EDUCATING ALL STUDENTS (IDEAS)
June 2-5, 2015
St. Simons, Georgia

WHY BULLYING OF STUDENTS MATTERS
Torin D. Togut
Attorney at Law
DEMOGRAPHICS OF BULLYING

Bullying is pervasive. It is perceived by educators as serious especially in middle school years. See http://www.stopbullying.gov/references/white_house_conference/index.html.

Over 40% of teachers and support staff indicated that bullying was a moderate or major problem in their school. Forty-one (41%) of teachers and support staff witnessed bullying once or a week or more. It is the most common type of violence in schools.
DEMOGRAPHICS OF BULLYING


HOW BULLYING DIFFERS FROM BOYS TO GIRLS

• Boys are more likely to bully and to be bullied than girls. Olweus, supra, at 18.

• Boys are inclined to engage in direct bullying such as hitting while girls are most likely to take indirect forms of social exclusion or rejection. Id.

• Girls often bully by slandering a classmate, spreading rumors or manipulating friendships to harass their target. Id. at 19. This can damage the victim’s reputation or status in a peer group. See Gayle L. Macklem, Bullying and Teasing: Social Power in Children's Groups 42-47, 56 (2003)
WHAT CONSTITUTES BULLYING

• The bullying-victim relationship is characterized as a real or perceived imbalance of power and encompasses a variety of negative acts that are carried out over a period of time. Dan Olweus, Bully at School: What we Know and What We Can Do at 9 (1993).

• Negative acts can be described as inflicting or attempting to inflict discomfort upon another. Olweus, supra, at p. 9. Bullying takes three primary forms: physical, verbal and psychological. Nels Ericson, U.S. Dep’t of Justice Office of Juvenile Justice and Delinquency Prevention Fact Sheet, Addressing the Problem of Juvenile Bullying 1 (2001). Indirect bullying such as exclusion or isolation is less visible but not less corrosive. Olweus, supra, at 10.
WHAT CONSTITUTES BULLYING

EFFECTS OF BULLYING

• “Youth that are victimized are likely marginalized from the mainstream peer group, lacking access to prosocial peers who provide role models of appropriate social skills, and also protection against bullying.” Nansel, supra, at 735.

• The most common place for victimization in elementary school is on the playground. The next most common places are the classroom and gym class. Glew, supra, at 1029.
CYBERBULLYING

• The Internet is a fertile ground for cyberbullying. Cyberbullying is defined as “willful and repeated harm inflicted through the use of computer, cell phones and other electronic devices.” Sameer Hinduja and Justin W. Patchin, Overview of Cyberbullying, in White House Conference on Bullying Prevention, at 21 (March 10, 2011).

• Cyberbullying can be anonymous. Cyberbullying can become viral with many people harassing the same victim at one time. The bully does not see the emotional toll taken on the victim. It is also is difficult to monitor by teachers. Id.
EFFORTS BY STATES TO ADDRESS BULLYING

The Georgia Bullying Law
O.C.G.A. 20-2-751.4 and 20-2-751.5
(a) As used in this Code section, the term "bullying" means an act which occurs on school property, on school vehicles, at designated school bus stops, or at school related functions or activities, or by use of data or software that is accessed through a computer, computer system, computer network, or other electronic technology of a local school system, that is:
(1) Any willful attempt or threat to inflict injury on another person, when accompanied by an apparent present ability to do so;
(2) Any intentional display of force such as would give the victim reason to fear or expect immediate bodily harm; or
(3) Any intentional written, verbal, or physical act, which a reasonable person would perceive as being intended to threaten, harass, or intimidate, that:
(4) Each local board of education shall ensure that students and parents of students are notified of the prohibition against bullying, and the penalties for violating the prohibition, by posting such information at each school and by including such information in student and parent handbooks.

(c) No later than January 1, 2011, the Department of Education shall develop a model policy regarding bullying, that may be revised from time to time, and shall post such policy on its website in order to assist local school systems. See http://archives.gadoe.org/DMGetDocument.aspx/GaDOE%20Bullying%20Policy_August%202011.pdf?p=6CC6799F8C1371F629903F3067606F26B2DA4EBDCB1753CDC36BAE8E54C30EC2&Type=D

Such model policy shall include:

(1) A statement prohibiting bullying;

(2) A requirement that any teacher or other school employee who has reliable information that would lead a reasonable person to suspect that someone is a target of bullying shall immediately report it to the school principal;
GEORGIA ANTI-BULLYING LAW

(3) A requirement that each school have a procedure for the school administration to promptly investigate in a timely manner and determine whether bullying has occurred;

(4) An age-appropriate range of consequences for bullying which shall include, at minimum and without limitation, disciplinary action or counseling as appropriate under the circumstances;

(5) A procedure for a teacher or other school employee, student, parent, guardian, or other person who has control or charge of a student, either anonymously or in such person's name, at such person's option, to report or otherwise provide information on bullying activity;

(6) A statement prohibiting retaliation following a report of bullying; and

(7) Provisions consistent with the requirements of subsection (b) of this Code section.
GEORGIA ANTI-BULLYING LAW

(d) The Department of Education shall develop and post on its website a list of entities and their contact information which produce anti-bullying training programs and materials deemed appropriate by the department for use in local school systems.

(e) Any person who reports an incident of bullying in good faith shall be immune from civil liability for any damages caused by such reporting.

(f) Nothing in this Code section or in the model policy promulgated by the Department of Education shall be construed to require a local board of education to provide transportation to a student transferred to another school as a result of a bullying incident.

(g) Any school system which is not in compliance with the requirements of subsection (b) of this Code section shall be ineligible to receive state funding pursuant to Code Sections 20-2-161 and 20-2-260.
WHY CHILDREN BULLY

External characteristics such as obesity, red hair, unusual dialect, and wearing glasses, can play a role in who gets bullied. For males, it may be the lack of strength. Olweus, supra, at 30. For girls, however, those who are bullied may be physically stronger than the perpetrator. Macklem, supra, at 55. Differences in religion, disability, and ethnicity are also factors that may single out a student as the object of harassment. Philip C. Rodkin, Bullying and Children's Peer Relationships, in White House Conference on Bullying Prevention, at 35 (March 10, 2011), available at http://www.stopbullying.gov/references/white_house_conference/index.html.
WHY CHILDREN BULLY

• Another factor why children bully is school climate. When a school is not supportive or it is negative, then bullying thrives. Macklem, supra, at 27-29. School culture such as the disciplinary system, preventive policies, the architecture of the building, resources, support services, and morale can only play a positive or negative role whether bullying is pervasive. Id. at 26.

• Parents can play a role in determining whether their child is likely to bully. Id. at 15-20.

• Children may use bullying as a means show their dominance. Olweus, supra, at 35; Macklem, supra, at 38-39.

• For student who are connected to social groups, bullying serves as a way to control their peers. Rodkin, supra, at 33.

• Television, video games, and the Internet may be linked to an increased likelihood for bullying behavior. Macklem, at 24.
BULLYING AND CHILDREN WITH DISABILITIES

• The United States Department of Education has defined disability harassment (not bullying) as “intimidation or abusive behavior based on disability that creates a hostile environment.” U.S. Dep’t of Educ., Reminder of Responsibility under Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act at 
http://www2.ed.gov/about/offices/list/ocr/docs/disabharassltr.html

• Studies show students with disabilities are subject to increased bullying that is directed at the disability. John Young, Ari Ne’eman, and Sara Gelser, Bullying and Students with Disabilities in White House Conference on Bullying Prevention, at 74 (March 10, 2011).
BULLYING AND CHILDREN WITH DISABILITIES

• Harassing conduct may include verbal acts and name-calling, and nonverbal behavior such as written statements or conduct that is threatening, harmful, or humiliating. DOE Reminder of Responsibility Letter, infra. Students with disabilities, as compared to non-disabled peers, are less popular, have fewer friends, suffer from peer rejection, and are more likely to become the victim of bullying. Bonnie Bell Carter and Vicky G. Spencer, “the Fear Factor and Students with Disabilities,” 21 Int’l J. of Special Educ. at 12-21. Students who have learning disabilities and emotional disorders often lack social awareness which makes them more vulnerable to bullying. Id. at 12.
BULLYING AND STUDENTS WITH DISABILITIES

• Paradoxically, students with learning disabilities and emotional disorders are more likely to perpetrate bullying than students with low incident disabilities. John W. Maag & Antonis Katsiyannis, Bullying of Students with Disabilities: Legal and Practical Considerations, Behavior Disorders, 37(2), 78, 82, Feb. 2012.

• In general, students with visible and non-visible disabilities are subject to more bullying than non-disabled peers. Carter and Spencer, supra.

• A 2002 study found that 94% of children with Asperger’s Syndrome faced peer harassment including emotional bullying, gang attacks, and nonsexual assaults. L. Little, Middle Class Mother’s perceptions of peer and sibling victimization among children with Asperger’s Syndrome and nonverbal learning disorders. Issues in Comprehensive Pediatric Nursing, 25(1), 43-45 (2002).
BULLYING AND STUDENTS WITH DISABILITIES

• A 2003 study found that 34% of students taking medication for ADHD faced bullying at least 2-3 times a month. J.D. Unnever & D. G. Cornell, Bullying, Self-Control, and ADHD. Journal of Interpersonal Violence, 81(2), 129-147 (2003).

• A Canadian study found that 59% of students with speech impediments (e.g. stuttering) were bullied. M. Langevin, K. Bortnick, T. Hammer, & E. Wiebe, Teasing/bullying experienced by children who stutter: Toward development of a questionnaire. Contemporary issues in Communication Science and Disorders, 25, 12-24 (1998).
DEFINITION OF BULLYING

• There are no universally accepted definition of bullying. However, one researcher defined bullying as when a student is “being exposed, repeatedly and over time, to negative actions on the part of one or more students. D. Olweus, Peer Harassment: A critical analysis and some important issues. In J. Juvonen & S. Graham (eds.). Peer harassment in schools: the plight of the vulnerable and victimized (pp. 3-20 at 9). New York: The Guilford Press (2001).

• Another researcher concluded the there must be an imbalance of physical or psychological power expressed in the definition. The bully must be perceived as stronger than the victim. D.M. Ross, Childhood bullying, teasing, and violence: What school personnel, other professionals, and parents can do (2nd ed.). Alexandria, VA. American Counseling Association (2003).
DEFINITION OF BULLYING

There is less consensus about single acts of aggression that constitute bullying behavior. Some researchers believe that bullying must be repetitive. Other researchers believe that a single act may constitute an act of bullying. Carter & Spencer, supra, at 13. Ultimately, it is how disability harassment is defined under by courts and by governmental agencies that determines the legal liability for school districts in such cases. In most purposes, bullying and disability harassment are used interchangeably.
LEGAL CONSIDERATIONS FOR DISABILITY HARASSMENT

A school is responsible for addressing harassment incidents about which it knows or reasonably should have known. In some situations, harassment may be in plain sight, widespread or well-known to students and staff, such as harassment occurring in hallways, during academic or physical education classes, during extracurricular activities, at recess, on a school bus, or through graffiti in public areas. In these cases, the obvious signs of the harassment are sufficient to put the school on notice. In other situations, the school may become aware of misconduct, triggering an investigation that could lead to the discovery of additional incidents that, taken together, may constitute a hostile environment.

LEGAL CONSIDERATIONS FOR DISABILITY HARASSMENT

• The Department of Education had advised schools that "[w]hen disability harassment limits or denies a student's ability to participate in or benefit from an educational institution's programs or activities, the institution must respond effectively. Where the institution learns that disability harassment may have occurred, the institution must investigate the incident promptly and respond appropriately." DOE Reminder of Responsibilities Letter, supra.

• Conduct need not be outrageous to fit within the category of harassment that rises to a level of deprivation of rights of a disabled student. The conduct must, however, be sufficiently severe, persistent, or pervasive that it creates a hostile environment. Id. See T.K. and S.K. v. New York City Dep’t of Educ., 32 F. Supp. 3d. 405 (E.D.N.Y. 2014). Where a student is verbally abused repeatedly and suffers other indignities such as having his property taken or is struck by his fellow students, and a school does nothing to discipline the offending students despite its knowledge that the actions have occurred, the student has been deprived of substantial educational opportunities. DOE Reminder of Responsibilities Letter, supra.
LEGAL CONSIDERATIONS FOR DISABILITY HARASSMENT

The rule to be applied is as follows: When responding to bullying incidents, which may affect the opportunities of a special education student to obtain an appropriate education, a school must take prompt and appropriate action. It must investigate if the harassment is reported to have occurred. If harassment is found to have occurred, the school must take appropriate steps to prevent it in the future. These duties of a school exist even if the misconduct is covered by its anti-bullying policy, and regardless of whether the student has complained, asked the school to take action, or identified the harassment as a form of discrimination. T.K. v. New York City Dep’t of Educ., 779 F. Supp. 2d 289 (E.D.N.Y. 2011).
• It is not necessary to show that the bullying prevented all opportunity for an appropriate education, but only that it is likely to affect the opportunity of the student for an appropriate education. The bullying need not be a reaction to or related to a particular disability. T. K. v. New York City Dep’t of Educ., supra.

• The October 2010 Bullying and Harassment letter, U.S. Department of Education, provides an illustration of when a school is required to act and what type of response is required. It is useful in applying the test now applied. A hypothetical student with a disability is verbally teased by other students and on one occasion is tackled, hit with a binder, and has his personal effects thrown in the garbage. DOE Bullying and Harassment Letter at 8-9.
LEGAL CONSIDERATIONS FOR DISABILITY HARASSMENT

The student approaches teachers and guidance counselors who suggest counseling, but they do nothing to punish the bullies. \textit{Id.} The bullying then continues and the student, who was once doing well, begins showing the signs of victimization at the hands of other children. \textit{Id.} at 9. The school in this hypothetical responded in part to the bullying, by offering the student counseling to deal with what he was going through. But it did not respond adequately. It did not fully investigate the bullying or punish those who were perpetrating the harassment. In this example, the school deprived the student of his educational benefit. \textit{T.K.} supra.
LEGAL CONSIDERATIONS FOR DISABILITY HARASSMENT

The October 2010 Bullying and Harassment letter, the Department of Education provides an illustration of when a school is required to act and what type of response is required. It is useful in applying the test now applied. A hypothetical student with a disability is verbally teased by other students and on one occasion is tackled, hit with a binder, and has his personal affects thrown in the garbage. DOE Bullying and Harassment Letter at 8-9. The student approaches teachers and guidance counselors who suggest counseling, but they do nothing to punish the bullies. Id. The bullying then continues and the student, who was once doing well, begins showing the signs of victimization at the hands of other children. Id. at 9. The school in this hypothetical responded in part to the bullying, by offering the student counseling to deal with what he was going through. But it did not respond adequately. It did not fully investigate the bullying or punish those who were perpetrating the harassment. In this example, the school deprived the student of his educational benefit. T.K. supra.
The U.S. Department of Education’s Office of Special Education and Rehabilitative Services (OSERS) issued a policy letter on August 20, 2013 on a school district’s responsibilities under IDEA to address bullying of students with disabilities. http://www.ed.gov/policy/speced/d/guid/idea/memosdcltrsbulliyngdcl-8-20-13.doc. The highlights of this letter are:

• Bullying of students with disabilities may also constitute discriminatory harassment and trigger a school district’s responsibilities under Section 504, Title II of the ADA, Title VI of the Civil Rights Act of 1964, and Title IX of the Educational Amendments of 1972.

• Teachers and adults should respond quickly and consistently to bullying behavior and intervene to ensure a safer school environment.
OSERS POLICY LETTER

• Addressing and reporting of bullying is critical. Teachers, school personnel, parents and students should report bullying when they become aware of it.

• Students who are targets of bullying behavior are likely to experience lower academic achievement, higher truancy rates, feelings of alienation from school, poor relationships with peers, loneliness and depression.

• Bullying can foster fear and disrespect and negatively affect the school experience, norms, and relationships of all students.

• Students with learning disabilities, ADD or ADHD, and autism are more likely to be bullied than their peers.
• In circumstances involving a student who has not been previously identified as a child with a disability under the IDEA, bullying may trigger a school system’s child find obligations under the IDEA. 34 C.F.R. §§ 300.111, 300.201.

• Any bullying of a student with a disability that results in the student not receiving meaningful educational benefit constitutes a denial of a free appropriate public education (FAPE) under the IDEA that must be remedied. A student with a disability who is the target of bullying behavior continue to receive a FAPE in accordance with his or her IEP. The school should in response to the bullying convene the IEP team to determine whether as a result of the bullying, the student’s needs have changed and whether the student is receiving meaningful educational benefits.
OSEP POLICY LETTER

• If the IEP is no longer designed to provide meaningful educational benefits to the student then the IEP team must determine to what extent additional or different special education or related services are needed to address the student’s individual needs and revised the IEP accordingly.

• The IEP team must grant parental request for an IEP meeting when student’s needs have changed as a result of bullying.

• The IEP team should exercise caution in changing the placement or location of services to the student who was the target of the bullying behavior and keep in mind the student’s original placement unless the student can no longer receive a FAPE in the current placement. Placement in a more restrictive or “protected” environment to avoid bullying behavior may constitute a denial of FAPE in the least restrictive environment.

• Schools should not resolve bullying situation by changing the frequency, duration, intensity, placement or location of the student’s special education and related services.
OSEP POLICY LETTER

• If the student who engaged in the bullying behavior is a student with a disability, the IEP team should review the student’s IEP to determine whether additional supports and services are needed (e.g. functional analysis and behavior intervention plan) to address the inappropriate behaviors. The IEP team should consider examining the environment in which the bullying occurred to determine if changes to the environment are warranted.

• OSERS encourages States and school districts to reevaluate their policies and procedures addressing problematic behaviors such as bullying in light of this letter as well as the OSERS July 25, 2000 joint Dear Colleague Letter at http://www.ed.gov/ocr/docs/disabharassltr.html and OCR’s October 26, 2010 Dear Colleague Letter at http://www.ed.gov/ocr/letters/colleague-201010.pdf
OCR POLICY LETTER ON DISABILITY HARASSMENT

On October 21, 2014, the U.S. Department of Education issued a policy letter on disability harassment at http://www2.ed.gov/about/offices/list/ocr/letters/colleague-bullying-201410.pdf. The highlights of this letter are:

• Bullying of a student with a disability on any basis can result in denial of a FAPE under Section 504 that be remedied. School must address conduct that may constitute disability-based harassment and must remedy the denial of a FAPE resulting from such harassment.

• Bullying on the basis of his or her disability may result in disability-based harassment violation under Section 504 and Title II of the ADA.
OCR POLICY LETTER

If a school’s investigation reveals bullying occurred on the basis of disability and created a hostile environment, the school must take prompt action and effective steps reasonably calculated to end the bullying and hostile environment, prevent it from reoccurring and remedy its effects if appropriate. OCR would find disability-based harassment under Section 504 and Title II when: (1) student is bullied on the basis of disability; (2) the bullying is sufficiently serious to create a hostile environment (participate in or benefit from the services, activities, or opportunities offered by a school); (3) school officials know or should know about the bullying; and (4) the school does not respond appropriately.
OCR POLICY LETTER

• A school’s investigation should determine whether the student’s receipt of appropriate services may have been affected by the disability. If so, then the school has an obligation to remedy those effects on the student’s receipt of a FAPE. Even if the school finds that bullying did not create a hostile environment, the school still has an obligation to address any FAPE related concerns.

• The bullying on basis of a student with a disability who is receiving IDEA FAPE services or Section 504 FAPE services can result in denial of FAPE and must be remedied. Schools under Section 504 have ongoing obligation to ensure student with disability receives IDEA FAPE services or Section 504 FAPE services and who is the target of bullying continues to receive FAPE regardless of why the student is being bullied. Under Section 504, school should convene the IEP team or Section 504 team to determine whether as a result of the effects of bullying the student’s needs have changed such he or she is no longer receiving FAPE. If so, the IEP team or Section 504 has the same obligation to ensure changes are made promptly and safeguard against placing the burden on the student to avoid the bullying.
OCR POLICY LETTER

How much change in academic performance or behavior is necessary to trigger a school’s obligation to convene an IEP team or Section 504 team? A sudden decline in grades, onset of emotional outbursts, increase in frequency or intensity of behavioral interruptions, or increase in missed classes of Section 504 services would generally be sufficient to trigger the school’s obligation. Schools should promptly convene the IEP team or Section 504 team to determine whether FAPE is being provided to the student who has been bullied and who is experiencing adverse changes in academic performance or behavior.
OCR POLICY LETTER

Not all bullying that results in a disability-based harassment violation will result in a denial of FAPE. A student who is the target of bullying that results in a disability-based harassment violation but the student is not eligible to receive IDEA or Section 504 services, there would be no FAPE violation. But when a student receives IDEA or Section 504 FAPE services and has experienced bullying that results in a disability-based harassment violation, there is a strong likelihood that student was denied FAPE. Unless it is clear from school’s investigation that bullying had no effect on student with a disability’s receipt of FAPE, school should promptly convene an IEP team or Section 504 team to determine whether: (1) student’s educational needs have changed; (2) the bullying impacted the student’s receipt of IDEA or Section 504 FAPE services; and (3) additional or different services, if any, are needed, and ensure any needed changes are made promptly.
OCR DECISIONS ON DISABILITY RELATED HARASSMENT

- **Fairfield-Suisan (CA) Unified School District**, 51 IDELR 139 (OCR 2008). In this case, a seventh grade student had visible physical burn disfigurement and scars from an accident as a child. The child was bullied but the district did not consider it as disability-based harassment but just teasing from student to another. OCR found that the district had a duty to promptly investigate the parent’s complaint. The district did not conduct a timely investigation and OCR found a Section 504 violation.

- **Redford (MI) Union School District**, 50 IDELR 173 (OCR 2007). OCR found insufficient evidence that the district violated Section 504. The parent complained of disability-related harassment of her child. The district promptly investigated the incident and took appropriate steps from the harassment reoccurring. The district did not find that harassment was disability-based but rather on race.
OCR DECISIONS ON DISABILITY RELATED HARASSMENT

• **Las Virgenes (CA) Unified School District**, 49 IDELR 23 (OCR 2007). OCR found that the district went the extra mile to respond to a complaint of disability-related harassment. The district conducted a timely investigation and found insufficient evidence of a hostile environment. The district took immediate steps to determine who was responsible. The IEP team increased the student’s aids and services in response to reports of harassment despite the fact that no incidents of such harassment were found related to the child’s disability. OCR found no Section 504 violation.

• **Las Cruces (CO) Public School Dist.**, 48 IDELR 259 (OCR 2006). OCR found the district violated Section 504. The district did not follow its own procedures when it investigated a parent’s complaint that her daughter was being harassed because of her disability. The district failed to contact witnesses and did not inform the parent of its findings of the investigation. The district improperly addressed the parent’s complaint as bullying rather than disability-related harassment.
OCR DECISIONS ON DISABILITY RELATED HARASSMENT

Chesapeake (VA) Pub. Schools, 113 LRP 5990 (OCR 2012). The district’s definition of "bullying" in its policy did not encompass all conduct that would constitute harassment as defined by OCR. The district’s policy was not located on its website. The district provided grievance procedures to parents only if they requested a copy or make a complaint. The procedures were not publicized to the parent/student community. The district handled complaints of disability harassment by clarifying the Section 504 Grievance Procedures applied only to students with Section 504 plans. The student, who was subject to the complaint, was a qualified student with a disability entitled to the protections afforded by the Section 504 but was not – according to the district - be permitted to file a complaint under the district’s Section 504 Grievance Procedure because he has an IEP and not a Section 504 plan. OCR was concerned with this limited applicability of the Section 504 Grievance Procedure, as Section 504 applies to all students with a disability (i.e., students who have a physical or mental impairment that substantially limits one or more major life activities), regardless of whether they have a Section 504 plan, and also includes students regarded as having disabilities or who have a record of having a disability.
Chesapeake (VA) Pub. Schools, supra. In addition to the concerns relating to the applicability and distribution of the Section 504 grievance procedure, OCR identified some concerns with the procedure, as written. As an example, the procedure requires that complaints are made within fifteen school days of the act of discrimination, which is too short to afford a complainant a reasonable opportunity for resolution consistent with the requirements of 34 C.F.R. § 104.7(b) and 28 C.F.R. § 35.107(b). Moreover, the procedures do not define the types of complaints that can be brought under the procedures and do not ensure an impartial investigation in the event that the investigator is the same individual implicated by the grievance. There also is no statement that retaliation is prohibited.

OCR, however, did not find a violation of 504 on the disability-related harassment complaint. The student was harassed because of the color of his clothes and not as a result of his disability.
Williamston (MI) Community Schools, 56 IDELR 22 (OCR 2010). OCR found that the district failed to take action when student with cognitive impairment reported that other students called him “retard” and “moron” to staff but they did not investigate such incidents that violated Section 504. The student reported incidents of name-calling to his guidance counselor each week. The counselor did not refer the incidents for investigation. Instead, the counselor tried to teach the student the social skills needed to respond to bullying. The student’s teachers failed to take action when they learned of the name-calling. They mistakenly believed that they could do nothing unless the student filed a written complaint. When staff members reported incidents of harassment, the district treated those reports as minor incidents of "disrespectful conduct" and did not address whether they created a hostile environment. The district took no action to prevent future incidents of harassment, or to address the effects that the name-calling had on the student. OCR found that the district could resolve the matter by training its staff on disability harassment, creating a system of centralized record-keeping for complaints, and determining the student's need for compensatory education.
Virginia Beach (VA) City Public Schools, 60 IDELR 263 (OCR 2012). OCR did not find a violation of Section 504 when a science teacher's attempt to motivate students in an eighth-grade inclusion class may have been misguided, but his comment that they should "[not] be like stupid stumps" did not create a hostile environment for students with disabilities. OCR determined that the district's prompt and appropriate investigation relieved it of liability for harassment under Section 504 and Title II. OCR observed that the single statement, the only disability-related complaint against the teacher, was not sufficiently serious to limit or deny students' participation in the class. It was unclear that the comment was even a disability-related statement. Nonetheless, the principal took appropriate action by speaking with the teacher and telling him that he could not make such comments to students. OCR found insufficient evidence that the district discriminated against students with disabilities by allowing the science teacher to harass them.
Virginia Beach (VA) City Public Schools, supra. OCR examined materials submitted by the district which set forth the District’s internal grievance procedure for claims of discrimination on the basis of race, color, sex or pregnancy and childbirth, marital status, age, disability, national origin, ethnicity or religion. OCR reminded the district its obligation to adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints alleging discrimination as required by the regulations implementing Section 504 and Title II. OCR noted that the policy, in part, provided a grievant only ten (10) calendar days from the date of alleged discrimination in which to file an initial complaint, and only five (5) calendar days in which to file a complaint at each subsequent level (namely with the Superintendent and then with the School Board). Although the district’s procedure had broad applicability to discrimination on a number of bases, including age, it states that all complaints, regardless of the underlying basis of the complaint, be filed with the Title IX/Section 504/ADA Coordinator. While the procedure offers the complainant an opportunity to meet with the Superintendent, it does not specify that the Superintendent's decision as to the grievance will be reduced to writing. Moreover if the complaint is not resolved at an earlier stage, it does not specify the degree either to which an investigation will be conducted or to which a grievant may provide evidence in support of the claim, including witness testimony, at any earlier stage. Finally the procedure fails to include a prohibition against retaliation toward an individual who has filed a grievance or participated in the grievance process. OCR encouraged the district to consider modifications to its current grievance procedure to ensure that it met the prompt and equitable resolution standard of the regulations enforced by OCR.
PRACTICAL CONSIDERATION FOR ADDRESSING DISABILITY RELATED HARRASSMENT

Since 2000, OCR has issued more than 100 rulings involving disability-related harassment. Districts should be proactive in timely investigating complaints of disability-related harassment by: (1) interviewing witnesses; (2) notifying parents of the outcome; (3) developing compliant policies and procedures regarding allegations of harassment; (4) addressing effects and prevent reoccurrence of harassment (e.g. sensitivity training); (5) ensuring all staff follow policies and procedures; (6) improving teacher awareness of bullying and prevention; (7) disciplining perpetrators of bulling and taking steps that it does not reoccur; (8) monitoring students with disabilities for both victimization and perpetration; (9) involving parents in district’s response to bullying; (10) developing school wide policies, disciplinary polices, code of student conduct, and individual supports on bullying; and (11) promoting cultural competence and diversity awareness. Maag & Katsiyannis, supra, at 81-83.