



An Independent Educational Evaluation for Your Child with Disabilities Who is Being Bullied or Harassed

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About this Document

This document outlines an approach for parents of children with disabilities who are being bullied or harassed and the school's response has not effectively stopped this from occurring to request that the school pay for an Independent Educational Evaluation (IEE) to better investigate what is happening and present a plan with steps reasonable calculated to stop the harassment, prevent it from recurring, remedy the harm to your child, and correct the hostile environment.

If this is occurring to your child, it is possible to file a discriminatory harassment complaint with the Oregon Department of Education (ODE). The reason it is recommended to parents to first seek an IEE is that this process should be more rapid, less adversarial, and achieve a more comprehensive positive outcome.

Helpful Resource

An exceptionally helpful resource for parents is the *Parent and Educator Resource Guide to Section 504* published by the United States Department of Education. This document contains a section on bullying and harassment.

The Responsibility of Schools

It is the responsibility of schools under both Section 504 and Individuals with Disabilities Education Act (IDEA) to ensure that students with disabilities receive a Free Appropriate Public Education (FAPE). Harassment of student based on their disability or bullying on any basis can result in a denial of FAPE that must be remedied by the school.

When a student with disabilities is experiencing harassment or bullying, the school must conduct a prompt, comprehensive, unbiased investigation. If the hurtful conduct is sufficiently serious, pervasive, or persistent to interfere with the student's ability to participate in the services offered by a school, in other words is denying FAPE, this must be addressed in an IEP or 504 meeting.

The IEP or 504 Plan must incorporate a plan with steps reasonable calculated to stop the harassment, prevent it from recurring, remedy the harm to your child, and correct the hostile environment.

In Oregon, it appears many principals think if it is reported that a student is being treated badly, their only obligation is to investigate to determine whether discipline is warranted. This level of response is not in accord with Section 504. You should have a right to request an IEE paid for by the district.

Evaluation Requirements

Under both IDEA and Section 504, an evaluation takes place to determine whether the student is entitled to services. Students must be reevaluated if the school determines that the student's needs indicate that reevaluation is necessary or if the child's parent or teacher requests a reevaluation.

Under both IDEA and Section 504, the evaluation or reevaluation must use tools or strategies that focus on the specific need and are administered by trained and knowledgeable personnel.

To hold an effective IEP or Section 504 Team meeting to address harassment or bullying, the school must conduct an evaluation/investigation to support its decision-making. The civil rights regulations speak in terms of "investigation" and in the context of the development of IEPs or 504 plans, IDEA and Section 504 speak in terms of "evaluation." It must be understood that these describe the same actions.

Thus, in the situation of a student with disabilities who is being harassed or bullied, when the school knows or should know about this, the evaluation must focus on whether hurtful conduct that is serious, persistent, or pervasive is denying FAPE.

Further, the school or district staff member who conducts the evaluation must be trained and knowledgeable regarding the obligations of the school in responding to a situation where the student is being harassed or bullied to support the development of steps to be taken that are reasonable calculated to end the harassment, prevent it from recurring, remedy the harm to the target, and correct the hostile environment.

In addition, the planning to take these steps must occur within an IEP or 504 team meeting, which includes the parent.

Right to an IEE under IDEA

Under IDEA, you have the right to obtain an IEE paid for by the school district if you disagree with an evaluation or reevaluation by the district.

An IEE is an evaluation conducted by a qualified examiner who is not employed by the district.

If you request an IEE, paid for by the school, the district must, without unnecessary delay, either ensure that an IEE is provided or initiate a due process hearing.

The district must provide information to you about the district criteria for IEEs. However, the district must provide you an opportunity to demonstrate that unique circumstances justify an IEE that does not meet the district's criteria. In situations of harassment or bullying, the district's normal criteria will likely not be applicable.

In order to ensure your right to an independent evaluation, it is you, not the district, who has the right to choose which evaluator will conduct the IEE.

If the district disagrees with this, the district has to request a due process hearing with the Oregon Department of Education (ODE) to show that its evaluation is appropriate.

If the district did not conduct a comprehensive investigation to determine whether your child is being denied FAPE, told you that that since this is "not bullying" there is nothing they can do, or did not address these concerns in an IEP meeting, then the evaluation of your child has clearly not been appropriate.

Obtaining an IEE Under Section 504

Section 504 does not expressly provide that the district must pay for an IEE. However, a significant statement made in the *Parent and Educator Resource Guide to Section 504* opens the door to this possibility.

A parent may have a specialist or other educational professional, who is independent of the school, test his or her child. fn. 63.

Footnote 63 reads:

Note that Section 504 does not specifically address whether a school district must reimburse a parent if the parent has the student evaluated by professionals who are not affiliated with the school district.

The wording of this is significant. This language opens the door for such a request to be made even though the law does not "specifically" allow for this.

Further, note footnote 66.

... If a school district does not have the appropriate personnel on staff to conduct a medical assessment for diagnostic and evaluative purposes, the district must make arrangements for the medical assessment at no cost to the parent.

In addition, under Section 504, the evaluation must be conducted by trained personnel (page 16 of this document). Thus, if district personnel who conducts this investigation is not fully trained regarding the requirements of responding to situations where serious, persistent or pervasive hurtful conduct directed at a student with disabilities is appears to be denying FAPE the parent should have the right to request an IEE.

If the district has failed to respond to the situation appropriately and does not agree to pay for an IEE, you can immediately file a Section 504 complaint with ODE. Clearly, obtaining an IEE should be considered a preferable, less adversarial, path.

Paths for Parents

Important Understandings

Your school and district are familiar with parents requesting IEEs for students on IEPs in other situations. The idea of using this process to address concerns of harassment or bullying is new. There is no professional guidance to schools or evaluators on how to do this. It is highly probable that your school and district will not have even had a parent make such a request. It is unknown how school leadership will respond. Resistance is possible.

It will likely be helpful for you to indicate that you know you have the ability to file a discriminatory harassment complaint with ODE, but you are seeking to follow this path in an effort to resolve the situation more rapidly and in a less adversarial manner. ODE has been receiving increased complaints of discriminatory harassment. The desired outcome is that things get better for all involved students and the overall school climate.

Note that this document is a companion to: *Is Your Child with Disabilities Being Bullied or Harassed: A Parent's Guide for Advocacy*

Path for Parent of Student on an IEP

Send letter to school requesting an IEE. The letter must document:

- Your child is experiencing harassment or bullying that is interfering with FAPE.
- This has been reported. The school response did not include a comprehensive evaluation to determine how this situation is interfering with your child's learning and did not result in an IEP team meeting with the development of steps reasonably calculated to stop the harassment, prevent it from recurring, remedy the harm to your child, and correct the hostile environment.
- As a result, you disagree with the evaluation of the school and request an IEE paid for by the district.
- Note this is a unique circumstance that justifies an IEE that does not meet the district's criteria and your understanding that, as a parent, you have the right to choose who conducts an IEE.

If the district disagrees with your request for an IEE, the district will have to file for a due process hearing with ODE. If this happens, request an alternative dispute process to get the matter resolved as rapidly as possible.

If the district does file for a due process hearing, you can also file a discriminatory harassment complaint with the district and request that the district grant a waiver of its complaint process (normally 90 days) to allow you to immediately file an appeal with ODE. This process is in a different division in ODE than the one that addresses IDEA. The fact that you requested an IEE to more rapidly address the concerns and the district denied this can be raised as a factor in the investigation of your complaint by ODE.

A Template Letter is available on my site: <http://www.embracecivility.org/resolution/>

Path for Parent of Student on a 504

Send letter to school requesting an IEE. The letter must document:

- Your child is experiencing harassment or bullying that is interfering with FAPE.
- This has been reported. The school response did not include a comprehensive evaluation to determine how this situation is interfering with your child's learning and did not result in an 504 team meeting with the development of steps reasonably calculated to stop the harassment, prevent it from recurring, remedy the harm to your child, and correct the hostile environment.
- As a result, you disagree with the evaluation of the school and request an IEE paid for by the district. Note that you recognize that Section 504 does not require that the district pay. However, Section 504 does require that an evaluation be conducted by trained and knowledgeable personnel and this has not happened.
- Note this is a unique circumstance that justifies an IEE that does not meet the district's criteria and your understanding that, as a parent, you have the right to choose who conducts an IEE.

If the district disagrees with your request for an IEE, you can immediately file a Section 504 complaint with ODE. Alternative dispute processes are available for this and are recommended.

You can also file a discriminatory harassment complaint with the district and request that the district grant a waiver of its complaint process (normally 90 days) to allow you to immediately file an appeal with ODE. The fact that you requested an IEE to more rapidly address the concerns and the district denied this can be raised as a factor in the investigation of your complaint by ODE.

A Template Letter is available on my site: <http://www.embracecivility.org/resolution/>

Nancy Willard, M.S., J.D.

This is my background, which I maintain establishes that I have the expertise to conduct an IEE in situations of the harassment or bullying of students with disabilities:

- Bachelor's Degree in Elementary and Early Childhood Education from the University of Utah, 1975.
- Masters Degree in Special Education from the University of Oregon, with a focus on students experiencing emotional challenges, 1977.
- Special education teacher of students experiencing emotional challenges in Medford, Oregon, 1977-1980.
- Doctor of Jurisprudence from Willamette University College of Law, 1983. During law school, worked as an intern with a Salem law firm that focuses on school law.
- Author of first book ever published on cyberbullying, *Cyberbullying and Cyberthreats*, published by Research Press in 2007..
- Research, writings, and presentations in the field of cyberbullying and bullying prevention since 2007, including numerous articles written for school leadership publications and academic publications.
- Work as a trial consultant for attorneys representing students in discriminatory harassment cases.
- Author of *Engage Students to Embrace Civility and Be Positively Powerful: A Guide for Teens on Achieving Resilience and Empowerment*.

Professional Development

I am also able to provide professional development to educators on how to respond to situations where students with disabilities or other students are being harassed or bullied. Eventually, I will also offer professional development to parent advocates or mental health on how to conduct IEEs.



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