

Recognize, Respond, Report

Preventing and Addressing Bullying of Students with Special Needs

by

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Prevalence and Definition of Bullying and Disability-Based Harassment

Bullying was once a silent epidemic endured by millions of children daily. The attitude “kids will be kids” was considered just a part of normal childhood development. Most school professionals do not recognize the severe implications of bullying, its long-term impact on childhood victims, and its overall negative impact on the school environment and student achievement. Today, bullying in schools is being recognized as an international problem and public health concern. Recognizing the startling international and national statistics on bullying in schools is the first step in developing a comprehensive bullying and disability-based harassment prevention program:

- The U.S. Department of Education estimates that 28% of all middle school and high school students are bullied in school (Roberts et al., 2012).
- The World Health Organization reported that in a study of more than 15,000 students, 29.9% reported moderate or frequent involvement in bullying (Nansel et al., 2001).
- The Centers for Disease Control and Prevention indicate that approximately 20% of students report being bullied across various grade levels (Eaton et al., 2011).
- The National Crime Victimization Survey (2011) states that 27% of boys reported being bullied, whereas 30% of girls reported being bullied, dispelling the myth that there are differences between the prevalence rates for girls and boys.

- The National Center for Education Statistics' "Indicators of School Crime and Safety" (2008) indicates that 24% of elementary and secondary students are bullied weekly, with 7% of students bullied every day.

Taken in its totality, bullying is a severe and significant problem facing millions of children. Although there is some variability in the total percentage of the prevalence of bullying due to definition standards and measurement tools, it is clear that bullying affects millions of students in the United States annually.



I have been bullied since the 4th grade. I am short and skinny. I am alone and it makes me cry. I know there are bullies in every school, and I am trying to make friends too. Good luck.

In addition to the high rates of bullying for typically developing students, students with special needs are bullied at twice the rate of their peers. According to several national and state surveys and assessment outcomes, students with disabilities are at a greater risk for bullying and harassment:

- Ability Path (2011) reports that 60% of students with disabilities are bullied in schools.
- The Interactive Autism Network (IAN, 2012) reported that 63% of students with autism spectrum disorders (ASDs) were bullied in schools.
- *Youth Voice Project* (Davis & Nixon, 2014) reports that students with physical disabilities were 1.94 times more likely to be bullied in schools and students receiving special education were 1.66 times more likely to be bullied.
- The U.S. Department of Education reports children with learning disabilities, epilepsy, and other special needs are at a greater risk of being bullied and harassed (U.S. Department of Education, n.d.).

Bullying is increasingly disproportional when involving students with disabilities (Young, Ne'eman, & Gelser, 2011). Students with physical disabilities are at a greater risk for being targets of bullying (Rose, Swearer, & Espelage, 2012). Sixty-nine percent of students who stutter report that bullying occurs very frequently (Langevin, Bortnick, Hammer, & Wiebe, 1998). Students taking medication in school for attention-deficit/hyperactivity disorder (ADHD) face two to three times more bullying in schools per month than typical peers (Unnever & Cornell, 2003). According to Davis and Nixon's *Youth Voice Project* (2014), "Students who are members of groups who are not valued by the school community are more likely to be mistreated and ostracized socially," which leads to social exclusion. Students with disabilities are unfortunately often isolated and not

included as part of the school environment. In addition to students with more obvious visible and recognized disabilities, students with other health needs are also more likely to be bullied in schools. For example, students with a chronic illness such as asthma or diabetes report higher rates of bullying (Sentenac et al., 2012). These high rates of bullying and disability-based harassment have finally garnered the attention of school professionals, state educational agencies, and the federal government as a public health concern (Hamburger, Basile, & Vivolo, 2011), which warrants effective, comprehensive programming.



Tell the principal about the boys on the bus. You need to get a strict bus driver. Once you get a new bus driver, sit in the front and when kids call you names, tell the bus driver. Even if the kids call you snitch afterward, that just gives you more of a reason to stand up to them.

PREVALENCE AND DEFINITION OF BULLYING

Due to the severe and often long-term negative impact of and public health concerns about bullying and harassment, it is important for federal, state, and local educational leaders to adopt a uniform definition of bullying. Definitions of bullying can vary from state to state and school to school, which is a factor contributing to the variability of prevalence rates. The federal government has not adopted a universal definition for bullying in schools. To this end, the Centers for Disease Control and Prevention (CDC, 2014) selected an expert panel of researchers and practitioners to create a definition of bullying for use by schools and other public health agencies for further research on evidence-based interventions and assessment tools. The CDC and U.S. Department of Education (2014) released the following definition of bullying:

Bullying is any unwanted aggressive behavior(s) by another youth or group of youths who are not siblings or current dating partners that involves an observed or perceived power imbalance and repeated multiple times or is highly likely to be repeated. Bullying may inflict harm or distress on the targeted youth including physical, psychological, social, or educational harm. (p. 7)

There are other national organizations that have also developed position statements that include a definition of bullying. For example, the National Education Association (NEA) has written a slightly different definition of bullying:

Bullying is systematically and chronically inflicting physical hurt and/or psychological distress on another. Bullying can be physical, verbal or social. Bullying is not just child's play, but a frightening experience many students face every day. Bullying involves a real or perceived power imbalance between the one who bullies and their target. (NEA, n.d.)

Dan Olweus is a pioneer in the field of school safety and bullying prevention in schools. His work and research have been around for more than two decades

and are cited as seminal research in the field of bullying. His groundbreaking book, *Bullying at School* (1993), was written after the tragic suicides of three young boys in Norway in 1983 caused the adoption of new anti-bullying laws. The Olweus Bullying Prevention Program (OBPP) defines bullying as when “someone repeatedly and on purpose says or does mean or hurtful things to another person who has a hard time defending himself or herself” (Olweus, 1993). The OBPP program has expanded internationally and is a widely used multitiered program that has demonstrated significant positive results in decreasing bullying in schools (Farrington & Ttofi, 2010). There are keywords and common terms for defining bullying (Table 1.1).

Most definitions of bullying include a perceived imbalance of power. This can be due to appearance, body size, personality characteristics, degree of masculinity or femininity, socioeconomic status, or academic performance in school. Power imbalance can be subjective in nature and may require further explanation to students and staff by demonstrating exemplars of differing characteristics that create a power imbalance—for example, the outgoing boisterous captain of the football team versus the shy introvert computer club president or students from an influential geographical area of town versus students who live in impoverished neighborhoods.



I can relate because in 8th grade I was a new kid and I didn't know anyone. I got bullied because I was shy and dressed different from anyone. I finally got out of it in high school because I starting talking more and gained confidence. I believe in you. If they say something to you that is mean, just say, "Does it look like I care?"

In addition to the common terms and language utilized for defining bullying, some state and local definitions of bullying include an additional criteria that bullying is an *intentional, deliberate, or willful* act, which is a threshold much more challenging for school officials to investigate. As one might imagine, when confronted by an adult, it would not be uncommon for a student who exhibited a bullying act to quickly state, “I didn’t mean it” or “I was just messing with them,” thus minimizing the action or intent. Determining a person’s intention is

Table 1.1. Common terms and keywords for defining bullying

- Repeated actions
- Harmful to the victim
- Unwelcome behavior
- Inflicted on someone with less power or perceived power differences or dominance

subjective for school professionals who may be investigating an incident of bullying. According to the Dear Colleague Letter (DCL) from the U.S. Department of Education, Office of Civil Rights (OCR, 2010), “Harassment does not have to include *intent* to harm” (p. 2).

In addition, Dr. Jorge Srabstein, Medical Director of the Clinic for Health Problems Related to Bullying, states that “intentionality may not be required criteria when considering bullying” (Srabstein, 2014). Regardless of the intent, the hostile action exhibited by a student or group of students is unwelcome conduct based on the perception of the victim. The severity or negative impact of bullying or disability-based harassment is not solely judged by whether the act was intentional or not. Dr. Srabstein (2014) goes on to say, “Bullying is in the eyes of the beholder.” When investigating a bullying incident to determine disability-based harassment, the question is not whether the student “intended” to create a hostile environment. The incident is examined through the perspective of the victim or more likely a student with a disability. As will be discussed in Chapter 4, it is imperative that school professionals develop a uniform definition of bullying that includes the standard criteria for harassment and is disseminated to all school staff, students, and parents.

What Is a Dear Colleague Letter?

Dear Colleague Letters (DCLs) are official correspondence and nonregulatory guidance letters from the U.S. Department of Education to school districts, charter school operators, and school personnel for implementing federal laws and civil rights requirements. DCLs are available to members of the public (parents, students, and community stakeholders), with information about their rights and examples to assist these groups in meeting their legal obligations. They are not intended to set forth any new laws or require specific actions by any state, school, or school district, but schools should carefully consider adopting these policies and interventions as best practice standards when addressing bullying prevention and ending disability-based harassment.

Bullying versus Normal Childhood Conflict

When recognizing and defining bullying in schools, educators must often distinguish between typical childhood behaviors and bullying. Not all peer-to-peer teasing or aggression is bullying, and school professionals should be careful when defining bullying for staff and students in an attempt to distinguish between observable behaviors. According to Barbara Coloroso (2008), “Teasing is a fun thing to do with friends and is a playful part of childhood development” (p. 32). Childhood conflict is a normal part of the social environment in a school setting. Children that are of equal status and friends will have normal peer

conflict and may even exhibit rude or mean behaviors. It is important to recognize that not all childhood struggles constitute bullying. Minor acts of childhood struggles are a normal part of development and must be differentiated from harmful acts of aggression toward students at risk (Limber & Snyder, 2006). The written school definition of bullying, for both staff and students, may include examples or different representations of normal childhood conflict versus bullying to ensure consistent understanding between these concepts. Teachers and school leaders should provide age-appropriate concrete examples of behaviors that are considered part of bullying (e.g., repeated name calling and pushing of a younger student) and differentiate examples of normal childhood conflict (e.g., like poking fun at a friend). A school district's operational definition of bullying should provide degrees, characteristics, and exemplars of normal peer conflict and examples of bullying for comparison (Table 1.2).



Well here is my advice because I go through the same thing and it is hard, but when people tell me I'm ugly, I just say, "Before you judge me, make sure you are perfect." Don't let them bother you, and that makes them mad. I hope you can take my advice and keep your head up.

Disability-Based Harassment

According to research from a variety of international and national disability organizations and governmental agencies, students with disabilities are vulnerable and at greater risk for being bullied in schools, which may rise to the level of disability-based harassment. School personnel must first recognize and understand that students with disabilities have additional legal protections to guard against hostile environments, such as bullying in school. Students with disabilities have a greater protection from bullying and disability harassment under three federal laws:

Table 1.2. Examples of normal childhood conflict versus bullying

A group of longtime friends poke fun at each other in a lighthearted manner in the cafeteria. One student burps in the other student's face. The peer then sticks his finger in the student's mashed potatoes. Both students have an equal friendship, and they leave the cafeteria together while laughing.	A student sitting alone in the cafeteria is approached by an older student who calls him "retarded and gay" and then pours his milk on his tray. Other students laugh at him, and the perpetrator walks away leaving the student sitting alone.
Two girls with equal power and status have an argument, insult each other, and scream they will never speak again. When confronted by an adult, they immediately have remorse for their actions and end the disagreement.	Two girls have what appears to be a disagreement that has been ongoing in the classroom for weeks. The dominant girl says, "You are a skank." When an adult intervenes, the dominant girl shifts blames and has no remorse for her actions.

- 1. Section 504 of the Rehabilitation Act of 1973 (PL 93-112) is an antidiscrimination law designed to protect the rights of individuals with disabilities in programs and activities that receive federal financial assistance from the U.S. Department of Education.
- 2. Title II of the Americans with Disabilities Act of 2008 (PL 110-325) is an antidiscrimination law that extends the prohibition to the full range of state and local government services, programs, and activities (including public schools).
- 3. The Individuals with Disabilities Education Improvement Act (IDEA) of 2004 (PL 108-446) is a federal statute that funds special education programs and requires a school district to provide a free appropriate public education (FAPE) to students with disabilities in the least restrictive environment (LRE).

The federal government has a long history of creating and implementing strict laws to protect individuals with disabilities from harassment. From 1973 to the present day, a series of federal laws have been enacted and reauthorized explicitly to protect individuals with disabilities from any form of discrimination, which includes harassment, in schools. In order for a student to make a claim of disability harassment, they must first be found eligible or qualify for services under the federal regulations of the Individuals with Disabilities Education Act (IDEA) or Section 504 of the Rehabilitation Act of 1973. A student is found eligible for special education and related services for a disability under IDEA after an individualized educational evaluation determines if the student meets the criteria within the 14 specific disability categories: “In order to fully meet the definition (and eligibility for special education and related services) as a ‘child with a disability,’ a child’s educational performance must be adversely affected due to a disability” (IDEA, 2004; Table 1.3).

For more information on specific disability categories, go to Center for Parent Information and Resources web site:



<http://www.parentcenterhub.org/repository/categories>

Table 1.3. Individuals with Disabilities Education Act (IDEA) disability categories

Autism	Multiple disabilities	Deaf blindness	Deafness
	Emotional disturbance	Hearing impairment	Orthopedic impairment
Other health impairment	Specific learning disability	Speech language impairment	
Intellectual disability	Traumatic brain injury	Visual impairment including blindness	

A student may also claim disability-based harassment if they qualify under Section 504, which defines an individual with a disability as “any person who: (i) has a mental or physical impairment that substantially limits one or more major life activity; (ii) has a record of such an impairment; or (iii) is regarded as having such an impairment” (34 C.F.R. §104.3[j][1]). Students who qualify under Section 504 and demonstrate an impairment that limits a major life activity (e.g., walking, learning, reading, thinking) can range from those with severe allergies, medical conditions such as diabetes, ADHD, or other issues that limit their school activity. Students who qualify as having a disability under Section 504 have a written 504 Plan that includes supports and accommodations to their educational program. For more information on Section 504 and protecting students with disabilities, go to the U.S. Department of Education web site:



<http://www2.ed.gov/about/offices/list/ocr/504faq.html>

Students who qualify as having a disability under IDEA automatically receive protections from discrimination, such as harassment, under Section 504 and Title II. Although the qualifications and standards for students under IDEA are much more stringent with specific eligibility criteria, students who qualify under Section 504 are awarded the same rights of protection from disability-based harassment (OCR, 2010, 2014). Section 504 protects individuals with disabilities, including IDEA-eligible students, from discrimination and ensures that children with disabilities have equal access to an education. Although there are major differences in the qualifications under these two federal laws, it is important for school personnel to understand that both groups of students are protected from discrimination, which includes bullying and disability-based harassment (OCR, 2010, 2014).

Definition of *Students with Disabilities*

For the purpose of this book, the term *students with disabilities* will include students found eligible for special education aids and services under both IDEA and Section 504.

In addition to these federal antidiscrimination laws and funding statutes, the U.S. Department of Education has provided technical assistance and guidance to school districts regarding bullying and disability-based harassment with four important DCLs. Beginning with the first DCL on July 25, 2000, the Office

for Civil Rights (OCR) has provided clear guidance for the compliance with the federal laws to protect individuals with disabilities as well as other protected classes such as race, color, gender, religion, and sexual orientation. The OCR, under direction from the Department of Education, has clarified the relationship among bullying, harassment, and the legal requirements for school district personnel to investigate and prevent future incidents. According to the OCR (2000),

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. 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. (p. 1)

The OCR reminds schools that the failure to recognize disability-based harassment may be a violation of students' civil rights. In a follow-up letter dated October 26, 2010, the OCR recognized that state and local educational agencies had expanded policies and procedures specifically to address bullying in schools, but these general school policies and procedures on bullying may not protect students from disability-based harassment. OCR explains, "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" (p. 1). School district personnel must heed caution when applying a standard of bullying during an incident involving a student with a disability. For example, if an adopted school policy requires that an incident of bullying include "deliberate acts," then a violation of disability-based harassment may not be determined with this requirement of intentional acts. The school may dismiss acts that are ultimately disability-based harassment due to this additional requirement, potentially violating a student's right to a "hostile-free" educational environment.

The DCLs from the OCR are clear with regard to their expectations and guidance to all school district leaders and school professionals. In addition to the DCLs written from the OCR (2000, 2010, 2014), the Department of Education in conjunction with the Office of Special Education and Rehabilitative Services (OSERS) wrote a DCL on August 20, 2013, to clarify its position on bullying and disability-based harassment as it relates to a student's right to a free appropriate public education (FAPE). The OSERS's letter states that "bullying, for any reason cannot be tolerated in our schools . . . and students with disabilities have a right to a safe and respectful school environment" (p. 1). The letter goes on to state that "whether or not the bullying is related to the student's disability, any bullying of a student with disabilities that results in the student not receiving meaningful educational benefit constitutes a denial of a FAPE" (p. 3). The Department of Education is suggesting that bullying can seriously interfere with students with disabilities' right "to receive the education critical to their advancement" (OCR, 2000). This DCL (2013) reminds school personnel of their responsibility for

addressing all incidents of bullying and potential disability-based harassment, which creates a hostile environment to a student with a disability regardless of the intentionality or label used to describe the incident (e.g., bullying, hazing, teasing). This type of repeated unwelcome behavior creates a hostile environment and interferes with the student’s ability to participate in or benefit from the services, activities, or opportunities provided by the school (CDC, 2014). To watch a short video on disability-based harassment, visit StopBullying.gov:



<http://www.stopbullying.gov/videos/2014/02/civil-rights.html>

It is important to clarify that bullying and harassment can overlap (CDC, 2014). School personnel may ask, when does bullying become disability harassment? The OCR does not utilize the term “bullying” but instead prohibits “harassment.” In a DCL regarding *Santa Monica (CA) Unified School District*, 55 IDELR 208 (OCR, 2010), OCR explains,

Although the possible bases for action constituting “bullying” are much broader than the bases constituting harassment under federal laws enforced by OCR, because the complaint stated actions alleged to have taken against the Student because of disability, the distinction between “bullying” and harassment in this matter is *immaterial* and the complaint was investigated as one alleging harassment.

Therefore, the school’s labeling of an incident as “bullying” is immaterial if the student has a disability under the protections of federal regulations. Table 1.4 provides the language and legal definitions that constitute disability-based harassment.

If the criteria listed in Table 1.4 are met, then a finding of disability-based harassment violation may be proven. Even if one of the criteria is not met, for a student who is receiving IDEA FAPE services or 504 FAPE services, the school multidisciplinary team should convene to determine whether the student’s educational needs have changed.

As clear and forthright as the Department of Education and OCR have been with clarifying the rights of students with disabilities (OCR, 2000, 2010, 2013, 2014),

Table 1.4. Four-prong criteria for disability-based harassment

- | |
|--|
| 1. The student is an individual with a disability and receives unwelcome conduct or harassment based on his or her disability. |
| 2. The bullying is sufficiently severe, persistent, or pervasive to create a hostile environment. |
| 3. School officials know or reasonably should have known about the harassment. |
| 4. The school failed to respond appropriately to end the harassment. School personnel must take immediate action to eliminate the hostile environment and prevent it from recurring and, as appropriate, remedy its effects. |

there remains a gap in knowledge of these protections at the school level as these groundbreaking and important documents are not widely disseminated to front-line school personnel. For example, while attending a special education seminar held in a rural southern town, I informally surveyed the 87 participants of their knowledge of the DCLs: Only 3 attendees (out of 87) had any awareness of the existence of these DCLs, and just one participant understood the legal implications for school personnel. This small sample is not intended to represent the millions of teachers and staff who work in schools but may suggest an indication for the need of further professional development and widespread awareness campaigns of the federally required protections for students with disabilities.



When I was in 3rd grade, I was pushed around because I was bigger than most of my friends. Even when I lost weight, I still got talked about. When they say things, I just say to myself, "That's not who I am anymore." Become the bigger person and just keep walking like you never heard them and stay happy. Never show you care.

The multiple and compelling technical assistance guidance letters from the Department of Education, the OCR, and the OSERS provide further evidence of the federal government's position on protecting students with disabilities in schools. The Department of Education reminds all school personnel of their important role in defining bullying and quickly investigating any claims of disability harassment and to prevent any further incidents. School leaders must recognize that educational institutions are held legally accountable to provide an educational environment that ensures equal educational opportunities for all students (OCR, 2010). Given the high rates of bullying of students with disabilities, it is critically important that all special education professionals recognize the signs of bullying, disability harassment, and their legal obligations to intervene. If schools reasonably suspect disability harassment, they must take prompt, effective steps to eliminate the hostile environment.

In addition to the federal regulations and DCL guidance from the Department of Education regarding disability-based harassment, there are additional legal ramifications for school personnel as parents pursue legal remedies for cases of bullying and harassment. There have been several due process hearings and federal court cases with regard to harassment and students' civil rights. Parents are becoming more informed of their rights and the rights of their children with disabilities as a number of state legislatures pass new laws, policies, and procedures. In 2011, a New York federal judge ruled in a precedent-setting case regarding bullying and harassment for students receiving special education services known as *T.K. v New York Department of Education* (Cyr, 2012). A 12-year-old girl with a learning disability and her parents had repeatedly complained to the

principal of bullying in school. The school did not take adequate steps to investigate and prevent future bullying. The district court ruled in favor of the parents that their daughter was denied IDEA FAPE services based largely on the OCR Harassment and Bullying Guidance Letter (2010). Although the New York district court case findings cannot legally be applied at a national level to all schools, the ruling is a reminder of the strict duties of school personnel to take prompt and appropriate action when students with disabilities are bullied or harassed. School personnel who violate federal law and do not investigate and eliminate disability harassment can create potential liabilities for the school, opening themselves up for lawsuits, which are time consuming, include damages and attorney fees, and can jeopardize the students' civil rights. If school personnel are reasonably made aware of harassment toward a student with a disability, they are required by federal law to investigate and take action to end the hostile environment. Chapter 8 will review the laws and requirements for investigating disability harassment and the corrective measures that should be taken by school leaders.

Implementation Checklist

Can you . . . ?	Yes
Review and articulate the prevalence of bullying	<input type="checkbox"/>
Identify the impact of bullying on students with disabilities	<input type="checkbox"/>
Memorize the keywords and common language to define bullying	<input type="checkbox"/>
Differentiate between bullying and normal childhood conflict	<input type="checkbox"/>
Label the three federal laws that protect students with disabilities	<input type="checkbox"/>
Indicate the four-prong criteria for disability-based harassment	<input type="checkbox"/>
List the legal ramifications of harassment in schools	<input type="checkbox"/>
