

Q&A: The Right to be Free from Harassment

May school¹ staff or students engage in harassment based on disability?

No. Section 504 of the Rehabilitation Act of 1973 prohibits discrimination and harassment (including bullying) in schools that receive federal funding from the U.S. Department of Education.

The U.S. Equal Employment Opportunity Commission defines harassment as “unwelcome conduct” that is based on disability. While the term ‘harassment’ is used in this document, people often call it ‘bullying’ and the legal analysis is the same.

If I am being harassed by other students, does the school have to do anything about it?

Yes. If a student with a disability is being harassed by other students, the school has an obligation to prevent or stop harassment. A school can violate Section 504 if:

1. A student is **harassed by another student** based on disability;
2. The harassment is sufficiently serious to create a **hostile environment**;
3. The recipient **knew or reasonably should have known** about the harassment; ***and***
4. The recipient **failed to respond appropriately**.

While a school is not responsible for the actions of a harassing student, ***it is responsible for its own discrimination in failing to respond adequately***. Responding to alleged harassment is the school’s responsibility **whether or not** the student who was harassed makes a complaint or otherwise asks the school to take action.

If I am being harassed by school employees, does the school have to do anything about it?

Yes. If a student with a disability is being harassed by an employee of the school, the school has an obligation to prevent or stop harassment. A recipient can violate Section 504 if:

1. An employee who **is acting, or reasonably appears to be acting**, in the context of carrying out his or her responsibilities **engages in disability-based harassment** against a student;
2. The harassment is sufficiently serious to create a **hostile environment**; ***and***
3. The recipient **fails to respond appropriately**.

What is a hostile environment?

Harassment creates a hostile environment if the harassment is **sufficiently serious to deny or limit a student’s ability to participate in or benefit from the school’s programs, activities, or benefits**. In determining whether a hostile environment based on disability has been created, the following circumstances of a situation are generally considered:

- the type of harassment (e.g., whether it was verbal or physical);
- the frequency and severity of the conduct;
- the nature of the student’s disability, or perceived disability;

¹ In this document, “school” is a term used to describe recipients of federal funding from the U.S. Department of Education. This includes entities such as public schools, charter schools, colleges, and universities.

- the age and relationship of the parties;
- the setting and context in which the harassment occurred;
- whether other incidents have occurred at the recipient; and
- other relevant factors.

What happens once the school suspects harassment?

Responding to alleged harassment is the school's responsibility whether or not the student who was harassed makes a complaint or otherwise asks the school to take action. Once on notice of possible disability-based harassment, the recipient **must conduct a prompt, thorough, and impartial inquiry** designed to reliably determine what occurred. During the investigation, the recipient **may need to put interim measures in place**, such as providing student(s) with an escort, enhancing staff supervision, and/or designating a safe place for an impacted student.

What happens if the school finds there was harassment?

Once an investigation is complete, the recipient **must take corrective actions** if it determines the behavior was disability-based harassment. The corrective actions must be (1) reasonable, (2) timely, (3) age-appropriate, (4) effective, and (5) tailored to the specific situation.

In addition, **the response must be designed** to (1) stop the harassment, (2) prevent the harassment from recurring, (3) eliminate the hostile environment, and (4) remedy the effects of the harassment on the student who was harassed.

Examples of corrective actions:

- disciplining the individual who engaged in harassment;
- providing counseling services or compensatory education for individuals impacted by the harassment;
- re-disseminating nondiscrimination and harassment policies and reporting mechanisms;
- providing social and emotional learning programming for students;
- mandating training for staff on identifying and responding to harassment; and
- mediation or restorative justice.

What can I do if I am being harassed?

If you need help or have questions about your rights, you can contact [Disability Law Colorado](#).

If you believe you have been harassed, you can speak with your school. You also have the right to file a complaint with the [U.S. Department of Education's Office for Civil Rights](#) (within 180 days of the alleged discrimination) or the [U.S. Department of Justice](#).

Where can I go for more information?

- OCR's "[Dear Colleague Letter: Harassment and Bullying](#)" (Oct. 2010);
- OCR's "[Dear Colleague Letter: Responding to Bullying of Students with Disabilities](#)" (Oct. 2014)
- OCR's [Policy Guidance Portal](#)
- [StopBullying.gov](#)