

**BEATING BULLYING:
Effectively Responding to Child
Find, FAPE and LRE Issues for
Students with Disabilities**

ICASE Spring Conference

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What is Bullying?



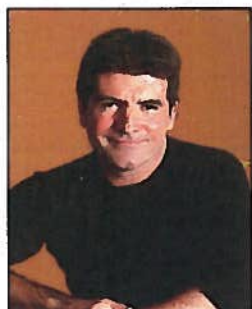






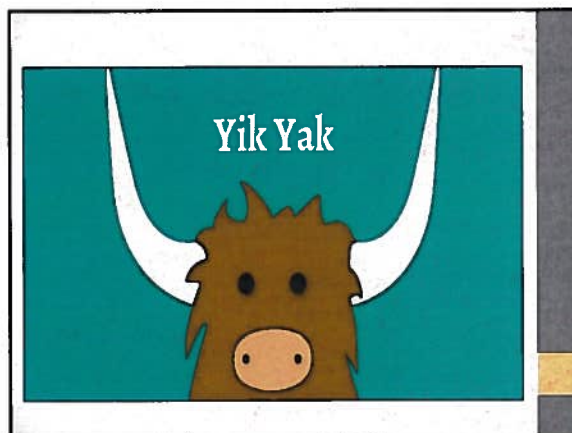












**U.S. DEPARTMENT OF HEALTH AND
HUMAN SERVICES
(WWW.STOPBULLYING.GOV):**

"Bullying is unwanted, aggressive behavior among school-aged children that involves real or perceived power imbalance. The behavior is repeated, or has the potential be repeated, over time. Both kids who are bullied and who bully others may have serious lasting problems."

**U.S. DEPARTMENT OF HEALTH AND
HUMAN SERVICES (CONT.):**

There are several kinds of bullying:

- Verbal
- Social
- Physical

- Isolated instance of rough play between peers was not bullying. *A.L. v. Jackson County Sch. Bd.* (SEA FL. 2014)
- Single incident of high school students fighting over a girl was not bullying and did not require private placement. *District of Columbia Pub. Schs.* (SEA DC 2011)

Indiana Code Definition of Bullying

Bullying means overt, repeated acts or gestures, including:

- Verbal or written communications transmitted in any matter (including digitally or electronically);
- Physical acts committed; or
- Aggression or any other behaviors committed

by a student or group of students against another student with the intent to harass, ridicule, humiliate, intimidate or harm the other student and create an objectively hostile school environment

IC 20-33-8-0.2

The objectively hostile school environment

1. Places the targeted student in reasonable fear of harm to person or property;
2. Has a substantially detrimental effect on targeted student's physical or mental health;
3. Has the effect of substantially interfering with the target student's academic performance; or
4. Has the effect of substantially interfering with targeted student's ability to participate in or benefit from school services, activities and privileges.

IC 20-33-8-0.2

A school's bullying rules must prohibit bullying through use of data or computer software that is assessed through a school corporation's computer, computer system or computer network.

U.S. Department of Education
DEAR COLLEAGUE LETTERS

***Dear Colleague Letter: Harassment
and Bullying*** (OCR 10/26/10)

- Disability-based harassment is a form of prohibited discrimination, and bullying may constitute disability-based harassment.

- Disability harassment is defined as offensive, intimidating, abusive, threatening, harmful, or humiliating verbal, non-verbal, or physical conduct directed towards a student, based on his/her disability, that creates a hostile environment for the student that denies him/her an equal opportunity to an education.

- When a student with a disability has been bullied, school personnel should consider the civil rights implications, if any, of what occurred and address the situation accordingly.

This DCL expansively interpreted case law:

- Districts must respond if “know or reasonably should have known” of harassment;
- Describes harassment as severe, pervasive or persistent behavior; and
- District must not only respond to but remedy harassment.

Duty of School Personnel Who Become Aware of Harassment

- Stop the harassment and report it to appropriate school officials
- Advise individuals who report harassment of their options

- Investigate complaints
- Take steps reasonably calculated to end the harassment
- Take steps reasonably calculated to prevent future harassment

Complaint Investigation

- Prompt
- Thorough
- Fair
- As confidential as possible
- Assess for civil rights implications
- Don't dismiss incidents out of hand



Take Steps to End Harassment, for example:

- Stop the conduct and report it to appropriate school officials
- Disciplinary measures
- Change schedules; separate harasser and victim
- Counseling /education for victim and/or bully

- Keep victim and parent informed of status of investigation
- Notify victim and parent of outcome of investigation
- Advise individuals who report harassment of their options for obtaining help
- DOCUMENT all contacts with victim, parent, harasser, and action taken

Take Steps to Prevent Future Harassment, for example:

- Review and update policies and procedures
- Conduct and update staff training
- Provide student education
- Encourage students, parents, and others in school community to report harassment-related concerns

***Dear Colleague Letter on
Bullying/Discrimination
(OSERS 08/20/13)***

- Bullying may also constitute denial of FAPE and/or trigger a district's child find obligation.
- Bullying that results in a student not receiving meaningful educational benefit constitutes a denial of FAPE that must be remedied.

- 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.

If a student with a disability is a victim of bullying, schools should:

- Convene an IEP meeting to ascertain if the bullying interfered with the student's receipt of FAPE;



- Consider whether a reevaluation is needed;
- Consider whether different or additional services are needed; and
- Consider if the current placement is still appropriate.



***Dear Colleague Letter on
Responding to Bullying of Students
with Disabilities (OCR 10/21/14)***

Builds on prior USDOE guidance from 2010 and 2013, reiterates that bullying may constitute disability-based harassment that violates Section 504, and explains that bullying of students with disabilities on any basis can result in a denial of FAPE under Section 504 or the *IDEA* that must be remedied.

Under Section 504, as part of an appropriate response to bullying on any basis, schools must convene the student's IEP or Section 504 team to determine if the student's needs have changed as a result of the bullying. If the needs have changed, the team must:

- determine the extent to which additional or different services are needed;
- ensure that any needed changes are made promptly; and
- safeguard against putting the onus on the disabled student to avoid or handle the bullying.

Although bullying of a student with a disability may reflect disability-based harassment, it does not always amount to a denial of FAPE; however, there is a "strong likelihood" that it does.

When investigating complaints of disability-based bullying/harassment, OCR considers:

- Was the student bullied based on his/her disability?
- Was the bullying serious enough 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 to end the bullying, eliminate the hostile environment, prevent it from recurring, and remedy its effects?

BULLYING AND CHILD FIND

BULLYING AND CHILD FIND

Children who bully their peers regularly tend to:

- Be impulsive, hot-headed, dominant
- Be easily frustrated
- Lack empathy
- Have difficulty following rules
- View violence positively

www.bullyinginfo.com

BULLYING AND CHILD FIND

Should an evaluation or reevaluation be initiated when a student bullies or is bullied?

BULLYING AND CHILD FIND

In re: Rose Tree Media School District, 111 LRP 6194 (SEA PA 2010):

- Student with ADHD symptoms, anxiety and significant social skills deficits engaged in impulsive behavior and frequently annoyed peers.
- Student complained of bullying by peers, but school staff believed he was extremely sensitive and may have misinterpreted normal peer interactions.

BULLYING AND CHILD FIND

Rose Tree Media, cont.

- Hearing officer found that District violated its Child Find duty by not evaluating student and finding him eligible for special education.
- Question was not whether, in fact, student was bullied but whether student had a disability that made him a target for bullies or caused him to misinterpret others' actions as bullying.

BULLYING AND CHILD FIND

See e.g., Torrance Unified School District v. E.M., 51 IDELR 11 (C.D. Cal. 2008):

- Student had good grades and test scores, but bullied others and had many suspensions.
- Student was ED due to "inappropriate types of behaviors or feelings" in reaction to every day occurrences.

BULLYING AND CHILD FIND

Torrance, cont.

- Court found no child find violation due to family instability, medical diagnosis not shared with school.
- Court did find denial of FAPE due to district's failure to find ED eligibility.

**BULLYING AS A
DENIAL OF FAPE**

BULLYING AND FAPE

South Madison Community School Corporation, (SEA IN 11/25/13):

- Student reported to teachers and school staff that he was physically and verbally bullied by other students
- Student developed fear of going to school and self-harming behavior, expressed suicidal thoughts and started to see a counselor

BULLYING AND FAPE

South Madison, (cont.)

- Although school had a policy requiring the report and investigation of bullying, the teachers did nothing, did not consider the incidents bullying
- Superintendent also did not investigate

BULLYING AND FAPE

South Madison, (cont.):

- Due to redistricting, student started attending a new school, but missed four days before the transfer due to fear of going to school

BULLYING AND FAPE

South Madison, (cont.)

- Hearing Officer found denial of FAPE, and required district to:
 - conduct in-service on bullying,
 - develop and implement system of keeping track of and responding to bullying complaints,
 - Reconvene student's IEP and develop a plan to respond to bullying
 - Provide student compensatory services

BULLYING AND FAPE

South Bend Community School Corporation, (SEA IN 7/5/13)

- Middle school student was victim of several verbal and physical bullying incidents
- Student saw private social worker who reported to school that many of the student's off task behaviors were maladaptive, self soothing responses to anxiety caused by the bullying. The student had difficulty completing work due to the anxiety. The social worker recommended a plan to deal with the bullying and a one on one aide for the student

BULLYING AND FAPE

South Bend, (cont.)

- IEP team met and wrote a plan that identified 2 "go to" staff members for the student who would talk to the students involved in the bullying incidents; the student was removed from his P.E. class
- The District denied student a one on one aide
- The IEP included an accommodation to see the nurse, but it was not explained to teachers, so not implemented properly

BULLYING AND FAPE

South Bend, (cont.)

School denied student FAPE:

- IEP dealt with bullying (ineffectively) after the fact, but did not protect student from bullying
- Bully should be removed from the class, not the victim

BULLYING AND FAPE

South Bend, (cont.)

- Determine special education and related services needed to meet unique needs of student regarding bullying at school, as bullying exacerbated disability- hearing officer ordered aide for student, bathroom privileges, permission to leave class to use restroom without penalty
- Compensatory services for 14 days of school student missed

BULLYING AND FAPE

T.K. v. New York City Department of Education, 56 IDELR 228 (E.D. N.Y. 2011) affirmed 2016 WL 229842 (2nd Cir. 2016)

- LD student complained that other students ostracized her, pushed her, refused to touch items that she touched, and ridiculed her daily.
- Student was emotionally unavailable to learn.

BULLYING AND FAPE

T.K., cont.

- The school had no evidence that it had investigated the reports of bullying or had taken any steps in OCR's DCL, and had no written reports of the incidents. The principal refused to talk to student's parents about their concerns.
- School refused to include plan to address bullying in IEP.

BULLYING AND FAPE

T.K., (cont.)

- The court held that FAPE is denied if the district fails to follow the procedures in OCR's DCL. The student need only show that bullying was likely to affect her educational opportunity.
- District required to pay for private school.

BULLYING AND FAPE

Huntington Beach City Sch. Dist., 115 LRP 17622 (OCR 1/16/15)

- Parent filed OCR complaint because student with OHI was regularly taunted with anti-Semitic comments, derogatory names and assaulted by peers.
- OCR indicated that when a student with a disability is harassed *for any reason*, the district must respond.
- Although district assigned the student an aide, it never reevaluated the student to determine whether the bullying affected his ability to learn.
- The district should convene the IEP or Section 504 team to determine if student's needs have changed due to bullying- *e.g.*, have academic or behavior needs changed?

BULLYING AND FAPE

Huntington Beach, (cont.)

- OCR closed the matter when the district entered a resolution agreement to:
- Continue to assign student an aide to observe social interactions and intervene
- Convene IEP meeting to determine effects of bullying on student's program
- Determine if student has sufficient supports of socializing with peers

BULLYING AND FAPE

Huntington Beach, (cont.)

- Develop and implement a plan to assess and monitor school climate and harassment
- Provide investigative training to school administrators
- Communicate with parents about prohibition on harassment

BULLYING AND LEAST RESTRICTIVE ENVIRONMENT

BULLYING AND LRE

*Birdville Independent School District, 111 LRP
47266 (Texas SEA 2011)*

- Student was dismissed from two day care centers for violent behavior.
- Parents placed him in psychiatric day treatment program.
- District evaluation found him ineligible for special education services.

BULLYING AND LRE

Birdville, (cont.)

- Although Student did well academically at the placement, he continued to bully, misinterpret actions of others, become aggressive, and threaten to harm himself and others.

BULLYING AND LRE

Birdville, (cont.)

- IHO determined Student was not capable of progressing in a general education class, therefore Student required special education and related services.

BULLYING AND LRE

***Fayette County Schools, 114 LRP 19320
(Kentucky SEA 2013)***

- Student was diagnosed with ADHD, Tourette's, OCD, depression, and anxiety.
- Student had been subjected to bullying, which led Parents to homeschool Student for two years.

BULLYING AND LRE

Fayette County, (cont.)

- Student returned to District but was bullied again.
- IEP placement was the general education classroom with 60 minutes daily of special education; IEP did not address bullying concerns.

BULLYING AND LRE

Fayette County, (cont.)

- District seemed “uninformed and indifferent” to the bullying problem.
- In October, doctor recommended homebound, and Student stayed there for the remainder of the school year.

BULLYING AND LRE

Fayette County, (cont.)

- District prepared an IEP for the next year, but Parent had already enrolled Student in a private school.

BULLYING AND LRE

Fayette County, (cont.)

- IHO determined Student had not received FAPE and that the private placement was appropriate.
- IEP contained no social skills development goal.
- No safety plan was developed to prevent bullying or address suicidal ideations.

BULLYING AND LRE

Fayette County, (cont.)

- Student would not have been on homebound had the District not ignored bullying.
- Lack of support and opportunity to practice social skills resulted in a more restrictive environment than Student required.

BULLYING AND LRE

Generalized fear of bullying is insufficient for specialized placement.

BULLYING AND LRE

J.E. v. Boyertown Area School District, 111 LRP 10319 (E.D. Penn. 2011)

- Parents of 10th grade Student with Asperger's, Reading, Math and Writing Disorders, and a Learning Disorder in auditory and visual processing unilaterally placed him at private school because District's IEP recommended the small autistic support class at the high school.

BULLYING AND LRE

Boyertown, (cont.)

- Parent's fear was that her son would face bullying if placed in the public school – based on overhearing students "discussing bullying."

BULLYING AND LRE

Boyertown, (cont.)

- IHO denied reimbursement and a federal judge affirmed.
- Even if bullying should occur, the autistic support program was equipped to address it.

BULLYING AND LRE

Boyertown, (cont.)

- "The student may face bullying but FAPE does not require that the District be able to prove that a student will not face future bullying at a placement, as this is impossible."
