

CLIENT NEWS BRIEF

Back to School Legal Update: Bullying

As students head back to school for the start of the new school year, Lozano Smith's Special Education and Student Practice Groups would like to provide school districts, and other local educational agencies, with a reminder of their obligations to prevent bullying among all students. As many educators are aware, bullying has been a hot topic for the last few years, and the law in this area is ever-developing. In the past two years, the legislature has passed several anti-bullying laws relating to student discipline rules and district policies. Recently the Office of Special Education and Rehabilitation Services (OSERS) issued a Dear Colleague Letter regarding special education students and bullying.

Bullying in General

School districts must have a board policy in place that prohibits bullying, and may also adopt an accompanying administrative regulation. The board policy, or set of board policies, must define bullying and contain various mandated provisions. Typical policies and regulations will discuss bullying in the context of prevention, intervention, discipline, and complaints.

With regard to prevention, both staff and students should receive training regarding bullying. School districts should also have bullying intervention plans—all employees should be aware that California law *requires* teachers/staff members to intervene if they witness an act of bullying (so long as it is safe to do so). School districts should also note that bullying can be grounds for discipline, under Education Code section 48900, subdivision (r), which also contains specific provisions regarding cyberbullying. Addressing procedures for complaints is a statutory requirement, with best practices involving the use of district uniform complaint procedures, if and when the alleged bullying is based upon a student victim's protected characteristic (such as race, ethnicity, gender, sexual orientation etc.).

Special Education and Bullying

OSERS' new guidance, found [here](#), provides an overview of a school district's responsibilities under the Individuals with Disabilities in Education Act (IDEA) in regards to special education students who are bullied. In the Dear Colleague Letter, OSERS explains that bullying of a student with a disability, which results in the student not receiving a meaningful educational benefit, constitutes a denial of a free appropriate public education (FAPE). OSERS' guidance applies to public preschools, as well as elementary, middle and high schools and other public agencies, including non-profit charters.

The Dear Colleague Letter further provides guidance regarding how school districts and other educational agencies should respond when a special education student is bullied. OSERS provides the following guidance for school districts and other educational agencies:

- Have teachers and adults respond quickly and consistently to

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- bullying behavior to send a message that bullying is not acceptable;
- Have teachers intervene immediately to stop bullying on the spot to help ensure a safer school environment;
 - Convene an individual education plan (IEP) team meeting 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 to the student;
 - Revise the student's IEP to include additional or different special education or related services that are needed to address the student's individual needs;
 - Do not change a student's placement or the location of services unless the student can no longer receive a FAPE in the current least restrictive environment;
 - Do not address the bullying by changing the frequency, duration, intensity, placement or location of the student's special education and related services;
 - Convene an IEP team meeting if the student who committed the act of bullying is a special education student; and
 - Consider changing the environment in which the bullying occurred, if needed.

OSERS stressed that 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 a meaningful educational benefit constitutes a denial of FAPE and must be remedied.

School districts and other educational agencies may want to review OSERS' guidance with staff, and in particular teachers, to ensure that they are aware of the interplay between bullying and special education students. During the review of OSERS' guidance, school districts can also discuss bullying in the general education context, with regard to student discipline, intervention and complaints. In particular, school administrators responsible for student discipline should be familiar with the definition of bullying added to section 48900 of the Education Code as it has been amended. Please see previous Lozano Smith Client News Briefs for more information on bullying policy and regulations: [June 2012](#), [May 2012](#) and [October 2011](#). Educational agencies should also ensure their procedures provide that when a special education student is bullied, or engaged in bullying, the student's IEP team considers whether the student may have been denied a meaningful educational benefit, and if so, revises the student's IEP appropriately.

Lozano Smith will be offering a number of workshops and webinars over the next few months that discuss these topics in greater depth, see our [2013-2014 Course Catalog](#) for more information. If you have further questions on bullying, please feel free to 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](#).