



“Disability Harassment and the Responsibilities of Schools”

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In response to concerns expressed to the Office of Special Education and Rehabilitative Services (OSERS) from parents, disabled persons, and advocates for students with disabilities, the Office for Civil Rights (OCR) and the OSERS in the U.S. Department of Education issued a letter to school personnel concerning “a vital issue that affects students in school - harassment based on disability.” The Department of Education’s purpose in writing the letter 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.”

The U.S. Department of Education highlighted that: “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.”

Harassment can have significant effects on victims, including negative self-image and decreased self-esteem, depression and anxiety, feelings of powerless or lack of control, avoidance from places where the harassment is occurring (i.e. school) and suicidal ideation. Studies have additionally demonstrated that victims of school harassment can lead to many psychosomatic difficulties, such as the development of headaches, abdominal pain, enuresis, and poor appetite. Research also indicates that the negative effects of school harassment frequently continue into adulthood, and victims often drop out of school.

Special education students are subject to harassment at significantly higher levels than non-disabled students. Specifically, studies have shown that students with special education needs were about twice as likely to experience harassment compared to students without special education needs, and the harassment special education students experience is related to their special needs or disabilities.

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Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (Title II), both enforced by OCR, prohibits discrimination and harassment based on disability and affords parents and students with grievance procedures and due process remedies. In addition, the IDEIA, and which is enforced by OSERS, disabled students must be provided with a free appropriate public education (FAPE), which may be denied through disability harassment. Therefore, IDEIA, Section 504, or Title II can be utilized by parents to initiate due process remedies to address a denial of FAPE, including those resulting from disability-based harassment.

Disability-based harassment is defined as intimidation or abusive behavior towards a student based on his or her disability, including verbal acts (i.e. name-calling), nonverbal behavior (i.e. graphic and written statements), or physically threatening, harmful, or humiliating conduct, that perpetuates a hostile environment by interfering or denying a student's access to programming. If a student's access to educational programming has been denied or interfered with, the student has been denied FAPE. Furthermore, disability-based harassment that decreases a student's ability to benefit from his or her education through the student's Individualized Education Plan (IEP), results in a denial of FAPE.

Examples, provided by OCR and OSERS, of how disability harassment could amount to a hostile environment, thus a denial of FAPE, include:

- As a result of several students continual remarks out loud during class that a student with dyslexia is "retarded", the harassed student had difficulty doing work in class and her grades declined.
- A student repeatedly placed classroom furniture in the path of students who used wheelchairs, impeding their ability to enter the classroom.
- As a result of a teacher's inappropriate physical restraint because of conduct related to a student's disability, the student tried to avoid school through increased absences.
- A school administrator repeatedly denied a student with a disability access to lunch, field trips, assemblies, and extracurricular activities as punishment for taking time off from school for services related to the student's disability.
- As the result of a teacher repeatedly belittling and criticizing a student with a disability for using accommodations in class, the student was so discouraged that she had great difficulty performing in a class and learning.
- Students continually taunted or belittled a student with mental retardation by mocking and intimidating him so he did not participate in class.

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The OCR and OSERS obligate schools and institutions to “respond effectively” when disability-based harassment interferes with or denies a student's access to his or her educational program, and to promptly investigate and respond appropriately to possible occurrences of disability-based harassment. The U.S. Department of Education further promulgates that schools develop and distribute an official policy statement prohibiting disability-based harassment and establish grievance procedures to address disability-based harassment. Schools are also responsible to respond to any disability-based harassment that occurs, including taking prompt and effective action to end the harassment and prevent it from recurring and remedying the effects on the harassed student, where appropriate.

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