

## **Bullying and Section 504**

On October 21, 2014, OCR issued a Dear Colleague Letter clarifying school district's obligations as it relates to bullying and Section 504.<sup>1</sup> The OCR Dear Colleague Letter advises school districts that bullying of a student who is receiving either IDEA or Section 504 services on any basis, including bullying not related to the student's disability, can result in the denial of a free appropriate public education to a student.<sup>2</sup> Similar to a school's obligations under the IDEA, under Section 504, schools have an ongoing obligation to ensure that an eligible student who receives services under a Section 504 Accommodation Plan continues to receive a free appropriate public education. According to OCR, under Section 504, as part of a school's appropriate response to bullying, schools are required, in most cases, to convene the Section 504 Team to determine whether, as a result of the effects of the bullying, the student's needs have changed such that the student is no longer receiving a free appropriate public education.

If, as a result of the bullying, the school suspects that the student's needs have changed, the Section 504 Team must convene and determine the extent to which additional or different services are needed to ensure the receipt of a free appropriate public education, and ensure that any such changes are made promptly and refrain from putting the responsibility of avoiding the bullying on the student with a disability. The effects of the bullying could include, for example, adverse changes in the student's academic performance or behavior. In making the determination as to what, if any, additional services are necessary, the Section 504 Team must ensure that those services are provided in an educational setting with persons who do not have disabilities to the maximum extent appropriate. Generally, the student will remain in the original setting (e.g., same school or classroom) unless the Section 504 Team determines that the student cannot receive a free appropriate public education in that setting.

According to the OCR Dear Colleague Letter, unless it is clear from the school's investigation of the bullying conduct that there was no effect on the student's receipt of a free appropriate public education, the school "should, as a best practice" promptly convene the Section 504 Team to determine whether, and to what extent: "(1) the student's educational needs have changed; (2) the bullying impacted the student's receipt of IDEA FAPE services or Section 504 FAPE services; and (3) additional or different services, if any, are needed, and to ensure any needed changes are made promptly."

## **Harassment and Free Appropriate Public Education**

In terms of the investigation of disability-related harassment, on October 21, 2014, OCR issued a Dear Colleague letter which provided that a school's investigation should include determining whether the harassment of the student affected his or her receipt of appropriate services. If the

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<sup>1</sup> The October 21, 2014 U.S. Department of Education, Office of Civil Rights Dear Colleague Letter is available at: <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-bullying-201410.pdf>.

<sup>2</sup> For the District's obligations regarding disability-based harassment, in addition to the section immediately below, please also see pages 42 and 43 of this Manual.

school's investigation reveals that the bullying created a hostile environment and there is reason to believe that the student's IDEA FAPE services or Section 504 FAPE services may have been affected by the bullying, the school has an obligation to remedy those effects on the student's receipt of a free appropriate public education.<sup>3</sup>

In circumstances when a student on a Section 504 plan has experienced bullying that results in disability-based harassment, OCR opines that "there is a strong likelihood that the student was denied FAPE." In such a case, the Section 504 Team should convene promptly to address any necessary changes to the student's Section 504 plan to remedy the effects of the harassment and to consider any additional or different services or accommodations that may be necessary to ensure that the student receives a free appropriate public education.

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<sup>3</sup> In regard to the school's obligation under Section 504 to investigate claims of disability-based harassment please see pages 42 and 43 of this Manual.