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Federal Government Instructs School Districts to Address Bullying as Possible Harassment

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On October 26, 2010, the Department of Education, through the Office of Civil Rights (“OCR”), issued a detailed guidance for school districts regarding bullying and federal antidiscrimination laws (the “Guidance”). In sum, it directs school districts to look at each bullying incident not only as a violation of bullying policy, but as a possible action of discriminatory harassment. If discriminatory harassment has occurred, the school district must take steps to end the harassment, regardless of any discipline imposed for bullying.

The Guidance notes that bullying/harassment may take several forms, including verbal acts and name-calling; graphic and written statements, which may include use of cell phones or the Internet; or other conduct that may be physically threatening, harmful, or humiliating. Harassment creates a hostile environment when the conduct is sufficiently severe, pervasive or persistent so as to interfere with or limit a student’s ability to participate in or benefit from the services, activities, or opportunities offered by a school. When such harassment is based on race, color, national origin, sex, or disability, it is “discriminating harassment” and implicates the civil rights laws.

The Guidance gives specific hypothetical examples, and cautions that school districts who do not address such discriminatory harassment risk violating the Federal civil rights laws. For example, after discussing bullying based on disability, the OCR states:

In this example, the school failed to recognize the misconduct as disability harassment under Section 504 and Title II. The harassing conduct included behavior based on the student’s disability, and limited the student’s ability to benefit fully from the school’s education program (e.g. absenteeism). In failing to investigate and remedy the misconduct, the school did not comply with its obligations under Section 504 and Title II. (emphasis added).

Therefore, in addressing bullying complaints, if there is any possibility of it being linked to discriminatory harassment, a school district should proceed with the Guidance in mind. If discriminatory harassment has occurred, the school district must take appropriate steps to end the harassment, regardless of what the discipline for the bullying may be. The Guidance notes, “When the behavior implicates civil rights laws, school administrators should look beyond simply disciplining the perpetrators... A school’s responsibility is to eliminate the hostile environment created by the harassment, address its effects, and take steps to ensure that harassment does not recur....” School districts should review their current procedures for responding to bullying complaints and be sure they adequately address OCR’s concerns.