

# When Students with Disabilities are Adversely Affected by Social Media

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UNDERSTANDING YOUR DISTRICT'S  
RESPONSIBILITIES

# Definition of Bullying

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Bullying is:

- A **repeated** action by one or more students or staff
- A written, verbal **or electronic expression** or a physical act or gesture or any combination thereof
- **Directed** at a target (victim)

*M.G.L. Chapter 71, Section 370*

# Bullying Is Directed At A Target and Causes:

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- Physical or emotional harm
- Damage to the target's property
- Places the target in reasonable fear of harm to him/herself or of damage to his/her property
- Creates a hostile environment at school for the target
- Infringes on the rights of the target at school; OR
- Materially and substantially disrupts education process

# Scope of Law

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Applies to ALL sites and activities under control of district, including school grounds, bus stops, at school functions or events, **or through use of school-owned technology or device**

**Applies to NON-SCHOOL related sites/activities/technology IF the acts create a hostile environment at school for the target or materially and substantially disrupt the education process or the orderly operation of the school**

# Cyber-bullying = Bullying

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Bullying through the use of technology or any electronic communication

E-mail

Texting

Internet/Social Media - web pages, blogs, Facebook, SnapChat, Instagram etc.

Can include IMPERSONATION of another (catfishing)

# Addressing On- vs. Off-Campus Cyberbullying

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## Considerations

- First Amendment Free Speech Protections
  - Can restrict if: 1) in-school lewd, vulgar, or plainly offensive, 2) school-sponsored (student newspaper) if reasonably related to legitimate educational concerns, 3) **“material and substantial” disruption to school activities or work of the school, or impinges on the rights of other students**, or 4) in-school speech promoting illegal drug use
- Most cyberbullying “speech” is neither in-school nor school-sponsored

# What is Harassment?

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Conduct in any form (verbal, written, electronic, physical) that is:

1. Unwelcome
2. On school grounds or in any school-related event or activity (**or out-of-school conduct if it creates a hostile environment**)
3. Relating to a student's race, color, national origin, sex **or disability (protected class!!!)**
4. Sufficiently severe, persistent or pervasive
5. **Creates a hostile, harmful or humiliating environment at school**

# Other Factors....

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Harassment **DOES NOT** have to:

1. include an **intent** to harm;
2. be **directed** at a specific target;
3. involve **repeated** incidents.

What does this mean and how does this differ from Bullying?



# Investigation of Off-Campus Cyberbullying or Harassment Incidents

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Question: Do we need to investigate incidents that happen outside of school?

- Under previous Title IX guidance, schools were required to process all complaints of sexual harassment, regardless of where the conduct occurred, to determine whether the conduct occurred in the context of an education program or activity or had continuing effects on campus education or activities
- Investigate to determine if there are continuing on-campus effects or whether a hostile environment was created by the incident
  - If so, address in the same way you would an on-campus incident

# Bullying vs. Harassment

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## Bullying is:

A repeated action by one or more students or staff member

A written, verbal or electronic expression or a physical act or gesture or any combination thereof

Directed at a target (victim)

Applies to ALL sites and activities under control of district, including school grounds, bus stops, at school functions or events, or through use of school-owned technology or device

Applies to **NON-SCHOOL** related sites/activities/technology IF the acts create a hostile environment at school for the target or materially and substantially disrupt the education process or the orderly operation of the school

## Harassment/Discrimination:

**One incident** can be sufficient to trigger civil rights concerns.

Target is a member of a protected class;

- **Disabled,**
- Gender identification/orientation
- Race or ethnicity, etc.
- **No specific target is necessary**

# Bullying vs. Peer Conflict

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Not all situations that students share with their parents or school personnel are examples of bullying.

Some behaviors or incidents may be examples of a more EQUAL type of conflict, such as an argument or disagreement.

*Students with disabilities may have difficulty navigating peer interactions and understanding social expectations and pragmatics.*

# Nature of School's Responsibility to Address Bullying and Harassment

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Must promptly and effectively respond to claims of bullying/harassment as shown by taking corrective steps to:

1. Stop the bullying/harassment
2. Prevent its recurrence
3. Remedy the effects of the harassment – individual remedies and school-wide remedies (education, training etc.)

# Students with Disabilities

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Students with disabilities are going to be more vulnerable to bullying, and by virtue of their status as a protected class, more vulnerable to harassment.

How do we address this through the special education process?

# Students on IEPs

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For a student on an IEP who has disability which affects social skills development or who is vulnerable to bullying, teasing or harassment, the IEP MUST address the skills and proficiencies needed to avoid and respond to the bullying, teasing or harassment

This is an ANNUAL consideration.

***But what are the district's obligations when a special education student is dealing with alleged bullying/harassment outside of the regular IEP cycle?***

# Huntington Beach City (CA) Sch. Dist.

## 115 LRP 17622 (OCR 2015)

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In addition to conducting an initial evaluation, school districts also have child find obligations to reevaluate as necessary/appropriate:

Here, OCR responded to a parent complaint that the district failed to protect a student with a health impairment from anti-Semitic peer harassment.

OCR noted that, although the district attempted to end the harassment by assigned an aide to escort the student around the school, the district never re-evaluated the student **to determine whether the bullying affected his ability to learn.**

OCR commented, “as part of a school’s appropriate response to bullying on any basis, the school should convene the IEP team or Section 504 team of [the] student to determine whether ... the student’s needs have changed.”

# Westford Public Schools

## OCR Complaint No. 01-16-1282

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Complainant alleged that the District discriminated against Student on the basis of disability by failing to provide her with FAPE when it did not convene IEP meeting, despite notice that student was subjected to ongoing bullying

Bullying included incidents on social media, including posting photos

District was on notice that that bullying was adversely affecting the student

- Emails stated the student was “nervous,” “very upset,” and “came home crying”



# Westford Public Schools, cont.

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Consider additional indicators that alleged bullying may be adversely affecting a student

- Decrease in grades
- Increased absences

# Narragansett School District Complaint No. 01-15-1269

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Complainant alleged that the District failed to appropriately respond to complaint that Student was subjected to hostile environment of the basis of sex and disability

Student involved in four incidents of potential bullying/cyberbullying and harassment

Complainant alleged the District failed to investigate reports of inappropriate social media messages sent to Student

During investigation of a later physical assault, District learned that prior to the altercation, a student created a fake social media account. The account was used to perpetuate a ruse that the account was owned by a female and complainant was encouraged to send pictures of himself.

# Narragansett School District, cont.

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OCR: District must determine whether the student's receipt of appropriate services was affected by the bullying. Even if the school finds the bullying did not create a hostile environment or constitute harassment, the obligation remains the same.

The school should have convened the IEP team to determine whether the student's needs have changed.

So what's to be learned from  
these cases??

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# Reconvene the Team!!!

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Whenever a student with a disability is the perpetrator or target of bullying or harassment, best practice is to RECONVENE the Team to determine whether, as a result of the bullying/harassment, the student's needs have changed such that the student is no longer receiving a FAPE.

***Note: May need to reconvene even if no finding of bullying/harassment.***

# Team Considerations

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1. How the bullying/harassment impacts the student's disability(ies)
2. How the student's disability impacts the bullying/harassment
3. Whether there has been a change in attendance, grades, behavior etc.
4. Whether additional assessments are required under child find (consider the physical, emotional, and psychological effects of bullying/harassment on students with disabilities)
5. Whether new or different accommodations, goals or services are necessary to address the alleged bullying/harassment (e.g. self-advocacy, social pragmatics)
6. Be careful not to put onus on victim to avoid/handle future bullying

# Questions and Answers

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