

Bullying in School

A guide to understanding what you can do to help your child with a disability overcome the effects of bullying on their education

What Requirements Does the North Carolina School Violence Protection Act Place on My Child's School?

Pursuant to North Carolina law,¹ schools *must* develop and implement methods and strategies for promoting school environments that are free of bullying or harassing behavior. Each school district must adopt a policy prohibiting bullying or harassing behavior that includes, at a minimum, the following components:²

- A statement prohibiting bullying or harassing behavior;
- A definition of bullying or harassing behavior no less inclusive than the definition in the statute;
- A description of the type of behavior expected for each student and school employee;
- Consequences and appropriate remedial action for a person who commits an act of bullying or harassment;
- A procedure for reporting an act of bullying or harassment, including a provision that permits a person to report such an act anonymously;
- A procedure for prompt investigation of reports of serious violations and complaints of any act of bullying or harassment, identifying either the principal or the principal's designee as the person responsible for the investigation; and

¹ N.C. Gen. Stat. Ann. § 115C-407.15.

² N.C. Gen. Stat. Ann. § 115C-407.16.

- A statement that prohibits reprisal or retaliation against any person who reports an act of bullying or harassment, and the consequence and appropriate remedial action for a person who engages in reprisal or retaliation.

Who must report?

A school employee who has witnessed or has reliable information that a student has been subject to any act of bullying or harassing behavior *must* report the incident to the appropriate school official.³ Additionally, a student or a volunteer who has witnessed or has reliable information that a student or school employee has been subject to any act of bullying or harassing behavior *should* report the incident to the appropriate school official.⁴

Where can I find the policy?

Notice of the local policy must appear in the school unit publication that sets forth the comprehensive rules, procedures, and standards of conduct for schools within the school unit and in any student and school employee handbook. Additionally, the policy must be incorporated into a school's employee training program.⁵

What obligations do federal antidiscrimination laws place on my child's school?

Once a school knows or should know of harassment or bullying against a student with a disability, the school must take immediate and appropriate action to investigate and if a school does not do this then the bullying of a student with a disability can result in a disability-based harassment violation and/or a FAPE violation.⁶

What if my child is being bullied based on his/her disability?

If harassment and bullying is towards a student with a disability then a disability-based harassment violation and/or a FAPE violation may be occurring.

When Does a Disability-Based Harassment Violation Occur?

Under Section 504 and Title II, disability-based harassment violation occurs when:⁷

- Student is bullied based on a disability,
- Bullying is sufficiently serious to create a hostile environment,
- School officials know or should know about the bullying, and

³ N.C. Gen. Stat. Ann. § 115C-407.15.

⁴ *Id.*

⁵ *Id.*

⁶ Letter from Catherine E. Lhamon, Assistant Secretary for Civil Rights, to Colleague (October 2014).

⁷ *Id.*

- The school does not respond appropriately.

School Obligations

A school investigation should determine whether that student's receipt of appropriate services may have been affected by the bullying.⁸ If the school's investigation reveals that bullying based on a disability created a hostile environment, the school must take prompt and effective steps reasonably calculated to end the bullying, eliminate the hostile environment, prevent it from recurring, and, as appropriate, remedy its effects.⁹

If there is a disability-based harassment violation, can there also be a FAPE violation?

Yes, but not always. Under Section 504 and the Individuals with Disabilities Education Act (IDEA), schools have a responsibility to ensure that students receive a free appropriate public education (FAPE).¹⁰ When bullying results in a disability-based harassment violation, it will not always result in a denial of FAPE.

When can a FAPE violation occur as a result of disability-based bullying?

A FAPE violation can occur only when the disabled student being bullied is receiving IDEA FAPE or Section 504 FAPE services.

When a student who receives IDEA FAPE or Section 504 FAPE services has experienced bullying resulting in a disability-based harassment violation, there is a strong likelihood that the student was denied FAPE if the effects of the bullying impacted the student's receipt of FAPE and the school failed to remedy such effects.

Even if no disability-based harassment violation is found, there may still be a FAPE violation.¹¹

What if the bullying is not based on my child's disability?

Student on student harassment and bullying of a student with disabilities for ANY reason can result in FAPE violation.

Whether the student is being bullied based on his/her disability or based on other reasons, if that student is receiving Section 504 FAPE services or IDEA FAPE services, bullying for ANY reason can result in denial of FAPE that must be remedied. A school has an obligation to ensure that the student being bullied continues to receive FAPE.¹²

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

When does a FAPE violation occur?

A FAPE violation occurs when:¹³

- The school knew or should have known that the effects of the bullying may have affected the student's receipt of IDEA FAPE services or Section 504 FAPE services, and
- The school did not meet its ongoing obligation to ensure FAPE by promptly determining whether the student's educational needs were still being met, and if not, making changes, as necessary to the student's IEP or Section 504 plan.

The school should convene the IEP team to determine whether, as a result of the effect of the bullying, the student's needs have changed such that the IEP is no longer designed to provide a meaningful educational benefit.¹⁴ If the IEP is no longer providing a meaningful educational benefit then the IEP team must determine what different or additional IDEA FAPE/ FAPE services are necessary to address the student's individual needs.¹⁵ Changes in accordance with this determination must be made to the IEP. These changes must follow the general requirements for forming an IEP, such as having parental participation and keeping the student with the disability in the original placement or setting with persons who do not have disabilities to the maximum extent appropriate, unless the student can no longer receive FAPE in that placement or setting.

How Can This Help Me?

Step 1: Familiarize yourself with the anti-bullying policy of your child's school. Then, contact your child's teachers and/or administrators and alert them to the situation. It is possible that the school's staff are not aware of the problem, or they do not know how bad the problem is. Give them the benefit of the doubt, and allow them to try to remedy the problem.

For a child with an IEP, you may be able to address the bullying with an IEP meeting a discussed above.

Step 2: If you don't see any action on the part of school administrators, call your district's central office and ask to speak to the staff person designated to respond to bullying complaints within the school system. Tell this person what has been happening. Ask that person for help in addressing the problem.

Step 3: If these measures don't help *and* you believe one of the above violations, either a disability-based harassment violation or a FAPE violation, has occurred, then you can call

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

us or contact the Office of Civil Rights¹⁶ for more information.

Disability Rights North Carolina is a 501(c)(3) nonprofit organization headquartered in Raleigh. It is a federally mandated protection and advocacy system with funding from the U.S. Department of Health and Human Services, the U.S. Department of Education, and the Social Security Administration.

Its team of attorneys, advocates, paralegals and support staff provide advocacy and legal services at no charge for people with disabilities across North Carolina to protect them from discrimination on the basis of their disability. All people with disabilities living in North Carolina are eligible to receive assistance from Disability Rights NC.

Contact us for assistance or to request this information in an alternate format.

Disability Rights North Carolina
3724 National Drive, Suite 100
Raleigh, North Carolina 27612
www.disabilityrightsncc.org

919-856-2195
877-235-4210 (toll free)
888-268-5535 (TTY)
919-856-2244 (fax)

¹⁶ 800-421-3481 / 877-521-2172 TDD or online at OCR@ED.Gov