

DELAWARE DEPARTMENT OF EDUCATION

EXCEPTIONAL CHILDREN RESOURCES

FINAL REPORT

STATE COMPLAINT RESOLUTION

DE SC 20-06 (January 24, 2020)

On November 26, 2019, Parent filed a complaint with the Delaware Department of Education (Department) alleging the School District (District) violated Part B of the Individuals with Disabilities Education Act (IDEA) concerning the provision of a free, appropriate public education to Student. The complaint has been investigated as required by federal regulations at 34 C.F.R. §§ 300.151 to 300.153 and according to Department regulations at 14 DE Admin Code § 923.51.0 to 53.0. The investigation included review and consideration of the records provided by Parent and the District. Interviews were conducted with Parent and District staff. Parent was given the opportunity to provide additional information related to the complaint, and submitted documents, including E-mails among Parent and school staff related to the complaint issues. The records were reviewed and considered in the investigation.

The complaint investigation and decision are based on the specific issues stated in the complaint. The decision includes the findings of fact that are relevant and material to addressing the complaint issues.

COMPLAINT ALLEGATIONS

The complaint alleges the District violated Part B of the IDEA by denying specialized transportation and a bus aide for Student. The complaint also alleges that the Student has been bullied.

FINDINGS OF FACT

A. IEP Implementation

1. Student attends kindergarten at School (School) in the District for the 2019 -2020 school year.
2. Student is X (X) years of age and eligible to receive special education and related services under the disability category of other health impairment outlined in 14 DE Admin Code § 925.6.14.
3. On September 5, 2019, the District provided prior written notice to Parent proposing to conduct an initial evaluation to determine Student's eligibility for special education and related services.
4. Parent provided informed written consent for the initial evaluation on September 6, 2019.

5. In this case, the initial evaluation and eligibility meeting were completed within the timeline required by 14 DE Admin Code § 925.2.3.
6. On November 4, 2019, a meeting was held to review the evaluation results and determine Student's eligibility for special education and related services. The school sent timely written notice of the meeting to Parent on October 15, 2019 in compliance with 34 C.F.R. § 300.322 and 14 DE Admin Code § 925.22.
7. The meeting included the participants required by 34 C.F.R. § 300.306(a)(1) and 14 DE Admin Code § 925.6.1. Parent attended and participated in the meeting.
8. The evaluation report provides, in relevant part:
 - (a) Student was diagnosed with AD/HD, combined type in May 2019 by Nemours.
 - (b) The Nemours evaluation indicated, based on a Parent rating scale, Behavioral Assessment System for Children-3, and Connors Early Childhood Parent Scale, Student's behaviors were rated "at risk" to "clinically significant" in most areas.
 - (c) Based on the Weschsler Intelligence Scale for Children, 5th Edition, Student's full scale IQ in the low average range. Student's verbal comprehension and fluid reasoning skills are in the low average range.
 - (d) Results from the Kaufman Test of Educational Achievement, 3rd Edition reflect Student has below average skills in letter and word recognition, written expression, spelling, and reading comprehension, and low average skills in math concepts and applications.
 - (e) Adaptive behavior rating scales were completed by Parent and two (2) of Student's teachers reflecting most problem and maladaptive behaviors occurring in the home setting as rated by Parent.
9. The team concluded Student is eligible for special education and related services under the disability category of other health impairment. The evaluation summary report notes Student's medical condition of AD/HD significantly limits Student's ability to attend to instruction and Student requires support in the areas of basic reading skills and written expression. The eligibility decision was documented in the evaluation summary report, and provided to Parent.
10. The District sent prior written notice to Parent on November 4, 2019 proposing the provision of special education and related services to Student with the IEP and program to be developed at IEP team meeting.

11. The District is required to obtain informed consent from Parent before the initial provision of special education and related services to Student pursuant to 34 C.F.R. § 300.300(b) and 14 DE Admin Code § 925.1.2.
12. On November 4, 2019, Parent provided the written consent for Student to receive special education and related services.
13. On November 18, 2019, an IEP team meeting was held to develop Student's initial IEP. The school provided timely written notice of the meeting to Parent on November 4, 2019 in compliance with 34 C.F.R. § 300.322 and 14 DE Admin Code § 925.22.
14. The IEP team included the members required by 34 C.F.R. § 300.321 and 14 DE Admin Code § 925.21.1. Parent attended and participated in the meeting.
15. The November 18, 2019 IEP provides for Student's educational needs in the areas of written expression and attention and focusing skills. It provides for specially designed instruction within the general education setting and an annual goal in written expression.
16. The IEP includes services and accommodations to help support Student, including the use of visual and verbal prompts, cues, and models, peer models, rephrased, simplified and repeated directions, redirection as needed, close proximity to the instructor or activity, additional wait time, praise and positive reinforcement, small group and one-on-one instruction, use of visual timer, and frequent movement breaks during instruction.
17. The IEP provides that Student will spend greater than eighty (80%) of the day in the regular education classroom, and Student will participate in regular school bus transportation.
18. Parent requested a special bus or van, or a bus aide, for Student due to alleged bullying by other students on the bus. Parent raised allegations of bullying on the bus within the first week of school, and periodically raised concerns throughout September, October, and November 2019.
19. The bus incidents perceived by Parent as bullying were discussed at the IEP team meeting. The District considered the incidents isolated and episodic, and not targeted at Student or intentional and persistent. In addition, there was no decline in Student's academic progress or significant changes in behavior in the school setting, and Student was not relaying any concerns to the school staff or classroom teacher.
20. The District declined Parent's request for a special van or bus, and bus aide as not necessary for Student to receive a free appropriate public education (FAPE).

21. In order to address Parent's concern, the District arranged for the school Librarian to meet Student daily when Student gets off the bus and enters the school building. The IEP provides that an authorized adult will meet Student at the bus when arriving at school in the morning and when arriving at the bus stop for the afternoon.
22. Parent did not sign the IEP and disagreed with the District's decision to not provide specialized transportation or a bus aide for Student.
23. On November 18, 2019, the District provided Parent with prior written notice proposing the IEP and rejecting Parent's request for specialized transportation or a bus aide. The prior written notice reflects the District would facilitate conversations with school administrators and transportation staff regarding Parent's concerns.
24. The District sent the procedural safeguards notice to Parent with the prior written notice on November 18, 2019. Parent had ten (10) school days to exercise procedural safeguards or pursue other relief before the School begins implementation of the IEP.
25. The District has not implemented Student's IEP because Parent did not sign the IEP indicating agreement with the program. School staff erroneously believed consent was withheld because the IEP was not signed by Parent. However, Parent provided written consent for the provision of special education and related services to the District on November 4, 2019. Thus, the IEP should have been implemented ten (10) school days after it was proposed through prior written notice, or December 9, 2019.
26. On November 26, 2019, Parent filed the state complaint with the Department alleging the denial of FAPE based on the District's failure to provide Student with a special bus or van or a bus aide.

B. Behavior on the School Bus

27. On August 24, 2019, Parent sent an E-mail to the District Transportation Supervisor asking how the Bus Driver knows which stop is the right one for a small child so the child will not be dropped off at the wrong stop. Parent expressed concern Student may get off at the wrong bus stop and get lost.
28. On the same date, the District Transportation Supervisor responded to Parent indicating that all students need to be released to a parent, guardian or some other adult the school has verified as having permission to receive the child. In addition, the drivers have lists of students at each stop with grade levels and know to look for how many X grade level students are getting off at a stop and verify there is an adult for each.
29. Student's first day of school for the 2019-2020 school year was August 28, 2019.

30. Starting with the first week of school and continuing through November, Parent periodically raised allegations of bullying behavior directed toward Student on the bus to and from school. Parent contends the behavior was occurring in the morning and afternoon bus rides. The records reflect Parent's contacts to and from District transportation staff and school administrators through E-mails and text messages.
31. Parent's perception that Student was being bullied on the school bus arises from Parent's report of the Student describing incidents to Parent when home and questioned by Parent. Student has not described or mentioned any bullying incidents or inappropriate behavior by peers to school staff or the Bus Driver.
32. There are several documented communications among Parent, Vice Principal, and the District's Transportation Supervisor reflecting adaptations to typical bus routines to address Parent's concerns and to protect Student.
33. On August 30, 2019, Parent called the School and sent a text message relating the Student was hit by boys on the school bus and Student is scared to ride the bus. Parent requested the staff view the bus video to review the hitting incident. On the same date, Parent sent an E-mail to District transportation office notifying them of the incident.
34. On September 2, 2019, the Vice Principal responded to Parent there were no buses running on Friday, August 30, 2019 because School was closed, and a request for recent video was sent to the District. In the meantime, Student's seat was moved to the front of the bus as requested by Parent. The Bus Driver had Student sit in the front, right row of the bus, diagonal to the Driver so the Driver could visually observe any concerning behavior.
35. On September 4, 2019 the District Transportation Supervisor responded to the Parent advising that Parent should report any concerns about behaviors to the School administrator. The District Transportation Supervisor advised Parent that the Bus Driver would be notified that X grade level students need to be seated at the front of the bus with X grade level students only.
36. On September 4, 2019, there were 11 text messages between Parent and Vice Principal regarding Parent's bus concerns. Parent suggested other children's bus behaviors were instigating Student's inappropriate behaviors.
37. On September 4, 2019 the Vice Principal reported communicating with the Bus Driver that only two (2) children are to be seated in some seats. In addition, the Vice Principal directed the Bus Driver to have a X(X) grade helper student with Student in the front row allocated for early grade students, and keep the older students away from Student and the front of the bus.

38. On the morning of September 5, 2019, Parent sent a text message to the Vice Principal requesting the school meet Student as Student got off the bus and ask how the bus ride went. The Vice Principal responded that they complied with the Parent's request that day and the Student did not report any issues. On the same day, Parent sent an E-mail notifying the District that Student was sitting in the front row of the bus and older children were not observed to be in the front of the bus as per the established policy.
39. On September 6, 2019 Parent reported via text message to the Vice Principal that the Student was "squashed" between two students on the bus. The Vice Principal reportedly spoke directly with the Bus Driver and requested the Driver assign seats.
40. On September 10, Parent reported via text message that a student was bothering Student in the School.
41. On September 11, 2019, Parent sent a text message to the Vice Principal that a student was bullying Student. The Vice Principal said the Principal was notified and would be looking into the situation.
42. On October 16, 2019, Parent sent a text message to the Vice Principal that Student reported a student took Student's backpack and put it next to the Driver. After speaking with the Bus Driver, Parent learned that Student was taking things out of the backpack against bus rules. Therefore, the Bus Driver requested the other student take the backpack and put it next to the Driver. Subsequently, Parent notified the Vice Principal that this was no longer an issue that needed attention.
43. On October 18th, 2019, Parent sent a text message and an E-mail to the Vice Principal and the District Transportation Supervisor requesting that the helper student seated next to the Student on the bus be moved because the helper student reportedly pulled Student's hat and hair. The District Transportation Supervisor agreed to contact the Bus Driver about this issue. The Principal responded via E-mail that the incident would be addressed that day in school. On the say day, the Principal responded to the Parent a second time via E-mail to share that the Vice Principal asked the Student about the incident and the Student responded that Student, "sat next to a nice student and was happy on the bus."
44. On November 14, 2019, Parent reported to Vice Principal that another child took Student's backpack on the bus. After investigating and reviewing the bus video, the Principal sent an E-mail to Parent on November 20, 2019 confirming the incident occurred and advising the offending student would receive appropriate consequences. The Principal invited Parent to come into the school and view the video for a clear understanding of what happened.
45. The Investigator viewed the bus video of the November 14, 2019 backpack incident. Another student is observed taking Student's backpack very briefly. The backpack is pulled away from Student, swung around by the offending student, and then immediately returned to the student.

46. On November 15, 2019, Parent sent an E-mail to the District Transportation Supervisor indicating Student was crying because a X (X) grade student “snatched” Student’s backpack on the bus and made fun of Student.
47. On November 15, 2019 the Parent sent an E-mail to the District Special Education Supervisor reporting that Student was bullied on the bus and sometimes at school. The Parent requested to attend the IEP meeting scheduled for Monday, November 18, 2019. Parent felt that Student is afraid of harassment and Student is not receiving a free, appropriate public education. In the school setting, Parent felt that Student has been teased, given the middle finger, dragged at recess, lunch food thrown on floor, and schoolwork crumbled. Parent reported Student is describing bullying behavior at home and it affected Student’s health and sleep at night.
48. As stated in Section A., the IEP team convened on November 18, 2019 and discussed Parent’s concerns. The District considered the incidents isolated and episodic, typical peer to peer behavior, and not targeted at Student or intentional and persistent. In addition, there was no decline in Student’s academic progress or behavior in the school setting, and Student was not relaying any concerns to the classroom teacher.
49. The District arranged for the Librarian to meet Student daily when Student gets off the bus and enters the school building.
50. On November 21, 2019, Parent reported to the Principal that a child on the bus forced Student to eat playdough. The Principal investigated the incident and reviewed the bus video. On December 2, 2019, the Principal confirmed the incident with Parent as observed on the bus video. The Principal reported it to both the Bus Driver and District Transportation Supervisor and reported it as a bullying incident. The offending student received a two (2) day suspension for the behavior.
51. The Investigator viewed the bus video of the playdough incident. The offending child placed playdough near Student’s mouth, Student turned head, and the offending child moved the playdough away from Student and moved to another child.
52. On December 2, 2019, the District Transportation Supervisor directed the Bus Driver to ensure Student is away from the offending student involved in the playdough incident, and to report any concerning behavior immediately to the School.
53. The Bus Driver confirmed Student is seated in the front row of bus, diagonal to the driver so the driver can easily view Student during the morning and afternoon bus rides. The Bus Driver also confirmed having a X (X) grade helper child sit next to Student so Student has consistent peer support on the bus.

54. On December 3, 2019, Parent reported a bullying incident involving another child who took Student's backpack and gave it to the Bus Driver. On December 5, 2019, the Principal sent an E-mail to Parent confirming review of the bus video for the reported incident. The video showed Student and another child hugging and sitting together, and the Bus Driver asking the child to be a helper and put Student's backpack next to the Driver. The Bus Driver explained that Student was taking food out of the backpack against the bus rules. The bus driver asked the helper student to put Student's back next to the Driver so Student could not access the snacks for the remainder of the drive.
55. In response to Parent's concerns, the District arranged for Student to meet with the School Counselor. The counselor met with Student three (3) times between December 3, 2019 and December 17, 2019, and interacts with Student daily in the School cafeteria during lunch. The Counselor reported that during their sessions together, Counselor focused discussion with Student on the school bus experience and how to use words to tell students to stop behavior that bothers Student, identifying feelings, and strategies to cope with fear and stress. Student has not reported any bus problems to the Counselor. The Counselor also spoke with Parent and suggested language to use at home when talking with Student about handling interactions with students on the bus.
56. On December 3, 2019, the School Counselor sent an E-mail reporting the visit with the Student. The Counselor met the Student as Student got off the bus in the morning and the Student reported it was good ride. The Student reported some children were mean to one another but not to Student. The Student reported to the Counselor that the Student does not like it when children are mean to one another.
57. According to the classroom teacher, Student shows no hesitation or reluctance to get on the bus in the afternoon to go home. Additionally, Student has not mentioned or referenced inappropriate behavior by peers on the school bus.
58. When the Librarian meets Student at school daily in the mornings, the Librarian asks Student if anything happened on the morning bus ride. Student does not report any problems or problem behaviors from other students. Student's teacher does not observe any observable bullying behavior or atypical behavior toward Student in the classroom, nor have any reports of bullying been made to the Teacher in the cafeteria or at recess involving Student.
59. The Bus Driver reported that Student displays typical grade level age behavior on the bus, such as getting out of the seat, not staying seated, taking toys and snacks out of the backpack, and physically interacting with other students in a playful manner. The Bus Driver reported talking with Student when needed about appropriate and inappropriate bus behavior.

60. School records reflect Student engaged in disruptive behavior in school in September and October 2019:
- (a) On September 3, 2019, Student displayed disruptive behavior toward other students in school, including throwing mulch at another student, spitting on another student's lunch card, refusing to participate in class activity and finish classwork. The behavior was documented in the District's Student Intervention Detail and reported to Parent by the Teacher.
 - (b) On September 26, 2019, Student kicked a classmate causing the student to hit head on wall, throwing crayons during an activity, and touching another student's backpack. The behavior was documented in the District's Student Intervention Detail and reported to Parent by the Teacher.
 - (c) On October 16, 2019, Student pushed another child, the child pushed Student back, Student pushed back again and the other child punched Student in the face.
61. School attendance records through December 4, 2019 indicate Student was absent eleven (11) times since the beginning of the year to the date of the record. Four absences (4) were unexcused and seven (7) were excused with a sick note. Student was tardy five (5) times through December 4, 2019.
62. On October 31, 2019, Student was absent without an excuse. Parent provided a note reflecting Student's absence was due to "rainy weather on bus stop."
63. Parent requested the Principal to excuse Student's absences from school when the weather is bad, so Student does not need to wait outside at bus stop. The Principal declined stating it would not be an acceptable excuse for absence from school.
64. The District Transportation Supervisor confirmed Student's bus stop is approximately one block from Student's home.
65. The Student's teachers provided interim progress monitoring information in November 2019 reflecting Student is making satisfactory academic progress and not encountering any learning challenges in the classroom. Student is maintaining appropriate developmental growth, and Student's earlier behavioral challenges have resolved as there were no incidents in November or December.

CONCLUSIONS

A. The District Was Required to Implement Student's IEP as of December 9, 2019.

The IDEA and corresponding Delaware law requires schools to provide a free appropriate public education (FAPE) to students with disabilities. *See*, 20 U.S.C. § 1401(9); 14 Del. C. § 3101(5). FAPE is provided to students with disabilities through the implementation of the IEP.

In this case, Parent provided informed written consent for the initial provision of special education and related services to the District on November 4, 2019 as required by 34 C.F.R. § 300.300(b) and 14 DE Admin Code § 925.1.2. Parent declined to sign the IEP developed and proposed on November 18, 2019 through prior written notice. Parent had ten (10) school days to exercise procedural safeguards or pursue other relief before the school begins to implement the proposed IEP. Because Parent provided consent for the initial provision of special education and related services to the District on November 4, 2019, the IEP should have been implemented ten (10) school days after it was proposed through prior written notice, or on December 9, 2019. *See*, 34 C.F.R. § 300.503; 14 DE Admin Code § 926.3.0. **As a result, I find a violation of Part B of the IDEA and corresponding Delaware law related to the provision of special education services to Student as of December 9, 2019.**

B. Student Does Not Require Specialized Transportation and a Bus Aide to Receive FAPE.

Transportation is a related service under the IDEA and includes travel to and from school and between schools, travel in and around school buildings, and specialized equipment such as special or adapted buses, lifts and ramps, if required to provide special transportation for a child with a disability. *See*, 34 C.F.R. § 300.34(c)(16); 14 DE Admin Code § 922.3.0. It is the IEP team's role to determine if transportation is required to assist a child with a disability to benefit from special education and related services and how the transportation services should be implemented.

In this case, the IEP team determined at the November 18, 2019 IEP team meeting Student does not require specialized transportation to benefit from special education services. Parent contends that Student requires transportation in a separate vehicle or with a bus aide to benefit from special education services. The District declined Parent's request and provided prior written notice. The reported behavioral incidents on the bus were isolated and episodic, and not targeted at Student or intentional and persistent, and were mostly typical peer to peer behaviors for X school aged students. In addition, there was no decline in Student's academic progress or significant changes in behavior in the school setting, and Student was not relaying any concerns to the school staff, Counselor, Librarian, or Teacher. When the Librarian meets Student at school daily in the mornings, the Librarian asks Student if anything happened on the morning bus ride and Student does not report any problems or behaviors from other students. Student's Teacher does not observe any observable bullying behavior or atypical behavior toward Student in the classroom, nor have any reports of bullying been made to the Teacher in the cafeteria or at recess involving Student.

Student was not relaying any concerns to the Counselor or Teacher. The District made adaptations to regular school bus routines and put supports in place for Student to respond to Parent's concerns. **For the reasons stated, I find a no violation of Part B of the IDEA and corresponding Delaware law related to the provision of a free, appropriate public education and Student's transportation needs.**

C. Response to Allegations of Bullying on the Bus

The Parent alleges Student has been bullied on the bus and at school at times. The District worked with the Parent and Bus Driver to make several adaptations to typical bus routines that address Parent's concerns and aim to protect Student from disruptive behaviors and alleged bullying which included the following:

- a. The Bus Driver had Student sit in the front, right row of the bus, diagonal to the Driver so the Driver could visually observe any concerning behavior.
- b. X grade level students are seated at the front of the bus with X grade level students only.
- c. A X (X) grade student helper student is seated with Student in the front row allocated for early grade students, to keep the older students away from Student and the front of the bus.
- d. On one occasion after a reported incident, the school met Student as Student got off the bus and asked how the bus ride went.
- e. Students were given assigned seats on the bus.
- f. The District arranged for the Librarian to meet Student daily when Student gets off the bus and enters the school building
- g. The District had the Student meet with the Counselor at least three times between December 3 and December 17. The Counselor identified the focus of the sessions are to assist the Student with understanding how to interpret feelings and process those feelings using appropriate strategies and to express those concerns with adults using developmentally appropriate language. The Counselor shared the session experiences with the Parent.

The U.S. Department of Education's Office of Special Education and Rehabilitative Services issued a Dear Colleague letter on August 20, 2013, which addresses bullying (*attached*). The letter states, "...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. However, even when situations do not rise to a level that constitutes a denial of FAPE, bullying can undermine a student's ability to achieve his or her full academic potential."

The Dear Colleague letter further states, "Schools have an obligation to ensure that a student with a disability who is the target of bullying behavior continues to receive FAPE in accordance with his/her IEP. The school should, as part of its appropriate response to the bullying, convene the IEP Team to determine whether, as a result of the effects of bullying, the student's needs have changed

such that the IEP is no longer designed to provide meaningful educational benefit. If the IEP is no longer designed to provide a meaningful educational benefit to the student, the IEP Team must then determine to what extent additional or different special education or related services are needed to address the student's individual needs; and revise the IEP accordingly." States and school districts are also encouraged in the letter to reevaluate their policies and practices addressing bullying. **For the reasons stated, I find no violation of Part B of the IDEA and corresponding Delaware law related to the provision of a free, appropriate public education.**

CORRECTIVE ACTION

Student Level Corrective Actions

1. The District shall begin implementation of Student's IEP upon receipt of this decision.
2. **On or before February 28, 2020**, the District shall develop a written plan of compensatory services to be provided to Student for the denial of services between December 9, 2019 through the date the District begins to implement the IEP as directed in this decision. The District shall submit a written explanation of how the amount of compensatory services were calculated. The District shall also submit a specific plan for delivering the compensatory services to Student, including a timeline for service delivery and how the services will be provided, in consultation with Parent. The written plan shall be provided to the Department's Director of the Exceptional Children Resources Work Group **on or before March 5, 2020**.
3. The District will hold an IEP team meeting to discuss and review the supports that have been put in place to address disruptive behaviors and bullying both on the bus and in the school and determine if they should be documented within the IEP. The IEP team will also discuss and determine to what extent additional or different special education or related services are needed to address the Student's individual needs and revise the IEP accordingly. The District shall perform these corrective actions and provide copies of the Notice of Meeting, IEP, and Prior Written Notice to the Director of the Exceptional Children's Resources **on or before February 28, 2020**.

School Level Corrective Actions

1. The School must provide professional development to all special education staff in the School, as well as to the School Administrators regarding the following topics:
 - a) informed written consent for the initial provision of special education and related services.
 - b) the contents of the U.S. Department of Education's Office of Special Education and Rehabilitative Services' Dear Colleague letter dated August 20, 2013

The District will provide evidence of this plan to the Director of the Exceptional Children's Resources on or before **February 28, 2020**. The professional development must be completed and the associated documentation (sign in sheet, agenda, copy of handouts, copy of Power Point etc.) must be sent to the Director of Exceptional Children's Resources by **March 5, 2020**.

/s/
Assigned Investigator



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

AUG 20 2013

Dear Colleague:

The U.S. Department of Education's Office of Special Education and Rehabilitative Services (OSERS) is committed to working with States to ensure that school districts provide all children with positive, safe, and nurturing school environments in which they can learn, develop, and participate. OSERS is issuing this letter to provide an overview of a school district's responsibilities under the Individuals with Disabilities Education Act (IDEA) to address bullying of students with disabilities.¹

As discussed in this letter, and consistent with prior Dear Colleague Letters the Department has published, 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.² However, even when situations do not rise to a level that constitutes a denial of FAPE, bullying can undermine a student's ability to achieve his or her full academic potential. Attached to this letter are specific strategies that school districts and schools³ can implement to effectively prevent and respond to bullying, and resources for obtaining additional information.

Bullying of any student by another student, for any reason, cannot be tolerated in our schools.⁴ Bullying is no longer dismissed as an ordinary part of growing up, and every effort should be made to structure environments and provide supports to students and staff so that bullying does not occur. Teachers and adults should respond quickly and consistently to bullying behavior and

¹ This letter is intended to supplement the July 25, 2000, joint Dear Colleague Letter from OSERS and the Department's Office for Civil Rights (OCR), which addressed disability harassment under Section 504 of the Rehabilitation Act of 1973 (Section 504), Title II of the Americans with Disabilities Act of 1990 (Title II of the ADA), and the IDEA (available at: <http://www.ed.gov/ocr/docs/disabharassltr.html>).

² Some bullying of students with disabilities may also constitute discriminatory harassment and trigger additional responsibilities under the civil rights laws that OCR enforces, including Section 504, Title II of the ADA, Title VI of the Civil Rights Act of 1964, and Title IX of the Education Amendments of 1972. See OCR's October 26, 2010, Dear Colleague Letter on Harassment and Bullying (available at: <http://www.ed.gov/ocr/letters/colleague-201010.html>).

³ In the context of this letter "school" includes public preschools; elementary, middle, and high schools; and public agencies, including the State Educational Agency (SEA), Educational Service Agencies (ESA), Local Educational Agencies (LEA), nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities. See 34 C.F.R. §300.33.

⁴ Although the focus of this letter is peer-to-peer bullying, it is important to acknowledge that it is also intolerable for teachers and school staff to be party to school bullying and disability harassment (*i.e.*, being active participants in bullying), or observers to school bullying without taking action to address the behavior. While teacher-student disability harassment also may constitute a denial of FAPE, those issues are beyond the scope of this letter. We recommend that States and school districts consult with legal counsel regarding their responsibilities and duties in cases of bullying that involve school personnel, including taking the matter seriously, and promptly addressing any problematic behaviors.

send a message that bullying is not acceptable. Intervening immediately to stop bullying on the spot can help ensure a safer school environment.

Bullying is characterized by aggression used within a relationship where the aggressor(s) has more real or perceived power than the target, and the aggression is repeated, or has the potential to be repeated, over time. Bullying can involve overt physical behavior or verbal, emotional, or social behaviors (*e.g.*, excluding someone from social activities, making threats, withdrawing attention, destroying someone's reputation) and can range from blatant aggression to far more subtle and covert behaviors. Cyberbullying, or bullying through electronic technology (*e.g.*, cell phones, computers, online/social media), can include offensive text messages or e-mails, rumors or embarrassing photos posted on social networking sites, or fake online profiles.

Addressing and reporting bullying is critical. Students who are targets of bullying behavior are more likely to experience lower academic achievement and aspirations, higher truancy rates, feelings of alienation from school, poor relationships with peers, loneliness, or depression.⁵ Bystanders, or those who only see or hear about bullying, also may be negatively affected as bullying tends to have harmful effects on overall school climate. Bullying can foster fear and disrespect and negatively affect the school experience, norms, and relationships of all students, families, and school personnel.⁶ The consequences may result in students changing their patterns of school participation or schools eliminating school activities (*e.g.*, dances, sporting events) where bullying has occurred. Teachers, school personnel, parents, and students should report bullying when they become aware of it.

Students with disabilities are disproportionately affected by bullying.⁷ For example, students with learning disabilities, attention deficit or hyperactivity disorder, and autism are more likely to be bullied than their peers.⁸ Any number of factors -- physical characteristics, processing and social skills, or intolerant environments -- may increase the risk that students with disabilities will be bullied. Due to the characteristics of their disabilities, students with intellectual, communication, processing, or emotional disabilities may not understand the extent to which bullying behaviors are harmful, or may be unable to make the situation known to an adult who can help. In circumstances involving a student who has not previously been identified as a child with a disability under the IDEA, bullying may also trigger a school's child find obligations under the IDEA. 34 C.F.R. §§300.111, 300.201.

Whether or not the bullying is related to the student's disability, any bullying of a student with a disability that results in the student not receiving meaningful educational benefit constitutes a

⁵ Gini G., & Pozzoli T. (2009). Association between bullying and psychosomatic problems: A meta-analysis. *Pediatrics*, 123(3):1059-1065.

⁶ O'Brennan, L. M., Bradshaw, C. P., & Sawyer, A. L. (2009). Examining developmental differences in the social-emotional problems among frequent bullies, victim, and bully/victims. *Psychology in the Schools*, 46(2), 100-115.

⁷ Swearer, S. M., Wang, C., Maag, J. M., Siebecker, A. B., & Frerichs, L. J. (2012). Understanding the bullying dynamic among students in special and general education. *Journal of School Psychology*, 50, 503-520.

⁸ Twyman, K. A., Saylor, C. F., Saia, D., Macias, M. M., Taylor, L. A., & Spratt, E. (2010). Bullying and ostracism experiences in children with special health care needs. *Journal of Developmental Behavioral Pediatrics*, 31, 1-8.

denial of FAPE under the IDEA that must be remedied.⁹ States and school districts have a responsibility under the IDEA, 20 U.S.C. § 1400, *et seq.*, to ensure that FAPE in the least restrictive environment (LRE) is made available to eligible students with disabilities. In order for a student to receive FAPE, the student's individualized education program (IEP) must be reasonably calculated to provide meaningful educational benefit.¹⁰

Schools have an obligation to ensure that a student with a disability who is the target of bullying behavior continues to receive FAPE in accordance with his or her IEP. The school should, as part of its appropriate response to the bullying, convene the IEP Team to determine whether, as a result of the effects of the bullying, the student's needs have changed such that the IEP is no longer designed to provide meaningful educational benefit. If the IEP is no longer designed to provide a meaningful educational benefit to the student, the IEP Team must then determine to what extent additional or different special education or related services are needed to address the student's individual needs; and revise the IEP accordingly. Additionally, parents have the right to request an IEP Team meeting at any time, and public agencies generally must grant a parental request for an IEP Team meeting where a student's needs may have changed as a result of bullying. The IDEA placement team (usually the same as the IEP Team) should exercise caution when considering a change in the placement or the location of services provided to the student with a disability who was the target of the bullying behavior and should keep the student in the original placement unless the student can no longer receive FAPE in the current LRE placement. While it may be appropriate to consider whether to change the placement of the child who was the target of the bullying behavior, placement teams should be aware that certain changes to the education program of a student with a disability (e.g., placement in a more restrictive "protected" setting to avoid bullying behavior) may constitute a denial of the IDEA's requirement that the school provide FAPE in the LRE. Moreover, schools may not attempt to resolve the bullying situation by unilaterally changing the frequency, duration, intensity, placement, or location of the student's special education and related services. These decisions must be made by the IEP Team and consistent with the IDEA provisions that address parental participation.

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 if additional supports and services are needed to address the inappropriate behavior. In addition, the IEP Team and other school personnel should consider examining the environment in which the bullying occurred to determine if changes to the environment are warranted.

As discussed above, any bullying of a student with a disability that results in the student not receiving meaningful educational benefit from the special education and related services provided by the school is a denial of FAPE. A student must feel safe in school in order to fulfill his or her full academic potential. We encourage States and school districts to alert Boards of Education, school administrators, teachers, and staff that bullying can result in a denial of FAPE

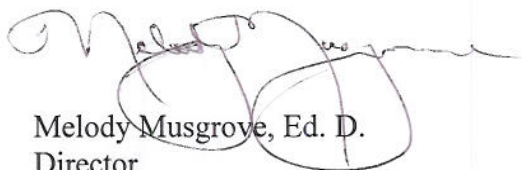
⁹ OCR also has authority to investigate complaints alleging denial of FAPE under Section 504 and Title II. See the July 25, 2000, joint Dear Colleague Letter on Disability Harassment; (available at: <http://www.ed.gov/ocr/docs/disabharassltr.html>); and OCR's October 26, 2010, Dear Colleague Letter on Harassment and Bullying (available at: <http://www.ed.gov/ocr/letters/colleague-201010.html>).

¹⁰ See *Hendrick Hudson Central Sch. Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176, 201 (1982).

for students with disabilities. We also encourage States and school districts to reevaluate their policies and practices addressing problematic behaviors, including bullying, in light of the information provided in this letter, as well as in OSERS' July 25, 2000, joint Dear Colleague Letter and OCR's October 26, 2010, Dear Colleague Letter. The enclosure to this letter, "Effective Evidence-based Practices for Preventing and Addressing Bullying," includes practices for use as part of any bullying prevention and intervention program to help ensure that school and classroom settings are positive, safe, and nurturing environments for all children and adults.

We look forward to continuing to work with you to ensure that students with disabilities have access to high-quality services in positive, safe, and respectful school environments.

Sincerely,



Melody Musgrove, Ed. D.
Director
Office of Special Education Programs



Michael K. Yudin
Acting Assistant Secretary

Enclosure: Effective Evidence-based Practices for
Preventing and Addressing Bullying