

Lindale ISD

SECTION 504

BULLYING AND HARASSMENT

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Bullying and Harassment

What is Required

Section 504 prohibits disability-related harassment and bullying by peers that is sufficiently serious to deny or limit a student's ability to participate in or benefit from the school's education programs and activities creating a hostile environment. When the District knows or reasonably should know of possible harassment or bullying, it must take immediate and appropriate steps to investigate or otherwise determine what occurred. If an investigation reveals that harassment or bullying created a hostile environment, the District must take prompt and effective steps reasonably calculated to end the harassment or bullying, eliminate the hostile environment, prevent the harassment/bullying from recurring, and, as appropriate, remedy its effects.

Bullying

The U.S. Department of Education defines bullying as "aggression used within a relationship where the aggressor has more real or perceived power than the target and the aggression is repeated or has the potential to be repeated over time." The Texas Education Code defines bullying as "a single significant act or a pattern of acts by one or more students directed at another student that exploits an imbalance of power and involves engaging in written or verbal expression, expression through electronic means, or physical conduct...that:

(i) has the effect or will have the effect of physically harming a student, damaging a student's property, or placing a student in reasonable fear of harm to the student's person or of damage to the student's property;

(ii) is sufficiently severe, persistent, or pervasive enough that the action or threat creates an intimidating, threatening, or abusive educational environment for a student;

(iii) materially and substantially disrupts the educational process or the orderly operation of a classroom or school; or

(iv) infringes on the rights of the victim at school; and

includes cyberbullying." "Cyberbullying" means "bullying that is done through the use of any electronic communication device, including through the use of a cellular or other type of telephone, a computer, a camera, electronic mail, instant messaging, text messaging, a social media application, an Internet website, or any other Internet-based communication tool." See Tex. Educ. Code 37.0832.

The bullying of a student with a disability on any basis can result in a denial of FAPE. Thus, the District must respond appropriately to bullying or harassment of a student with

a disability under Section 504.

Where an investigation reveals that bullying on any basis likely occurred, the Section 504 Committee will convene to assess whether, because of the bullying, the student's needs have changed such that the student is no longer receiving FAPE. Evidence that bullying has impacted the student's ability to receive FAPE may include adverse changes in the student's academic performance or behavior, including, but not limited to, a sudden decline in grades, an onset of emotional outbursts, an increase in the frequency or intensity of behavioral challenges, or an increase in attendance-related issues. However, one low grade for an otherwise high-performing student is generally not sufficient by itself to trigger the Section 504 Committee's obligation to convene. If there is reason to believe that the receipt of FAPE may have been impacted by the bullying, the District will make prompt efforts to remedy those effects.

If the student's needs have changed, the Section 504 Committee will determine the extent to which additional or different services are needed, ensure that any necessary changes are made promptly, and make efforts to protect the student with the disability from having to independently avoid or handle the bullying. In considering a change of placement, the Section 504 team must ensure that the student continues to receive FAPE in the least restrictive environment.

The District will make its policies prohibiting bullying and harassment and procedures for reporting and resolving complaints readily available to students, parents, and employees through the District website, Parent/Student Handbook, and Employee Handbook.

Disability-Based Harassment

Additionally, bullying of a student on the basis of his or her disability may constitute disability-based harassment under Section 504. The U.S. Department of Education has defined "disability-based harassment" as "intimidation or abusive behavior toward a student based on disability that creates a hostile environment." A hostile environment exists where the harassment is sufficiently serious as to interfere with or limit the ability of a student to participate in or benefit from the District's programs or services. This may exist even if there are no tangible effects on the student. Likewise, harassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents. All relevant circumstances should be considered when evaluating whether a hostile environment exists, including: the degree to which the conduct has impacted the student's educational program; the type, frequency, and duration of the conduct; the age, identity, and relationship between the Complainant and the Respondent; the number of individuals involved; the context in which the alleged incident occurred; and other school incidents.

In some situations, harassment may be in plain sight, widespread, or well-known to Campus Personnel and students. However, there may be other situations where several

incidents, taken together, constitute a hostile environment. Examples of conduct that may constitute disability-based harassment include, but are not limited to:

- Disparaging remarks about a student's disability made by another student or by Campus Personnel;
- A student repeatedly placing classroom furniture or other objects in the path of another student who uses a wheelchair, impeding the student's ability to enter the classroom;
- Campus Personnel subjecting a student to inappropriate physical restraint because of conduct related to the student's disability, with the result that the student tries to avoid school through increased absences;
- A Campus Administrator repeatedly denying a student with a disability access to lunch, field trips, assemblies, and extracurricular activities due to a student's disability or as punishment for absences due to the student's disability; and
- Campus Personnel or other students belittling or criticizing a student with a disability for using accommodations in class.

Harassment may take many forms, including verbal acts and name-calling; graphic or written statements; the use of cell phones, the internet, or other technology; or other conduct that may be physically threatening, harmful, or humiliating to a student. A single incident of disability-based harassment may be sufficient to trigger the District's duty to respond. However, if the conduct is not related to the student's disability specifically, it is not disability-based harassment under Section 504. Nevertheless, the District must still respond to harassment that is not disability-based harassment under other federal and state laws.

Response to Allegations

If the campus learns or has reason to know of bullying or harassment on the basis of a student's disability, Campus Personnel must take immediate and appropriate steps to investigate the incident. If the investigation reveals that such bullying or harassment did occur and created a hostile environment—i.e., the conduct was sufficiently severe to interfere with or limit a student's ability to participate in or benefit from the services, activities, or opportunities offered by the District—the District must make prompt and effective efforts reasonably calculated to end the bullying or harassment, eliminate the hostile environment, prevent it from reoccurring, and remedy its effects. Depending on the circumstances, appropriate responsive steps to eliminate harassment may include the following:

- Separating the Complainant and the Respondent;

- Providing counseling to the Complainant and/or the Respondent;
- Taking disciplinary action against the Respondent;
- Providing training and other interventions relating to harassment, both individually to the Respondent and to the school community as a whole; and
- Issuing new campus-wide and/or District-wide policies and procedures related to harassment.

During the investigation process, the District must determine whether the bullying or harassment may have interfered with the provision of FAPE to the student. Where a student who receives Section 504 services has experienced bullying that results in disability-based harassment, there is a strong likelihood that the student was denied FAPE. If there is reason to believe that the receipt of FAPE may have been impacted by the bullying or harassment, the District must remedy those effects promptly. This may be done through various means, such as the provision of additional or different services.

Notice of Harassment Complaints

The District must respond to any disability-based harassment about which it knows or has reason to know. While a generalized statement by a parent about the possibility of bullying taking place is likely not enough to trigger the District's duty to respond, the District may be put on notice when it receives a complaint that specifically mentions "harassment," "disability," or similar terms. However, there are no "magic words" that must be used. Furthermore, the parent or student reporting the harassment does not need to submit a formal complaint in writing to trigger the District's duty to investigate the complaint. Rather, the District may be on notice of the possible disability-based harassment regardless of the format of the complaint.

The District is responsible for any disability-based harassment in which a District employee engages while acting, or reasonably appearing to be acting, in the context of carrying out employment duties, regardless of whether the District has notice of the conduct.

Analysis of Complaints by OCR

OCR is likely to find that the District violated Section 504 if Campus Personnel knew or should have known about bullying or harassment based on a disability that created a hostile environment yet failed to respond appropriately. Typically, when evaluating complaints involving bullying and students with disabilities, OCR will conduct an investigation into whether there has been disability-based harassment, a FAPE violation, both, or neither. OCR will consider the unique facts and circumstances of each complaint.

See [OCR COMPLAINTS]. At a minimum, OCR will consider the following factors when investigating disability-based harassment:

- Was a student with a disability bullied by one (1) or more students based on the student's disability?
- Was the bullying sufficiently severe to create a hostile environment?
- Did the Campus know, or should it have known, of the bullying?
- Did the Campus fail to take prompt and effective steps reasonably calculated to end the conduct, eliminate the hostile environment, prevent it from recurring, and remedy its effects?

If the answers to these questions are all "yes," OCR will likely find that disability-based harassment occurred.

OCR will then determine whether there was also a denial of FAPE under Section 504. OCR may find that bullying resulted in the denial of FAPE even where it concludes that disability-based harassment did not occur. Factors that OCR considers when determining if a student was denied FAPE under Section 504 due to bullying include but are not limited to the following:

- Did the Campus know, or should it have known, that the effects of the bullying may have impacted the student's receipt of FAPE? For example, was the campus aware of adverse changes in the student's academic performance or behavior that may have indicated that the student is not receiving FAPE?
- If the Campus knew or should have known that the effects of the bullying may have impacted the student's receipt of FAPE, did the Campus meet its ongoing obligation to ensure FAPE by promptly determining whether the student's educational needs were still being met, and if they were not being met, making changes, as necessary, to the Section 504 plan?

If the answer to the second question is "no," and the student was not receiving FAPE, OCR will likely find that the District violated its duty to provide FAPE under Section 504. If a child is not yet receiving service under Section 504 or the IDEA and OCR suspects that the child may have a disability, OCR may also investigate whether the District has met its duty to evaluate the student in a timely manner. See [CHILD FIND AND REFERRAL].

Title IX and Section 504

Title IX requires the District to respond promptly to sexual harassment complaints. In the Title IX implementing regulations, the U.S. Department of Education clarified that the

regulations do not negate a student's rights under Section 504. However, Title IX may have implications for students with disabilities who have special disciplinary protections under Section 504. Campus Administration and/or the District Title IX Coordinator should work with the Campus Section 504 Chairperson, and where necessary, the District Section 504 Coordinator, prior to conducting a Title IX investigation involving a student receiving Section 504 services or implementing supportive measures for a student receiving Section 504 services following the investigation.

Furthermore, Campus Administration and the District Title IX Coordinator must recognize that the provision of supportive measures in some cases may constitute a change in placement. Therefore, the District Title IX Coordinator shall contact the Campus Section 504 Chairperson to determine whether any supportive measures may interfere with the provision of accommodations, services, etc. in the Student's Section 504 plan. Should a supportive measure impact the District's ability to implement the Student's Section 504 plan, the Section 504 Committee, including the District Title IX Coordinator, shall convene to discuss whether the student can still receive FAPE with the supportive measure in place.

Additionally, Title IX's provisions relating to emergency removals do not impact a student's rights relating to disciplinary protections and removals under Section 504. See [DISCIPLINE]. The District Title IX Coordinator and Campus Administration should be appropriately trained on disciplinary protections under Section 504 and their applicability to the Title IX grievance process.

Evidence of Implementation

- Section 504 Plan
- Section 504 Committee Meeting
- Provision of FAPE in the Least Restrictive Environment
- Publication of Policies and Procedures Related to Bullying and Harassment on District Website and in Handbooks
- Investigation into Allegations of Bullying and/or Harassment
- Prompt Efforts to Remedy Bullying and/or Harassment
- Title IX Policies and Procedures
- Prompt Efforts to Remedy the Denial of FAPE
- Provision of Additional or Different Services
- Full Individual and Initial Evaluation

Resources

[Title 34, Section 104 of the Code of Federal Regulations \(“Section 504 Regulations”\) - Electronic Code of Federal Regulations](#)

[Technical Assistance: 504 - Texas Education Agency](#)

[Section 504 Fact Sheet for Parents - Texas Education Agency](#)

[Dear Colleague Letter - U.S. Department of Education \(Oct. 21, 2014\)](#)

[Dear Colleague Letter on Bullying of Students with Disabilities - U.S. Department of Education \(Aug. 20, 2013\)](#)

[Dear Colleague Letter on Prohibited Disability Harassment - U.S. Department of Education \(July 25, 2000\)](#)

[Disability Rights Enforcement Highlights - U.S. Department of Education \(Oct. 2012\)](#)

[Coordinated School Health: Bullying and Cyberbullying - Texas Education Agency](#)

[OCR Complaint Process - U.S. Department of Education](#)

[Questions and Answers on OCR's Complaint Process - U.S. Department of Education](#)

[Title IX Final Rule: Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance - U.S. Department of Education \(May 2020\)](#)

CITATIONS

Board Policy FB and Board Policy FFH; 29 USC 794; 34 CFR Part 104; Texas Education Code 37.0832