

BY BETH CALLAHAN, EdS

Has your child been bullied at school because of his or her ADHD?

IN RECENT YEARS, bullying has drawn national attention from government and advocacy organizations. Bullying has also been discovered to impact children with disabilities at a higher rate than other groups of children. What are your child's rights in school if he or she is supported by a 504 Plan or IEP? Do schools really understand their responsibilities and are they disseminating this information to the parents of students with disabilities?

An October 2014 "Dear Colleague" letter from the US Department of Education's Office for Civil Rights (OCR) very clearly states the rights of the students and the responsibilities of the school systems in regards to bullying and Free and Appropriate Public Education. Bullying based on a child's disability or disability characteristics is viewed as discrimination.

Section 504 is a federal civil rights statute that says schools cannot discriminate against children with disabilities and must provide Free and Appropriate Public Education. It says that schools that receive federal dollars must provide eligible children with disabilities with an equal opportunity to participate in all academic and non-academic services the school offers.

What do you need to know?

If your child has a 504 Plan in place in the school system and is being bullied, then it is the school's responsibility to convene a 504 team meeting to ensure that your child's ability to receive a free and appropriate public education (FAPE) is still being met. In this meeting, the 504 team must decide if the bullying is adversely impacting your child's educational placement. Three questions must be answered to make this determination:

1. Is the student being bullied based on their disability?
2. Is the bullying serious enough to create a hostile environment?
3. If the environment is hostile, is this impeding the child's access to educational services?

If all three of these questions are answered as "yes," then the school is no longer meeting the requirements to provide FAPE for this child and the school must rectify this immediately to stay in compliance with Section 504 and Title II.

What if the school is not meeting the requirements to provide your child's FAPE?

If it is determined that the bullying is significant enough to impact the child's access to FAPE, what are the school's responsibilities? According to OCR, bullying a student based on disability or disability characteristics is considered disability harassment and a violation under Section 504 and Title II. The school must take steps to immediately investigate and respond appropriately so that the child can continue to learn in a safe environment. The 504 team will need to determine if there are additional services needed and also take steps to ensure that the bullying is stopped while maintaining an educational setting with your child's peers to the maximum extent possible.

What Are Your Child's Rights?



AN EXAMPLE GIVEN BY OCR

The following hypothetical example illustrates how OCR would analyze a complaint involving allegations of the bullying of a student with a disability who only receives Section 504 FAPE services.

A. Disability-Based Harassment Violation and FAPE Violation

At the start of the school year, a ten-year-old student with Attention Deficit Hyperactivity Disorder (ADHD) and a speech disability is fully participating in the classroom, interacting with his peers at lunch and recess, and regularly attending speech therapy twice a week. In addition to providing for speech services, the student's Section 504 plan also provides for behavior supports that call for all his teachers and other trained staff to supervise him during transition times, provide constructive feedback, and help him use preventative strategies to anticipate and address problems with peers.

Because of the student's disabilities, he makes impulsive remarks, speaks in a high-pitched voice, and has difficulty reading social cues. Three months into the school year, students in his P.E. class begin to repeatedly taunt him by speaking in an exaggerated, high-pitched tone, calling him names such as "weirdo" and "gay," and setting him up for social embarrassment by directing him to ask other students inappropriate personal questions. The P.E. teacher witnesses the taunting, but neither reports the conduct to the appropriate school official, nor applies the student's behavior supports specified in his 504 plan. Instead, she pulls the student aside and tells him that he needs to start focusing less on what kids have to say and more on getting his head in the game. As the taunting intensifies, the student begins to withdraw from interacting with other kids in P.E. and avoids other students at lunch and recess. As the student continues to withdraw over the course of a few weeks, he misses multiple sessions of speech therapy, but the speech therapist does not report his absences to the Section 504 team or another appropriate school official.

In this example, OCR would find a disability-based harassment violation. The student's

peers were making fun of him because of behaviors related to his disability. For OCR's enforcement purposes, the taunting the student experienced, including other students impersonating him and calling him "weirdo" and "gay," was therefore based on his disability. The school knew about the bullying because the P.E. teacher witnessed the conduct. Yet upon witnessing the taunting, the P.E. teacher not only failed to provide the student behavior supports as required in the student's



504 plan, but also failed to report the conduct to an appropriate school official. Had she taken this step, the school could have conducted an investigation and found that the conduct created a hostile environment because it interfered with the student's ability to benefit from the speech therapy services that he should have been receiving and negatively affected his ability to participate fully in P.E., lunch, and recess. The school's failure to appropriately respond to the bullying violated Section 504.

OCR would also find FAPE violations under Section 504. First, when the P.E. teacher failed to implement the behavior supports in the student's Section 504 plan, the school denied the student FAPE under Section 504. In addition, and independent of the failure to provide behavior supports, because the bullying impacted the student's receipt of Section 504 FAPE, the school should have addressed the student's changed needs; by failing to do so, the student was denied Section 504

FAPE. The school should have known about the missed Section 504 services and related changes in behavior. The P.E. teacher knew about the bullying but did nothing to report the student's behavioral changes (e.g., the student's increasing efforts to isolate himself from other students) to the Section 504 team members or other appropriate school official. Similarly, the speech therapist knew that the student was missing speech therapy but did not report this to the 504 team or to an appropriate school official. By failing to address the adverse effects of the bullying on FAPE, the school did not make necessary changes to ensure the student was provided FAPE under Section 504. If, upon concluding its investigation, OCR and the district were to enter into a resolution agreement, OCR could require, for example, that the district (1) ensure that FAPE is provided to the student by convening the Section 504 team to determine if the student needs different or additional services (including compensatory services) and, if so, providing them; (2) offer counseling to

the student to remedy the harm that the school allowed to persist; (3) monitor whether bullying persists for the student and take corrective action to ensure the bullying ceases; (4) develop and implement a school-wide bullying prevention strategy based on positive behavior supports; (5) devise a voluntary school climate survey for students and parents to assess the presence and effect of bullying based on disability and to respond to issues that arise in the survey; (6) revise the district's anti-bullying policies to develop staff protocols in order to improve the district's response to bullying; (7) train staff and parent volunteers, such as those who monitor lunch and recess or chaperone field trips, on the district's anti-bullying policies, including how to recognize and report instances of bullying on any basis; and (8) provide continuing education to students on the district's anti-bullying policies, including where to get help if a student either witnesses or experiences bullying conduct of any kind.

What is the appeals process?

If the 504 team does not feel that the bullying is impacting your child's FAPE and you disagree, you can appeal the decision. You may also file a complaint if the 504 team does not convene to discuss the issues of bullying or if the process is taking too long.

The first step is to file a complaint with your school district's Section 504 Coordinator, who will investigate the allegations regarding Section 504 FAPE violations.

As a parent it is always your right to file a complaint with OCR regarding discrimination based on disability. The complaint should be filed with the regional OCR office that covers your area. You can find out which office to contact, as well as additional information, from the Office for Civil Rights, US Department of Education in Washington, DC.

Tips for working with the school

- Do not be passive at the 504 meeting; express yourself clearly, directly and without guilt.
- Prepare for the meeting; bring specific examples of how bullying has impacted your child academically, behaviorally, and/or emotionally.
- Continue to monitor the 504 Plan to ensure that it is being followed in the classroom and at the school.
- Keep records; always keep documentation of all meeting with your child's school regarding the 504 Plan and/or anything that impacts the child's disability at school.
- Hold people accountable, but also collaborate with the school to ensure that your child's needs are being met.
- Remember at the heart of the matter is your child's academic, social, and emotional health. 🗣️

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FOR MORE INFORMATION

Office for Civil Rights
US Department of Education
www.ed.gov/ocr
800.421.3481

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