believe the student's underlying disability or disabilities have changed or the student has an additional disability.

²⁵ OCR would expect that schools address bullying behavior to ensure that the burden does not fall on the student with a disability. Along these lines, and consistent with the OSERS 2013 Dear Colleague Letter, schools should exercise caution when considering a change in placement, or the location of services (including classroom) provided to the student with a disability who is the target of bullying and should keep the student in the original placement unless the student can no longer receive Section 504 FAPE in that placement. OCR also urges schools to allow for parental participation when considering any change in placement or location of services (including classroom). *See* 34 C.F.R. pt. 104, app. A (discussion of Subpart D).

²⁶ In light of schools' ongoing obligation to ensure that students with disabilities are receiving FAPE, adverse changes in the academic performance or behavior of a student receiving FAPE services could trigger the school's obligation to convene the IEP team or Section 504 team regardless of the school's knowledge of the bullying conduct. *See, e.g.*, Section V, Hypothetical Example B, below. As a best practice, schools should train all staff to report bullying to an administrator or school official who can promptly convene a meeting of knowledgeable people (e.g., the student's Section 504 team or IEP team) to ensure that the student is receiving FAPE and, as necessary, address whether the student's FAPE needs have changed.

to a student with a disability who has been bullied and who is experiencing any adverse changes in academic performance or behavior.

When bullying results in a disability-based harassment violation, it will not always result in a denial of FAPE. Although all students with disabilities are protected from disability-based harassment, the requirement to provide FAPE applies only to those students with disabilities who need or may need FAPE services because of their disability.²⁷ This means that if a student is the target of bullying resulting in a disability-based harassment violation, but that student is not eligible to receive IDEA or Section 504 FAPE services, there could be no FAPE violation.

When a student who receives IDEA FAPE services or Section 504 FAPE services has experienced bullying resulting in a disability-based harassment violation, however, there is a strong likelihood that the student was denied FAPE. This is because when bullying is sufficiently serious to create a hostile environment and the school fails to respond appropriately, there is a strong likelihood both that the effects of the bullying included an impact on the student's receipt of FAPE and that the school's failure to remedy the effects of the bullying included its failure to address these FAPE-related concerns.

Ultimately, unless it is clear from the school's investigation into the bullying conduct that there was no effect on the student with a disability's receipt of FAPE, the school should, as a best practice, promptly convene the IEP team or the Section 504 team to determine whether, and to what extent: (1) the student's educational needs have changed; (2) the bullying impacted the student's receipt of IDEA FAPE services or Section 504 FAPE services; and (3) additional or different services, if any, are needed, and to ensure any needed changes are made promptly. By doing so, the school will be in the best position to ensure the student's ongoing receipt of FAPE.

IV. How OCR Analyzes Complaints Involving Bullying of Students with Disabilities

When OCR evaluates complaints involving bullying and students with disabilities, OCR may open an investigation to determine whether there has been a disability-based harassment violation, a FAPE violation, both, or neither, depending on the facts and circumstances of a given complaint.

²⁷ The FAPE requirement to evaluate applies to all students who are known or believed to need special education or related services, regardless of the nature or severity of the disability. 34 C.F.R. §§ 104.33, -.35. For a student who is suspected of having a disability but who is not yet receiving IDEA or Section 504 services, OCR may consider whether the school met its obligation to evaluate the student. 34 C.F.R. § 104.35. For example, if a student suspected of having a disability was missing school to avoid bullying, OCR may consider whether the student's evaluation was unduly delayed (e.g., if the school knew or should have known of the bullying and failed to act) in determining whether there was a denial of FAPE under the circumstances.

When investigating disability-based harassment, OCR considers several factors, including, but not limited to:

- Was a student with a disability bullied by one or more students based on the student's disability?
- Was the bullying conduct sufficiently serious to create a hostile environment?
- Did the school know or should it have known of the conduct?
- Did the school fail to take prompt and effective steps reasonably calculated to end the conduct, eliminate the hostile environment, prevent it from recurring, and, as appropriate, remedy its effects?

If the answer to each of these questions is "yes," then OCR would find a disability-based harassment violation under Section 504 and, if the student was receiving IDEA FAPE or Section 504 FAPE services, OCR would have a basis for investigating whether there was also a denial of FAPE under Section 504.

Even if the answers to one or more of these questions is "no," for a student who was receiving IDEA FAPE or Section 504 FAPE services, OCR may still consider whether the bullying resulted in a denial of FAPE under Section 504 that must be remedied.

When investigating whether a student receiving IDEA FAPE or Section 504 FAPE services who was bullied was denied FAPE under Section 504, OCR considers several factors, including, but not limited to:

- Did the school know or should it have known that the effects of the bullying may have affected the student's receipt of IDEA FAPE services or Section 504 FAPE services? For example, did the school know or should it have known about adverse changes in the student's academic performance or behavior indicating that the student may not be receiving FAPE?

If the answer is "no," there would be no FAPE violation.²⁸ If the answer is "yes," OCR would then consider:

- Did the school meet its ongoing obligation to ensure FAPE by promptly determining whether the student's educational needs were still being met, and if not, making changes, as necessary, to his or her IEP or Section 504 plan?

If the answer is "no," and the student was not receiving FAPE, OCR would find that the school violated its obligation to provide FAPE.

²⁸ Where a student is suspected of having a disability but is not yet receiving IDEA FAPE services or Section 504 FAPE services, OCR could consider whether the student's evaluation was unduly delayed in determining whether there was a denial of FAPE under the circumstances. See fn. 27, above.

V. Hypothetical Examples

The following hypothetical examples illustrate how OCR would analyze a complaint involving allegations of the bullying of a student with a disability who only receives Section 504 FAPE services.

A. Disability-Based Harassment Violation and FAPE Violation

At the start of the school year, a ten-year-old student with Attention Deficit Hyperactivity Disorder (ADHD) and a speech disability is fully participating in the classroom, interacting with his peers at lunch and recess, and regularly attending speech therapy twice a week. In addition to providing for speech services, the student's Section 504 plan also provides for behavior supports that call for all his teachers and other trained staff to supervise him during transition times, provide constructive feedback, and help him use preventative strategies to anticipate and address problems with peers.

Because of the student's disabilities, he makes impulsive remarks, speaks in a high-pitched voice, and has difficulty reading social cues. Three months into the school year, students in his P.E. class begin to repeatedly taunt him by speaking in an exaggerated, high-pitched tone, calling him names such as "weirdo" and "gay," and setting him up for social embarrassment by directing him to ask other students inappropriate personal questions. The P.E. teacher witnesses the taunting, but neither reports the conduct to the appropriate school official, nor applies the student's behavior supports specified in his 504 plan. Instead, she pulls the student aside and tells him that he needs to start focusing less on what kids have to say and more on getting his head in the game. As the taunting intensifies, the student begins to withdraw from interacting with other kids in P.E. and avoids other students at lunch and recess. As the student continues to withdraw over the course of a few weeks, he misses multiple sessions of speech therapy, but the speech therapist does not report his absences to the Section 504 team or another appropriate school official.

In this example, OCR would find a disability-based harassment violation. The student's peers were making fun of him because of behaviors related to his disability. For OCR's enforcement purposes, the taunting the student experienced, including other students impersonating him and calling him "weirdo" and "gay," was therefore based on his disability.²⁹ The school knew about the bullying because the P.E. teacher witnessed the conduct.³⁰ Yet upon witnessing the taunting, the P.E. teacher not only failed to provide the student behavior supports as required in the student's 504 plan, but also failed to report the conduct to an appropriate school official. Had she taken this step, the school could have conducted an investigation and found that the conduct created a hostile environment because it interfered with the student's ability to benefit from the speech therapy services that he

²⁹ OCR would have also investigated whether a school's inappropriate response to the use of the word "gay" in this context constituted a gender-based harassment violation under Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1688; 34 C.F.R. pt. 106, which prohibits discrimination on the basis of sex. For a discussion of gender-based harassment, see [OCR 2010 Dear Colleague Letter on Harassment and Bullying](#), at pages 7-8.

³⁰ The P.E. teacher in this example is a responsible employee. See fn. 17, above.

should have been receiving and negatively affected his ability to participate fully in P.E., lunch, and recess. The school's failure to appropriately respond to the bullying violated Section 504.

OCR would also find FAPE violations under Section 504. First, when the P.E. teacher failed to implement the behavior supports in the student's Section 504 plan, the school denied the student FAPE under Section 504. In addition, and independent of the failure to provide behavior supports, because the bullying impacted the student's receipt of Section 504 FAPE, the school should have addressed the student's changed needs; by failing to do so, the student was denied Section 504 FAPE. The school should have known about the missed Section 504 services and related changes in behavior. The P.E. teacher knew about the bullying but did nothing to report the student's behavioral changes (e.g., the student's increasing efforts to isolate himself from other students) to the Section 504 team members or other appropriate school official. Similarly, the speech therapist knew that the student was missing speech therapy but did not report this to the 504 team or to an appropriate school official. By failing to address the adverse effects of the bullying on FAPE, the school did not make necessary changes to ensure the student was provided FAPE under Section 504. If, upon concluding its investigation, OCR and the district were to enter into a resolution agreement, OCR could require, for example, that the district (1) ensure that FAPE is provided to the student by convening the Section 504 team to determine if the student needs different or additional services (including compensatory services) and, if so, providing them; (2) offer counseling to the student to remedy the harm that the school allowed to persist; (3) monitor whether bullying persists for the student and take corrective action to ensure the bullying ceases; (4) develop and implement a school-wide bullying prevention strategy based on positive behavior supports; (5) devise a voluntary school climate survey for students and parents to assess the presence and effect of bullying based on disability and to respond to issues that arise in the survey; (6) revise the district's anti-bullying policies to develop staff protocols in order to improve the district's response to bullying; (7) train staff and parent volunteers, such as those who monitor lunch and recess or chaperone field trips, on the district's anti-bullying policies, including how to recognize and report instances of bullying on any basis; and (8) provide continuing education to students on the district's anti-bullying policies, including where to get help if a student either witnesses or experiences bullying conduct of any kind.

B. FAPE Violation, No Disability-Based Harassment Violation

A thirteen-year-old student with depression and Post-Traumatic Stress Disorder (PTSD) who receives counseling as part of her Section 504 services is often mocked by her peers for being poor and living in a homeless shelter. Having maintained an A average for the first half of the academic year, she is now getting Bs and Cs, neglecting to turn in her assignments, and regularly missing counseling sessions. When asked by her counselor why she is no longer attending scheduled sessions, she says that she feels that nothing is helping and that no one cares about her. The student tells the counselor that she no longer wants to attend counseling services and misses her next two scheduled sessions. The counselor informs the principal that the student has missed several counseling sessions and that the student feels the sessions are not helping. Around the same time, the student's teachers inform the principal that she has begun to struggle academically. The

principal asks the teachers and counselor to keep her apprised if the student's academic performance worsens, but does not schedule a Section 504 meeting.

In this example, whether or not the school knew or should have known about the bullying, OCR would not find a disability-based harassment violation under Section 504 because the bullying incidents were based on the student's socio-economic status, not her disability.

Independent of the basis for the bullying and regardless of whether school officials knew or should have known about the bullying, the school district still had an ongoing obligation under Section 504 to ensure that this student with a disability was receiving an education appropriate to her needs. Here, the student's sudden decline in grades, coupled with changes in her behavior (missing counseling sessions), should have indicated to the school that her needs were not being met. In this example, OCR would find that these adverse changes were sufficient to put the school on notice of its obligation to promptly convene the Section 504 team to determine the extent of the FAPE-related problems and to make any necessary changes to her services, or, if necessary, reevaluate her, in order to ensure that she continues to receive FAPE. By failing to do more than keep track of the student's academic performance, the school failed to meet this obligation, which violated Section 504.³¹

C. No Disability-Based Harassment Violation, No FAPE Violation

A seven-year-old student with a food allergy to peanuts has a Section 504 plan that provides for meal accommodations, the administration of epinephrine if the student is exposed to peanuts, access to a peanut-free table in the cafeteria, and the prohibition of peanut products in the student's classroom. In advance of the upcoming Halloween party, the teacher reminds the class that candy with peanuts is prohibited in the classroom at all times, including Halloween. That afternoon, while on the bus, a classmate grabs the student's water bottle out of the student's backpack, drinks from it, and says, "I had a peanut butter sandwich for lunch today, and I just finished it." The following day, while having lunch at the peanut-free table in the lunchroom with some friends, a classmate who had been sitting at another table sneaks up behind her and waves an open candy bar with peanuts in front of her face, yelling, "Time to eat peanuts!" Though the candy bar does not touch her, a few other classmates nearby begin chanting, "Time to eat peanuts," and the student leaves the lunchroom crying. When the student goes back to her classroom and tells her teacher what happened at lunch and on the bus, the teacher asks her whether she came into contact with the candy bar and what happened to the water bottle. The student confirms that the candy bar did not touch her and that she never got the water bottle back from the classmate who took it, but says that she is scared to go back into the lunchroom and to ride the bus. The teacher promptly informs the principal of the incidents, and the peers who taunted the student on the bus and in the lunchroom are removed from the lunchroom, interviewed by the assistant principal, and required to meet with the counselor during

³¹ If OCR and the district were to enter into a resolution agreement in this case, such an agreement could include, for example, any of the provisions specified in Hypothetical Example A, above.

recess to discuss the seriousness of their conduct. That same week, the school holds a Section 504 meeting to address whether any changes were needed to the student's services in light of the bullying. The principal also meets with the school counselor, and they decide that a segment on the bullying of students with disabilities, including students with food allergies, would be added to the counselor's presentation to students on the school's anti-bullying policy scheduled in the next two weeks. Furthermore, in light of the young age of the students, the counselor offers to incorporate a puppet show into the segment to help illustrate principles that might otherwise be too abstract for such a young audience. In the weeks that follow, the student shows no adverse changes in academic performance or behavior, and when asked by her teacher and the school counselor about how she is doing, she indicates that the bullying has stopped.

In this example, based on the school's appropriate response to the incidents of bullying, OCR would not find a disability-based harassment violation under Section 504. The bullying of the student on account of her food allergy to peanuts was based on the student's disability. Moreover, the physically threatening and humiliating conduct directed at her was sufficiently serious to create a hostile environment by limiting her ability to participate in and benefit from the school's education program when she was near the classmates who bullied her in the lunchroom and on the bus. School personnel, however, did not tolerate the conduct and acted quickly to investigate the incidents, address the behavior of the classmates involved in the conduct, ensure that there were no residual effects on the student, and coordinate to promote greater awareness among students about the school's anti-bullying policy. By taking prompt and reasonable steps to address the hostile environment, eliminate its effects, and prevent it from recurring, the school met its obligations under Section 504.

OCR also would not find a FAPE violation under Section 504 on these facts. Once the school became aware that the student feared attending lunch and riding the bus as a result of the bullying she was experiencing, the school was on notice that the effects of the bullying may have affected her receipt of FAPE. This was sufficient to trigger the school's additional obligation to determine whether, and to what extent, the bullying affected the student's access to FAPE and take any actions, including addressing the bullying and providing new or different services, required to ensure the student continued receiving FAPE. By promptly holding a Section 504 meeting to assess whether the school should consider any changes to the student's services in light of the bullying, the school met its independent legal obligation to provide FAPE under Section 504.

VI. Conclusion

OCR is committed to working with schools, students, families, community and advocacy organizations, and others to ensure that schools understand and meet their legal obligations under Section 504 and Title II to appropriately address disability-based harassment and to ensure that students with disabilities who are bullied continue to receive FAPE.

OCR also encourages States and school districts to reevaluate their policies and practices in light of this letter, as well as OCR's and OSERS's prior guidance. If you would like to request technical assistance or file a complaint alleging discrimination, please contact the OCR enforcement office that serves your area. Contact information is posted on OCR's website at:

<http://www.ed.gov/ocr/complaintintro.html> or please contact OCR's customer service team at 1-800-421-3481 (TDD 1-800-877-8339).

I look forward to continuing our work together to address and reduce incidents of bullying in our schools so that no student is limited in his or her ability to participate in and benefit from all that our educational programs have to offer.

Sincerely,

/s/

Catherine E. Lhamon
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.

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.

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

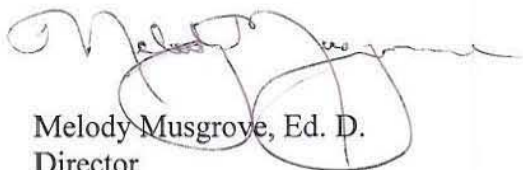
⁹ OCR also has authority to investigate complaints alleging denial of FAPE under Section 504 and Title II. See the July 25, 2000, joint Dear Colleague Letter on Disability Harassment; (available at: <http://www.ed.gov/ocr/docs/disabharassltr.html>); and OCR's October 26, 2010, Dear Colleague Letter on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

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



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 reasonably 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

WASHINGTON, D.C. 20202- _____

JUL 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.⁵ State compliance with IDEA, including compliance with FAPE requirements, is monitored by OSERS' Office of Special Education Programs (OSEP).

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. § 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), <http://www.ed.gov/offices/OCR/race394.html>) and sex (see 62 Fed. Reg. 12034 (Mar. 13, 1997), <http://www.ed.gov/offices/OCR/sexhar00.html>). 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 <http://www.ed.gov/pubs/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. § 1400 et seq.

⁵ 34 C.F.R. § 300.660 et seq.

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

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.

punishment for taking time off from school for required services 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.⁸ 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.

⁸ Section 504 (at 34 CFR § 104.7) and Title II (at 28 CFR § 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.

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

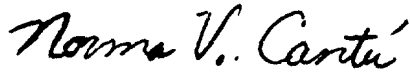
U.S. Secretary of Education Richard Riley has emphasized the importance of ensuring that schools are safe and free of harassment. Students can not learn in an atmosphere of fear, intimidation, or ridicule. For students with disabilities, harassment can inflict severe harm. Teachers and administrators 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) 205-5465 for TTY services.

Thank you for your attention to this serious matter.



Norma V. Cantú,
Assistant Secretary for
Civil Rights



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

Enclosure - list of OCR enforcement offices

Office for Civil Rights U.S. Department of Education

400 Maryland Avenue, S.W.
Washington, D.C. 20202-1100

<http://www.ed.gov/offices/OCR>
Customer Service #: 1-800-421-3481
TTY: 1-877-521-2172

EASTERN DIVISION

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Assistant Secretary
(202) 205-5526

Raymond Pierce
Deputy Assistant Secretary
(202) 205-9556

Scott Palmer
Deputy Assistant Secretary
(202) 205-5526

Lindsay Patterson
Chief of Staff
(202) 205-5526

John H. Jackson
Special Assistant
(202) 205-5526

Cathy H. Lewis
Enforcement Director for
the Midwestern & Western
Divisions
(202) 205-8217

Susan Bowers
Enforcement Director for
the Eastern & Southern
Divisions
(202) 205-8217

Jeanette Lim
Program Legal Group
Director
(202) 205-8635

Lester Slayton
Resource Management
Group
Director
(202) 205-8233

Thomas Hibino, Director
Connecticut, Maine, Massachusetts,
New Hampshire, Rhode Island, Vermont
Office for Civil Rights, Boston Office
U.S. Department of Education
J. W. McCormack Post Office and Courthouse
Room 707, 01-0061
Boston, MA 02109-4557 (617) 223-9662
FAX (617) 223-9669; TDD (617) 223-9695

Helen Whitney, Director
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Office for Civil Rights, New York Office
U.S. Department of Education
75 Park Place, 14th Floor
New York, NY 10007-2146 (212) 637-6466
FAX (212) 264-3803; TDD (212) 637-0478

Wendella Fox, Director
Delaware, Maryland, Kentucky, Pennsylvania,
West Virginia
Office for Civil Rights, Philadelphia Office
U.S. Department of Education
The Wanamaker Building
100 Penn Square East, Suite 515
Philadelphia, PA 19107 (215) 656-8541
FAX (215) 656-8605; TDD (215) 656-8604

SOUTHERN DIVISION

Gary Walker, Director
Alabama, Florida, Georgia, South Carolina,
Tennessee
Office for Civil Rights, Atlanta Office
U.S. Department of Education
61 Forsyth Street, S.W., Suite 19T70
Atlanta, GA 30303 (404) 562-6350
FAX (404) 562-6455; TDD (404) 562-6454

Taylor August, Director
Arkansas, Louisiana, Mississippi, Oklahoma,
Texas
Office for Civil Rights, Dallas Office
U.S. Department of Education
1999 Bryan Street, Suite 2600, 06-5010
Dallas, TX 75201 (214) 880-2459
FAX (214) 880-3082; TDD (214) 880-2456

Alice Wender, Director
North Carolina, Virginia, Washington, D.C.
Office for Civil Rights, District of Columbia Office
U.S. Department of Education
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Washington, D.C. 20044-4620
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TDD (202) 208-7741

MIDWESTERN DIVISION

Linda McGovern, Director
Illinois, Indiana, Minnesota, Wisconsin
Office for Civil Rights, Chicago Office
U.S. Department of Education
111 North Canal Street, Suite 1053
Chicago, IL 60606-7204 (312) 886-8434
FAX (312) 353-4888; TDD (312) 353-2540

Harry Orris, Director
Michigan, Ohio
Office for Civil Rights, Cleveland Office
U.S. Department of Education
600 Superior Avenue East
Bank One Center, Room 750
Cleveland, OH 44114-2611 (216) 522-4970
FAX (216) 522-2573; TDD (216) 522-4944

Angela Bennett, Director
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North Dakota, South Dakota
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U.S. Department of Education
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FAX (816) 891-0644; TDD (816) 891-0582

WESTERN DIVISION

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Arizona, Colorado, Montana, New Mexico,
Utah, Wyoming
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Federal Building, Suite 310, 08-7010
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Denver, CO 80204-3582 (303) 844-5695
FAX (303) 844-4303; TDD (303) 844-3417

Stefan Rosenzweig, Director
California
Office for Civil Rights, San Francisco Office
U.S. Department of Education
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50 United Nations Plaza, Room 239
San Francisco, CA 94102-4102 (415) 556-4275
FAX (415) 437-7783 TDD (415) 437-7786

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Alaska, Hawaii, Idaho, Nevada, Oregon,
Washington, Pacific Region
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915 Second Avenue, Room 3310
Seattle, WA 98174-1099 (206) 220-7900
FAX (206) 220-7887; TDD (206) 220-7907