

CLIENT NEWS BRIEF

Bullying of Students with Disabilities Triggers Affirmative Obligations Under Section 504 and the IDEA

The Office for Civil Rights (OCR) issued a "Dear Colleague" letter (OCR Letter) on October 21, 2014, guiding schools on how to respond to harassment or bullying complaints involving students with disabilities who receive special education or related services under the Individuals with Disabilities Education Act (IDEA) or Section 504 of the Rehabilitation Act of 1973 (Section 504). While "Dear Colleague" letters are non-binding, they communicate details regarding expectations and enforcement of federal laws by the OCR.

In this OCR Letter, which is available [here](#), OCR reaffirms and augments past guidance and clarifies that bullying of students with disabilities may affect the free appropriate public education (FAPE) of those students under both the IDEA and Section 504. In addition, OCR provides insight into its analysis of complaints alleging bullying of students with disabilities and outlines helpful hypothetical examples.

OCR reiterates that a school district has an obligation to address disability-based harassment and must remedy any bullying which results in a denial of FAPE under either the IDEA or Section 504. OCR sets forth the following criteria for when it would find a disability-based harassment violation:

- (1) whether the student was bullied on the basis of his or her disability;
- (2) whether the conduct was sufficiently serious to create a hostile environment for the student;
- (3) whether the school knew or should have known about the conduct; and
- (4) whether the school failed 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."

OCR indicated that if all of these factors are met, then OCR would find there was disability-based harassment violation and would have a basis to further investigate a denial of FAPE. However, even without the presence of every factor, OCR may still consider whether there was a denial of FAPE requiring a remedy. Accordingly, a school district must go a step further to determine whether the student's receipt of a FAPE under the IDEA or Section 504 was affected by the bullying. If so, the school must remedy those effects.

To further explain its analysis, OCR provides three hypothetical examples. In the first hypothetical, peers taunted a student with ADHD and a speech disability when he made impulsive remarks in a high-pitched tone. As a result, the student withdrew from interacting with other students and also missed multiple speech sessions. The student's teacher failed to report the bullying and the student's speech therapist failed to report his absences. In this hypothetical, OCR would find disability-based harassment and a FAPE violation.

In the second hypothetical, a student with depression and Post-Traumatic Stress Disorder (PTSD) received counseling as part of her Section 504 services. The student was teased for living in a homeless shelter and being poor. As a result,

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As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.

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her grades dropped and she began to avoid counseling. The counselor reported this to the principal and the principal followed up with staff, but no 504 meeting was scheduled. OCR indicates that while there was no disability-based harassment, there was a FAPE violation since the student suffered adverse changes sufficient to necessitate a prompt 504 Plan review.

Finally, the third example is possibly the most illustrative, with OCR finding no disability-based harassment and no FAPE violation. In this hypothetical, the student was allergic to peanuts and had a Section 504 plan. Peers taunted the student chanting, "It's time to eat peanuts!" while another student drank from the student's water bottle saying, "I had a peanut butter sandwich for lunch today, and I just finished it." Crying and afraid to go back to the cafeteria or ride the bus, the student reported the incident. The taunting students were interviewed and counseled, and a Section 504 meeting was promptly convened. Although the bullying was based on the student's disability, the school took prompt and reasonable steps to address it. For these reasons, OCR indicates that it would not find disability-based harassment nor a FAPE violation.

OCR recognizes that there are no "hard and fast rules" regarding whether the bullying of a student with a disability is having an effect on FAPE. To aid in the analysis, OCR describes potential signs, including adverse changes in academic performance, adverse changes in behavior, or increased absences. As a best practice, OCR specifically recommends that school districts "promptly convene the IEP team or the Section 504 team to determine whether, and to what extent: (1) the student's education needs have change; (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, to ensure any needed changes are made promptly."

For further information regarding the October 21, 2014 Dear Colleague Letter, bullying of students with disabilities under the IDEA or Section 504, or student bullying and FAPE in general, please contact one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#), or download our [Client News Brief App](#).