

Bias-based bullying is motivated by a person's race, religion, ethnicity, gender, disability, sexual orientation, age, and/or class or wealth. Regardless of whether it occurs in schools, bias-based bullying is a bias incident and may be a crime under New Jersey's Bias Intimidation Act.

### **Harassment, Intimidation and Bullying May Constitute Criminal Child Abuse**

As defined in New Jersey's child abuse statutes, child abuse/neglect occurs when a parent or another individual who is in a caregiver role to the child under the age of 18, engages in a particular behavior that is harmful to children. Teachers and child care workers are listed specifically in New Jersey's child abuse statutes as individuals in caregiver roles subject to being reported for committing child abuse and neglect, intimidation, harassment or bullying of a child with a disability, when perpetrated by school personnel, may also be a crime under New Jersey child abuse law. For more information on behaviors that constitute child abuse/neglect, visit <http://www.kidlaw.org>.

New Jersey is a mandatory reporting state under its child abuse laws. This means that any person having reasonable cause to believe that a child has been subjected to child abuse must report his/her concerns or findings immediately. Additionally, New Jersey education regulations contain specific child abuse reporting requirements for school personnel. Any failure to report substantiated child abuse may be criminally prosecuted as a disorderly person's offense, carrying penalties up to \$1,000, six months in jail, or both (N.J.S.A. 9:6-8.14). Failure to report could also result in civil liability should it be established that the school employee had prior knowledge or suspicions which, if reported, might have prevented further injury to the child. The person calling DYFS to report abuse can remain anonymous. Any person making a report or testifying in a judicial proceeding resulting from such a report is immune from civil or criminal liability resulting from making a report.

### **The Responsibility to Respond Lies with Schools**

Schools and school districts have a legal responsibility under both state and federal law to prevent and respond to disability harassment. The NJ Bullying Law's requirement that school districts develop official policy statements prohibiting bullying must include specific reference to harassment based on disability and must establish grievance procedures that can be used to address disability harassment. Federal law also requires that districts respond promptly to harassment, intimidation and bullying based on disability. The development of these policies and responses serves a significant preventive purpose by notifying students, parents and school staff that disability harassment is unacceptable, violates state and federal law, and will result in disciplinary action. The responsibility to respond to disability harassment, when it does occur, includes taking prompt and effective action to end the harassment and prevent it from recurring and, where appropriate, remedying the effects on the student who was harassed.

#### **Disability Rights New Jersey**

210 South Broad Street, 3rd Floor  
Trenton, New Jersey 08608

Voice: 800-922-7233, 609-292-9742

TTY: 609-633-7106

or use the NJ Relay, 711.

First Class U.S.  
Postage  
PAID  
Trenton, NJ  
Permit #21

## **Harassment, Intimidation and Bullying of Children with Disabilities**

# *Bulletin*

Harassment, Intimidation and Bullying of Children with Disabilities



# *Bulletin*

DRNJ is a private, non-profit, consumer-directed organization which serves as New Jersey's federally funded protection and advocacy system for persons with disabilities.

## **Harassment, Intimidation and Bullying of Children with Disabilities**

The New Jersey Bullying Law, P.L. 2002, Chapter 83 requires each school district to adopt a policy prohibiting harassment, intimidation or bullying on school property, at a school-sponsored function or on a school bus. The law aims to forge a statewide approach to harassment and bullying involving parents, teachers, administrators, students and communities, acknowledging the problem and creating systematic ways to address it.

Under the law, districts must have adopted a policy and transmitted a copy to the appropriate county superintendent of schools by September 1, 2003.

While the law allows local district control over the content of its harassment, intimidation or bullying policy, it nevertheless requires the policy to contain, at a minimum certain components which include but are not limited to the following:

- A statement prohibiting harassment, intimidation or bullying of a student;
- A definition of the offense no less inclusive than that set forth in the law;
- A description of the type of behavior expected from each student;
- The consequences and appropriate remedial action for a person who commits an act of harassment, intimidation or bullying;
- A procedure for the reporting and prompt investigation of complaints; and
- The range of ways in which a school will respond once incidents are identified.

To assist districts in developing their policies, the law also directed the Commissioner of Education to develop and issue a model policy applicable to grades kindergarten through 12. This model, along with issues for districts to consider in developing policy, may be found at <http://www.nj.gov/njed/parents/bully.htm>. The passage of the New Jersey Bullying Law now requires school districts to become more proactive and to take action and respond to disability harassment when it occurs.

### **Why Should Parents and Teachers be Mindful of Disability-Based Harassment and Bullying?**

Disability harassment can have a profound impact on students, raise safety concerns, and erode efforts to ensure that students with disabilities have equal access to the benefits that an education offers. Indeed, harassment can seriously interfere with the ability of students with disabilities to receive the education critical to their advancement.

Complaints filed with the Office on Civil Rights (OCR) in the U.S. Department of Education reflect a steady pace of allegations of harassment, while the number of court cases involving allegations of disability harassment has risen. OCR and the Office of Special Education and Rehabilitative Services (OSERS) have documented the often devastating effects of disability harassment that ranged from abusive jokes, crude name-calling, threats, and bullying, to sexual and physical assault by teachers and other students.

These forms of discrimination often reflect, and are perpetuated by barriers such as exclusionary teaching practices and a curriculum that does not address the needs of the young person with a disability.

### **Some Statistics on Bullying in New Jersey and Nationwide**

The Office of Bias Crime & Community Relations in the New Jersey Department of Law and Public Safety provides the following statistics on bullying:

- 10-15% of ALL children report that they are regularly bullied
- 55% of 8-11 year-olds and 68 percent of 12-15 year-olds say that bullying is a serious problem
- 30% of children 11-15 have been a target for bullying
- By age 30, one out of four persons identified as bullies in childhood have a criminal record
- Nearly 50% of bias crime offenders in New Jersey are 11-20 years of age
- 16% of reported bias incidents take place in schools.

The National Education Association estimates that everyday 160,000 school children stay home because they fear they will be attacked or intimidated by their peers. A study from the American Medical Association reports that 3.2 million children are victims of bullying each year.

Bullies choose targets who seem easy to hurt or are otherwise vulnerable. Bullies may also pick on children who:

- look or are different in some way,
- are stressed either at home or at school,
- struggle with schoolwork,
- are not good at sports,
- have fewer friends or lack social confidence,
- are anxious,
- are unable to hold their own because of being smaller, weaker or younger, or
- have a disability.

Children with disabilities are clearly at increased risk of being subjected to bullying, intimidation and harassment at school.

### **A Definition of Harassment, Intimidation and Bullying**

New Jersey's Bullying Law uses a widely accepted and expansive definition of harassment, intimidation and bullying. As used in the Act:

"Harassment, intimidation or bullying" means any gesture or written, verbal or physical act that is reasonably perceived as being motivated either by any actual or perceived characteristic, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical or sensory handicap, or by any other distinguishing characteristic, that takes place on school property, at any school-sponsored function or on a school bus and that a reasonable person should know, under the circumstances, will have the effect of harming a student or damaging the student's property, or placing a student in reasonable fear of harm to his person or damage to his property; or has the effect of insulting or demeaning any student or group of students in such a way as to cause substantial disruption in, or substantial interference with, the orderly operation of the school.

### **Federal Prohibitions on Harassment, Intimidation and Bullying: IDEA, Section 504, and the ADA Also Protect Children with Disabilities from Harassment**

Disability harassment is a form of discrimination prohibited by Section 504 of the Rehabilitation Act and Title II of the ADA. Section 504 covers all schools, school districts, and colleges and universities receiving federal funds. Title II covers all state and Local entities, including school districts and public institutions of higher education, whether or not they receive federal funds. Both Section 504 and Title II provide parents and students with grievance procedures and due process remedies at the local level. Individuals and organizations also may file complaints with the Office of Civil Rights (OCR) in the U.S. Department of Education. Information about OCR's complaint process can be found at <http://www.ed.gov/offices/OCR/qa-complaints.html>.

### Disability Harassment May Deny a Free Appropriate Public Education

The State of New Jersey and school districts have responsibility under the Individuals with Disabilities Education Act (IDEA) to ensure that a free appropriate public education (FAPE) is made available to eligible students with disabilities. Harassment of a student based on disability may decrease the student's ability to benefit from his or her education and amount to a denial of FAPE under IDEA, Section 504 and the ADA. Parents may initiate administrative due process procedures under IDEA, Section 504, or Title II to address a denial of FAPE, including a denial that results from disability harassment. Individuals and organizations also may file complaints with OCR, alleging a denial of FAPE that results from disability harassment. In addition, an individual or organization may file a complaint alleging a violation of IDEA under separate procedures with the state educational agency. State compliance with IDEA, including compliance with FAPE requirements, is monitored by OSERS' Office of Special Education Programs (OSEP).

### Disability Harassment May Deny a Student an Equal Opportunity to Education under Section 504 or Title II of the ADA by Creating a Hostile Environment

Disability harassment under Section 504 and Title II is intimidating or abusive behavior toward a student based on disability that creates a hostile environment by interfering with or denying a student's participation in or receipt of benefits, services, or opportunities in the institution's program. Harassing conduct may take many forms, including verbal acts and name-calling, as well as nonverbal behavior, such as graphic and written statements, or conduct that is physically threatening, harmful or humiliating.

When harassing conduct is sufficiently severe, persistent, or pervasive to create a hostile environment, it can violate a student's rights under the Section 504 and Title II regulations. A hostile environment may exist when the harassment is serious enough to adversely affect the student's ability to participate in or benefit from the educational program. Examples of harassment that could create a hostile environment follow.

- Several students continually remark out loud to other students during class that a student with dyslexia is "retarded" or "deaf and dumb" and does not belong in the class; as a result, the harassed student has difficulty doing work in class and her grades decline.
- A student repeatedly places classroom furniture or other objects in the path of classmates who use wheelchairs, impeding the classmates' ability to enter the classroom.
- A teacher subjects a student to inappropriate physical restraint because of conduct related to his disability, with the result that the student tries to avoid school through increased absences.
- A school administrator repeatedly denies a student with a disability access to lunch, field trips, assemblies, and extracurricular activities as punishment for taking time off from school for required services related to the student's disability.
- A teacher or staff member repeatedly belittles and criticizes a student with a disability for using accommodations in class, with the result that the student is so discouraged that she has great difficulty performing in class and learning.
- Students continually taunt or belittle a student with cognitive or physical disabilities by mocking and intimidating him so he does not participate in class.

When 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. When the institution learns that disability harassment may have occurred, the institution must investigate the incident(s) promptly and respond appropriately.

### **Is Bullying of a Child with a Disability a Crime?**

#### **Harassment, Intimidation and Bullying May be a Bias Crime**

The New Jersey Office of Bias Crime & Community Relations in the New Jersey Department of Law and Public Safety defines "bullying" as intentional, unprovoked attempts to cause physical and/or emotional harm to the victim. Bias-based bullying develops when bullying behavior and bias motivation intersect.