NY State

Federal Laws

Although no federal law directly addresses bullying, in some cases, bullying overlaps with discriminatory harassment when it is based on race, national origin, color, sex, age, disability, or religion. When bullying and harassment overlap, federally-funded schools (including colleges and universities) have an obligation to resolve the harassment. When the situation is not adequately resolved, the U.S. Department of Education’s Office for Civil Rights and the U.S. Department of Justice’s Civil Rights Division may be able to help.

Are there federal laws that apply to bullying?

At present, no federal law directly addresses bullying. In some cases, bullying overlaps with discriminatory harassment which is covered under federal civil rights laws enforced by the U.S. Department of Education (ED) and the U.S. Department of Justice (DOJ). No matter what label is used (e.g., bullying, hazing, teasing), schools are obligated by these laws to address conduct that is:

* Severe, pervasive or persistent
* Creates a hostile environment at school. That is, it is sufficiently serious that it interferes with or limits a student’s ability to participate in or benefit from the services, activities, or opportunities offered by a school
* Based on a student’s race, color, national origin, sex, disability, or religion\*
	+ Although the US Department of Education, under Title VI of the Civil Rights Act of 1964 does not directly cover religion, often religious based harassment is based on shared ancestry of ethnic characteristics which is covered. The US Department of Justice has jurisdiction over religion under Title IV of the Civil Rights Act of 1964.

What are the federal civil rights laws ED and DOJ enforce?

* A school that fails to respond appropriately to harassment of students based on a protected class may be violating one or more civil rights laws enforced by the Department of Education and the Department of Justice, including:
	+ Title IV and Title VI of the Civil Rights Act of 1964
	+ Title IX of the Education Amendments of 1972
	+ Section 504 of the Rehabilitation Act of 1973
	+ Titles II and III of the Americans with Disabilities Act
	+ Individuals with Disabilities Education Act (IDEA)

Do federal civil rights laws cover harassment of LGBT youth?

* Title IX and Title IV do not prohibit discrimination based solely on sexual orientation, but they protect all students, including students who are LGBT or perceived to be LGBT, from sex-based harassment.
* Harassment based on sex and sexual orientation are not mutually exclusive. When students are harassed based on their actual or perceived sexual orientation, they may also be subjected to forms of sex discrimination recognized under Title IX.

What is an example of a case were harassment based on sex and sexual orientation overlap?

* A female high school student was spit on, slammed into lockers, mocked, and routinely called names because she did not conform to feminine stereotypes and because of her sexual orientation. The student had short hair, a deep voice, and wore male clothing. After the harassment started, she told some classmates she was a lesbian, and the harassment worsened. The school described the harassment as “sexual orientation harassment” in its incident reports and did not take any action.
* In this case, the student was harassed based on her non-conformity to gender stereotypes. In this case, then, although the school labeled the incident as “sexual orientation harassment,” the harassment was also based on sex and covered under Title IX.

What are a school’s obligations regarding harassment based on protected classes?

Anyone can report harassing conduct to a school. When a school receives a complaint they must take certain steps to investigate and resolve the situation.

* Immediate and appropriate action to investigate or otherwise determine what happened.
* Inquiry must be prompt, thorough, and impartial.
* Interview targeted students, offending students, and witnesses, and maintain written documentation of investigation
* Communicate with targeted students regarding steps taken to end harassment
* Check in with targeted students to ensure that harassment has ceased
* When an investigation reveals that harassment has occurred, a school should take steps reasonably calculated to:
* End the harassment,
* Eliminate any hostile environment,
* Prevent harassment from recurring, and
* Prevent retaliation against the targeted student(s) or complainant(s).

What should a school do to resolve a harassment complaint?

* Appropriate responses will depend on the facts of each case.
* School must be an active participant in responding to harassment and should take reasonable steps when crafting remedies to minimize burdens on the targeted students.
* Possible responses include:
	+ Develop, revise, and publicize:
		- Policy prohibiting harassment and discrimination
		- Grievance procedures for students to file harassment complaints
		- contact information for Title IX/Section 504/Title VI coordinators
	+ Implement training for staff and administration on identifying and addressing harassment
	+ Provide monitors or additional adult supervision in areas where harassment occurs
	+ Determine consequences and services for harassers, including whether discipline is appropriate
	+ Limit interactions between harassers and targets
	+ Provide harassed student an additional opportunity to obtain a benefit that was denied (e.g., retaking a test/class).
	+ Provide services to a student who was denied a benefit (e.g., academic support services).

Are there resources for schools to assist with resolving harassment complaints?

The Department of Justice’s [Community Relations Service](http://www.justice.gov/crs/) is the Department's "peacemaker" for community conflicts and tensions arising from differences of race, color and national origin and to prevent and respond to violent hate crimes committed on the basis of: gender, gender identity, sexual orientation, religion, disability, race, color, and national origin. It is a free, impartial, confidential and voluntary Federal Agency that offers mediation, conciliation, technical assistance, and training.

What if the harassment continues?

If harassment persists, consider filing a formal grievance with the district and contacting the [U.S. Department of Education’s Office for Civil Rights](http://www2.ed.gov/about/offices/list/ocr/index.html) and from the[U.S. Department of Justice’s Civil Rights Division](http://www.justice.gov/crt/complaint/#three).

Resources:

<http://www.stopbullying.gov/laws/new-york.html>

<http://cyberbullying.us/>