



Office for Civil Rights Guidance

Fostering Positive Relations in Schools

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During the Obama Administration U.S. Department of Education's Office for Civil Rights (OCR) significantly increased its activities related to discriminatory harassment through the provision of guidelines and increased agency enforcement actions. The Department's Office of Special Education and Rehabilitation Services also issued one related *Dear Colleague Letter*.

As will be outlined, key actions of OCR provide exceptionally helpful insight into the kinds of comprehensive efforts that are necessary to establish a positive school climate that supports all students.

Public school districts violate federal civil rights laws when discriminatory harassment based on race, color, national origin, sex, or disability is sufficiently serious to create a hostile environment, and school staff encourage, tolerate, do not adequately address, or ignore such harassment. These laws are enforced through agency actions by the OCR and can also provide the basis for liability.¹ These laws include:

- *Title IX of the Education Amendments of 1972*.²
- *Title VI of the Civil Rights Act of 1964*.³
- *Section 504 of the Rehabilitation Act of 1973*.⁴
- *The Americans with Disabilities Act of 1990*.⁵

It is unknown whether OCR intended its guidance to be considered in its entirety in a blended manner. However, the OCR guidance can indeed provide the basis for developing a comprehensive plan of action to foster a positive school climate and positive relations that supports all students.

The key documents and additional resource include:

- 2010 Dear Colleague Letter Addressing Bullying and Harassment
- 2011 Supportive School Discipline Initiative
- 2012 Anoka-Hennepin Consent Decree
- 2013 and 2014 Dear Colleague Letters Addressing Students with Disabilities
- 2015 Dear Colleague Letter Addressing Transgender Students

Dear Colleague Letter Addressing Bullying and Harassment

The *Dear Colleague Letter* issued by the OCR in October 2010 addressed the intersection between bullying and discriminatory harassment as follows:

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 violates the civil rights laws that OCR enforces.⁶

The examples included in this *Letter* make clear that to avoid an adverse agency action, schools must not only intervene in reported incidents, they must engage in comprehensive efforts to change the school culture that underlies such incidents.

When the behavior implicates the civil rights laws, school administrators should look beyond simply disciplining the perpetrators. While disciplining the perpetrators is likely a necessary step, it often is insufficient. 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. Put differently, the unique effects of discriminatory harassment may demand a different response than would other types of bullying.⁷

Lesson: It is important to understand from this *Dear Colleague Letter* guidance that it is essential to not simply punish hurtful perpetrators, but to fully investigate and correct the overall environment that may be supporting pervasive and persistent harassment of students.

Supportive School Discipline Initiative

In July 2011, the OCR working with the U.S. Department of Justice's Civil Rights Division (DOJ) announced the launch of the *Supportive School Discipline Initiative*.⁸ This Initiative addresses the school-to-prison pipeline and punitive disciplinary practices that push students, especially minority students, out of school and into the justice system.

This initiative encouraged discipline practices to foster safe and productive learning environments, recommending positive behavior management, greater focus on identifying and addressing the underlying reasons for students wrongdoing through Multiple-Tier System of Supports, and using restorative practices.⁹

Lesson: The important insight from the *Supportive School Discipline Initiative* is the need to focus on the overall school climate, use Multiple Tier Systems of Supports for students who have greater challenges, and use restorative practices to resolve challenges

Anoka-Hennepin Consent Decree

In March 2012, the Anoka-Hennepin School District in Minnesota entered into a consent decree with OCR and DOJ, as well as student plaintiffs, that resolved a lawsuit and enforcement action related to Title IX gender-based harassment.¹⁰ In an OCR press release announcing the *Anoka-Hennepin Consent Decree*, was the following statement:

Through the Consent Decree, it is our hope that Anoka-Hennepin, Minnesota's largest school District educating nearly 40,000 students in 37 schools, will become a model for other school Districts in its efforts to address sex-based and other types of prohibited harassment.¹¹

It is clear from the *Anoka-Hennepin Consent Decree* list of requirements, that the necessary and expected actions of school districts and schools in preventing discriminatory harassment have moved far beyond current state statutory requirements to prevent bullying.

Lesson: Notable inclusions in these *Consent Decree* requirements are:

- **Effective coordination, with a requirement for designated staff to be responsible for efforts to address these issues at a district and school level.**
- **An expanded approach to address students' mental health and social emotional issues.**
- **Annual measurement including use of an annual survey and focus groups with students who are typically targeted.**
- **Active involvement of students both in providing insight and guidance to school administrators and in peer leadership programs.**
- **Working specifically with populations of students that are more typically bullied.**
- **Assessing the effectiveness of school interventions.**

Dear Colleague Letters Addressing Students with Disabilities

In August 2013, the U.S. Department of Education's Office of Special Education and Rehabilitation Services (OSERS) issued a *Dear Colleague Letter* that addressed the responsibilities of schools under IDEA with respect to the bullying of students with disabilities.¹²

Key requirement under this *Letter* is that the school must recognize that any student with disabilities who is being bullied or engaging in bullying may not be receiving a Free and Appropriate Public Education. Therefore, it is necessary to hold an Individual Education Plan (IEP) meeting.

In October 2014, OCR released a companion *Dear Colleague Letter* to 2013 OSERS Letter.¹³ This Letter detailed the same responsibilities for schools under Section 504 of the Rehabilitation Act and Title II of Americans with Disabilities Act regarding the bullying of or by students with disabilities.

Lesson: While the OSERS and OCR *Dear Colleague Letters* focused solely on students with disabilities, the guidance of the need for an in-depth investigation and team-based planning for ongoing intervention is essential for students who are experiencing chronic instances of being bullied, as well as for those who are engaging in such bullying.

Dear Colleague Letter Addressing Transgender Students

On May 13, 2016, OCR working with DOJ issued a Dear Colleague Letter addressing the concerns of transgender students.¹⁴ This *Letter* provided a comprehensive overview of issues to address, including: Safe and Nondiscriminatory Environment. Identification Documents, Names, and Pronouns. Sex-Segregated Activities and Facilities. Privacy and Education Records.

Lesson: While this *Dear Colleague Letter* focuses specifically on the concerns associated with one protected class, it sets forth an approach to follow to determine what the specific concerns of a group of students are and how actions can be taken to address these concerns. Other groups of students within a particular school may require this kind of detailed analysis and development of strategies. For example, in some communities students in refugee families may require a specific focus. In other schools, a focus on the needs of Native American students may be required.

Aggregating the Insight

In sum, the OCR, OSERS, and DOJ guidance, as well as the components of the *Anoka-Hennepin Consent Decree* provide the source of insight for schools on comprehensive approach to foster a positive school climate and positive relations.

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1 <http://www2.ed.gov/about/offices/list/ocr/index.html>.

2 *Title IX of the Education Amendments of 1972*. 20 U.S.C. §§ 1681-1688.

3 *Title VI of the Civil Rights Act of 1964*. 42 U.S.C. §§ 2000d-2000d-7.

4 *Section 504 of the Rehabilitation Act of 1973*. 29 U.S.C. § 794.

5 *The Americans with Disabilities Act of 1990*. 42 U.S.C. §§ 12131-12134.

6 U.S. Department of Education, Office for Civil Rights (October 26, 2010) *Dear Colleague Letter on Harassment and Bullying*. <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.html>.

7 *Id.*, pp. 3-4.

8 <http://www.ed.gov/news/press-releases/secretary-duncan-attorney-general-holder-announce-effort-respond-school-prison-p>. The Initiative introduced helpful resources for schools, including: U.S. Departments of Education and Justice, (2014) Supportive School Discipline Initiative, *School Discipline Guidance Package*. <http://www2.ed.gov/policy/gen/guid/school-discipline/index.html?exp=1>.

9 *Id.*

10 U.S. Departments of Justice and Education. Departments of Justice and Education Resolve Harassment Allegations in Anoka-Hennepin School District in Minnesota. <https://www.justice.gov/opa/pr/departments-justice-and-education-resolve-harassment-allegations-anoka-hennepin-school>. The other parties included several student plaintiffs, whose case was supported by attorneys from the Southern Poverty Law Clinic and Lambda Legal.

11 U.S. Departments of Education and Justice (2013) Anoka Hennepin Consent Decree. <http://www.WhiteHouse.gov/blog/2012/03/08/us-departments-justice-and-education-resolve-harassment-allegations-anoka-hennepin-s>. (emphasis added).

12 *Individuals with Disabilities Act*. 20 U.S.C. § 1400 et seq. U.S. Department of Education, Office of Special Education and Rehabilitation Services (August 20, 2013) *Dear Colleague Letter Keeping Students with Disabilities Safe from Bullying*. <http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/bullyingdcl-8-20-13.pdf>.

13 OCR. *Dear Colleague Letter on Students with Disabilities*. (October 21, 2014) <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-bullying-201410.pdf>.

14 U.S. Department of Education Office for Civil Rights, (2016) Dear Colleague Letter on transgender students. <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>.