PROBLEM BEHAVIORS:
A LEGAL PERSPECTIVE ON PREVENTION AND INTERVENTION

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PREVENTION THORUGH THE INDIVIDUALIZED EDUCATION PROGRAM (IEP)

1. Should the IEP address behavior?

Yes, if behavior is interfering with learning, it must be addressed in the IEP. The regulations put it this way:

> The IEP Team must—… In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior…. 34 C.F.R. §300.324(a)(2)(i).

2. Should we consider calling an IEP meeting to address behavior if problems persist?

If behavior problems persist, and are impacting the student's ability to receive a free appropriate public education (FAPE), then you may need to call an IEP meeting to review or revise the IEP.

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Even after an annual IEP Team meeting has been held, the IDEA requires that the IEP Team meet to revise the IEP as appropriate to address "[a]ny lack of expected progress toward the annual goals described in §300.320(a)(2), and in the general education curriculum, if appropriate." 34 C.F.R. § 300.324(b)(1)(ii)(A).

This, of course, is a judgment call. The judgment call should be driven by whether the behaviors are impacting the child's receipt of a FAPE. The U.S. Supreme Court in *Board of Education v. Rowley* set out a two-part test for determining FAPE, as follows:

> First, has the State complied with the procedures set forth in the Act? And second, is the IEP developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits? *Board of Education v. Rowley*, 102 S.Ct. 3034 (1982).

3. When does the law require positive behavioral intervention plans?

The U.S. Department of Education has issued the following guidance:

> The use of positive behavioral interventions and supports must be considered in the case of a child whose behavior impedes his or her learning or that of others. The requirement that a child with a disability receive, as appropriate, an FBA and a BIP and modifications designed to address the child's behavior now only applies to students whose behavior is a manifestation of their disability. However, FBAs and BIPs must also be used proactively if the IEP Team determines that they would be appropriate for the child. "For a child with a disability whose behavior impedes his or her learning or that of others, and for whom the IEP Team has decided that a BIP is appropriate, or for a child with a disability whose violation of the code of student conduct is a manifestation of the child's disability, the IEP Team must include a BIP in the child's IEP to address the behavioral needs of the child." Questions and Answers on Discipline Procedures (OSERS 2009).

4. What are the various ways that an IEP Team can address behavior?

This question was recently addressed by the U.S. Department of Education as follows:

> When a child's behavior impedes the child's learning or that of others, the IEP Team must consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior (34 CFR §300.324(a)(2)(i)). Additionally, the Team may address the behavior through annual goals in the IEP (34 CFR §300.320(a)(2)(i)). The child's IEP may include modifications in his or her program, support for his or

her teachers, and any related services necessary to achieve those behavioral goals (34 CFR §300.320(a)(4)). If the child needs a BIP to improve learning and socialization, the BIP can be included in the IEP and aligned with the goals in the IEP. ***Questions and Answers on Discipline Procedures***, Q/A E-3 (Revised June 2009).

New Mexico rules state:

> Public agencies are strongly encouraged to conduct functional behavioral assessments (FBAs) and integrate behavioral intervention plans (BIPs) into the IEPs for students who exhibit problem behaviors well before the behaviors result in proposed disciplinary actions for which FBAs and BIPs are required under the federal regulations. 6.31.2.11(F)(1) NMAC.

5. *School Board of the City of Norfolk v. Brown*, 56 IDELR 18 (E.D.Va. 2010)

The court found substantial evidence in the record to support the hearing officer's conclusion that the school should have developed a BIP and/or conducted a FBA prior to the imposition of long term discipline. The hearing officer and court called this a "child find" violation, noting that there was adequate reason to suspect disabilities in addition to the disability already identified (OHI). The court considered this both a failure to evaluate in all areas of suspected disability, and a failure to include necessary services in the IEP.

EFFECTIVE STRATEGIES AND INTERVENTIONS

6. *Waukee Community Sch. Dist. v. Douglas and Eva L.*; 51 IDELR 15 (S.D. Iowa 2008)

Issue: Were the District's behavioral interventions consistent with the FBA and researched based practices?

Result: No. In favor of the parents.

Summary:

The student received services as a student with intellectual disabilities. She demonstrated non-compliance and aggressive behavior. The district conducted an FBA and determined the "non-complaint behavior was maintained by an escape function, and her aggressive behavior was maintained by an attention-seeking function." The BIP included "(1) the use of a 'hand-over-hand' if [student] refuses to complete a task or demand and a break activity does not change her behavior." The student began to have significant behavioral problems. The use of hand-over-hand became more frequent, and regularly resulted in restraint. The IEP team revised the BIP to remove the hand-over-hand intervention and added time-out in response to noncompliance and aggression. The district provided the parents with information on the effective use of time-out, which recommended duration of one minute per year of age of the child.

However, when implementing the time-out procedure, the staff placed the student in time-out almost daily for durations of time well over the recommended one minute per year of age, resulting in several hours of time-out per day. The parent's alleged the BIP wasn't supported by the FBA, the interventions were inconsistent with research on appropriate practices, and were excessive in length and inconsistent with positive behavioral supports.

The Administrative Law Judge and the District Court agreed, stating:

> Both of [Student's] IEPs called for offering [Student] a break when she became non-complaint. The record also shows that the [District] at times used a hand-over-hand intervention in response to [Student's] inappropriate peer contact. Both parties' experts…testified that the use of a break time activity in response to non-compliance—an escape-based behavior—and the use of hand-over-hand intervention in response to peer aggression—an attention-seeking behavior—would serve to reinforce the problem behavior and would be contraindicated by the research…
>
> …
>
> [T]he duration of the time-out interventions used with [Student] was "excessive" in length, and the interventions were not otherwise effective…the preponderance of the evidence supports that the ALJ's finding that the duration of [Student's] time-outs were inconsistent with "applicable research and appropriate educational practices" and the "peer-reviewed research to the extent practicable."

7. *Kingsport City Sch. System v. J.R.*; 51 IDELR 77 (E.D. Tenn. 2008)

Issue: Did the District implement appropriate behavioral interventions?

Result: No. In favor of the parents.

Summary:

J.R. demonstrated difficulties with social interactions (e.g., profanity to peers). His BIP included the following:

> [JR] will refrain from name-calling and making inappropriate comments to peers.
> [JR] is to report any incidents to an adult.
> [JR] will refrain from contact with 'identified students' from previous incidents of alleged conflicts(s). This would include verbal/physical or third party contact…
> [JR] will report alleged incidents of threats in a responsible manner…

> The school will make provisions for scheduling regular meetings with identified contact individuals.
> The school will provide a supervised location for [JR] before and after regular school hours.
> The teachers will provide preferential seating when deemed appropriate.
> The school will provide proximity monitoring during class changes within the school day.
> The school will continue to contact Mr. or Mrs. Rentz to inform them of [JR's] progress, or if problems occur.

JR continued to use profanity/name calling with peers and the behavior resulted in physical altercations with peers. JR's parents requested Homebound Services for medical and psychological diagnosis, and requested a due process hearing. The IEP Team added a "shadow" to his BIP to facilitate his return to school. The shadow followed him throughout the school day and took notes on his behavior, but the notes were not utilized in IEP development.

The Court held the BIP was insufficient and denied JR a FAPE. A psychiatrist for JR testified the use of a shadow denied JR the opportunity to learn appropriate social interaction with peers. The ALJ determined the BIP was insufficient to improve JR's social interactions with peers because the use of the shadow impeded that goal and the reporting requirements placed the burden on JR and the District Court affirmed.

DISCIPLINE

8. What is our duty to provide services to a child with a disability when the child is removed on a short-term basis (10 days or less)?

"A public agency is only required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if it provides services to a child without disabilities who is similarly removed." 34 C.F.R. § 300.530(d)(3).

However, once you exceed 10 school days of removal during a school year, the district must provide services even during a short-term removal (10 days or less).

If the short-term removal will not result in a disciplinary change of placement, school personnel and at least one teacher decides the services to be provided, as follows:

> … school personnel, in consultation with at least one of the child's teachers, [must] determine the extent to which services are needed, as provided in § 300.101(a) [guarantee of a FAPE], so as to enable the child to continue to participate in the general education curriculum, although in

> another setting, and to progress toward meeting the goals set out in the child's IEP. 34 C.F.R. § 300.530(d)(4).

9. What happens if the removal will result in a disciplinary change of placement either because it is for more than 10 consecutive school days (long-term) or because of a pattern (short-term cumulative)?

First, the IDEA requires that the parent be notified of the decision and provided the procedural safeguards:

> On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the LEA must notify the parents of that decision, and provide the parents the procedural safeguards notice described in Section 300.504. 34 C.F.R. § 300.530(h).

Second, the school district, parent, and relevant members of the IEP Team must conduct a manifestation determination review:

> Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine—
>
> (i) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
>
> (ii) If the conduct in question was the direct result of the LEA's failure to implement the IEP.
>
> 34 C.F.R. § 300.530(e)(1).

Third, the IEP Team must address behavior:

Determination that behavior was a manifestation [no special circumstances]. 34 C.F.R. § 300.530(f)(1).	Determination that behavior was not a manifestation or when special circumstances exist (drugs, weapons, serious bodily injury). 34 C.F.R. § 300.530(d)(1)(ii).
If the LEA, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must— (1) Either— (i) Conduct a functional behavioral assessment, unless the LEA had	A child with a disability who is removed from the child's current placement pursuant to paragraphs (c) [authority to remove for behavior that is not a manifestation of the disability], or (g) [authority to remove for up to 45 school days for special circumstances] of this section must— ... (ii) Receive, as appropriate, a functional

conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or (ii) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior…	behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

Fourth, the IEP Team must determine services:

> If the removal is a change of placement under § 300.536 [change of placement because of disciplinary removals], the child's IEP Team determines appropriate services under paragraph (d)(1) of this section. 34 C.F.R. § 300.530(d)(5).

Determination that behavior was a manifestation [no special circumstances]. 34 C.F.R. § 300.530(f)(1).	Determination that behavior was not a manifestation or when special circumstances exist (drugs, weapons, serious bodily injury). 34 C.F.R. § 300.530(d)(1)(ii).
If the LEA, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must— (1) Either— (i) Conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or (ii) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior…	A child with a disability who is removed from the child's current placement pursuant to paragraphs (c) [authority to remove for behavior that is not a manifestation of the disability], or (g) [authority to remove for up to 45 school days for special circumstances] of this section must— ... (ii) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

Fifth, if the behavior is not a manifestation of the disability or the removal is for special circumstances, the IEP Team must determine the interim alternative educational setting for services (IAES) under § 300.530(c), (d)(5), and (g). The services provided in the IAES must be sufficient to confer a FAPE.

10. *District of Columbia v. Doe,* 54 IDELR 275 (D.C.Cir. 2010)

The school imposed a 45 day suspension on the student and assigned him to an alternative program. The IHO found that the behavior was not a manifestation of the child's disability, but found the length of the suspension to be excessive and lowered it to 11 days. The parents then claimed $30,000 in attorneys' fees as prevailing parties. The district sought a declaratory judgment that the IHO had exceeded his authority, and the district court agreed. But the Circuit Court reversed that decision, siding with the parent and the IHO. Key Quotes:

> It is true that the Superintendent has the last word regarding discipline imposed under the [district's regulations] for misconduct that is not a manifestation of the child's disability as long as the disciplinary action does not deprive the child of a FAPE……It is also true, however, that federal law and D.C. regulations empower an IDEA hearing officer to review "any decision regarding placement of a [disabled] child," [cite omitted], and also require the hearing officer to ensure the disciplinary action does not deprive a disabled child of a FAPE. Because we find that the hearing officer modified Doe's punishment only after finding that class exclusion would deny Doe a FAPE, we reject the District's argument that the hearing officer exceeded his authority.

BULLYING AND HARASSMENT

11. What is bullying and harassment?

Definitions of "bullying" and "harassment" vary from state to state. Check your state and local policies.

The Office for Civil Rights (OCR) described harassment in its October 26, 2010 *Dear Colleague Letter* as follows:

> Harassing conduct may take many forms, including verbal acts and name-calling; graphic and written statements, which may include use of cell phones or the Internet; or other conduct that may be physically threatening, harmful, or humiliating. ***Harassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents.*** 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. ***(Emphasis added.)***

12. How can I tell when behavior is sufficient to amount to bullying or harassment?

Check state law and local policy. The definitions tend to be very broad. Administrators have to rely on common sense and experience to make tough judgment calls. Look at the allegations, the conduct and the words used, not just whether someone uses the word "bully."

There is no magic formula. When in doubt, err on the side of caution. Administrators should keep in mind that OCR holds districts to a high standard of responsibility:

> A school is responsible for addressing harassment incidents **about which it knows or reasonably should have known.** In some situations, harassment may be in plain sight, widespread, or well-known to students and staff, such as harassment occurring in hallways, during academic or physical education classes, during extracurricular activities, at recess, on a school bus, or through graffiti in public areas. In these cases, the obvious signs of the harassment are sufficient to put the school on notice. In other situations, the school may become aware of misconduct, triggering an investigation that could lead to the discovery of additional incidents that, taken together, may constitute a hostile environment. In all cases, schools should have well-publicized policies prohibiting harassment and procedures for reporting and resolving complaints that will alert the school to incidents of harassment. ***(Emphasis added.)***

13. What should I do when I receive a report of bullying or harassment?

Check and follow both your policy and your Student Code of Conduct. Your Student Code of Conduct may address bullying beyond what is provided in policy.

Report it to the appropriate campus discipline authority.

The disciplinary authority should investigate and take appropriate action.

14. Eight Things Not To Say When Receiving a Bullying or Harassment Complaint or During a Bullying or Harassment Investigation!!!!

1. "That's just the way these kids are today."
2. "He just has to learn how to fend for himself!"
3. "If I have to look into every allegation of bullying on this campus, I won't have time to do anything else."
4. "Boys will be boys."
5. "Girls are just mean to each other at this age."
6. "There is nothing we can do about it – it's the media/parents/culture."

7. “We can’t protect them from everything.”
8. “Kids have always been bullied.”

Caution all staff not to say these things, either.

15. What can be said to the parents of the victim about how a bullying or harassment complaint was handled?

This issue was addressed in *OCR Dear Colleague Letter* (April 4, 2011), in the context of a discussion regarding sexual harassment of students, including sexual violence.

> Both parties must be notified, in writing, about the outcome of both the complaint and any appeal, 31 *i.e.*, whether harassment was found to have occurred. OCR recommends that schools provide the written determination of the final outcome to the complainant and the alleged perpetrator concurrently. Title IX does not require the school to notify the alleged perpetrator of the outcome before it notifies the complainant.
>
> Due to the intersection of Title IX and FERPA requirements, OCR recognizes that there may be confusion regarding what information a school may disclose to the complainant.32 FERPA generally prohibits the nonconsensual disclosure of personally identifiable information from a student’s “education record.” However, as stated in the *2001 Guidance*, FERPA permits a school to disclose to the harassed student information about the sanction imposed upon a student who was found to have engaged in harassment when the sanction directly relates to the harassed student. This includes an order that the harasser stay away from the harassed student, or that the harasser is prohibited from attending school for a period of time, or transferred to other classes or another residence hall.33 Disclosure of other information in the student’s “education record,” including information about sanctions that do not relate to the harassed student, may result in a violation of FERPA.

16. Do school administrators have liability concerns in dealing with bullying or harassment?

Yes. Claims of “failure to address or prevent bullying” are definitely on the rise. These claims are particularly prevalent if the bullying of the student was connected to the student’s gender, race or disability. When educators respond to known situations with “deliberate indifference,” they open the door to potential liability. *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629 (1999).

In *Davis*, the Supreme Court reviewed a claim of student-on-student sexual harassment and stated that liability may lie on the school district if:

1. the sexual harassment was so severe, pervasive and objectively offensive that it deprived the victim of access to educational opportunities and benefits;
2. school officials knew about it; and
3. responded with deliberate indifference.

17. Is bullying or harassment prohibited by federal law?

There is no federal law that specifically addresses "bullying," although several versions are currently pending in the federal Legislature. Currently, students may bring "bullying" claims under one or more federal civil rights laws, depending on the circumstances. If the bullying is based on a protected characteristic, it could fall under one of the following federal anti-discrimination laws:

- Title IX, which prohibits discrimination and harassment on the basis of sex and gender;
- Title VI, which prohibits discrimination and harassment on the basis of race, color or national origin; and
- Section 504 and the ADA, which prohibit discrimination and harassment on the basis of disability.

See OCR *Dear Colleague Letter* (October 26, 2010), located at: http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf.

Students could also claim that a school district's failure to protect them from harm violated their constitutional rights, which are brought as Section 1983 claims.

18. How can bullying by peers trigger school district liability for discrimination or harassment under federal anti-discrimination laws?

Federal anti-discrimination laws prohibit schools from discriminating against students by denying access to school programs, activities or services on the basis of the student's sex (Title IX), race (Title VI), or disability (Section 504 and ADA). In some circumstances, bullying or harassment of a student by his or her peers has been found by the courts to be so "severe or pervasive" that it effectively barred the student's access to school. If the school knew about the peer harassment but failed to reasonably respond or was "deliberately indifferent" to the harassment, the school may have violated federal law.

Thus, a bullying claim may implicate federal anti-discrimination laws where:

1) the student suffered peer-on-peer harassment;
2) the harassment was based on a protected characteristic (sex, race, or disability);
3) the harassment was sufficiently severe and pervasive enough to create a hostile educational environment;
4) the school knew of the harassment; but
5) the school did not reasonably respond, or was "deliberately indifferent."

Deliberate indifference is a fairly high standard. Federal courts have required plaintiffs to show that school personnel actually knew of the harassment and either completely ignored it, or responded unreasonably.

Most cases that address peer-on-peer harassment are filed under Title IX, which prohibits sexual harassment. This is interpreted very broadly and includes harassment based on gender and gender stereotypes. Recent Title IX harassment cases that have made headlines involve students who were bullied because they were gay or perceived to be gay. Facts suggesting that school personnel accepted gay slurs as normal, expected the victim to change his behavior, or did very little to stop the bullying, have been enough to suggest that the district was deliberately indifferent.

19. What would a student have to show in order to file a Section 1983 lawsuit alleging a constitutional violation?

A student would have to show he or she was deprived of a constitutional right, and that the deprivation was caused, at least in part, by a school employee's actions or a "custom or policy" of the school district itself. Most bullying claims are framed as deprivations of rights guaranteed under the Fourteenth Amendment which guarantees equal protection of laws and the right to "due process" prior to deprivation of life, liberty or bodily integrity.

For example, a student who was injured or assaulted by another student may claim that she was deprived of the right to bodily integrity, and that the deprivation was caused, in part, by the district's policy or custom of not intervening in student disputes. The student may sue the district as a whole, or an employee in his or her individual capacity. In the bullying context, Section 1983 lawsuits typically allege that the principal/teacher/coach/ knew the student was being bullied on a daily basis, but just stood by and did nothing. A showing of "deliberate indifference" or "conscious shocking" conduct is typically required before liability will be imposed.

20. Can a student bring a bullying or harassment claim under IDEA?

The IDEA is the federal law that requires school districts to provide a FAPE to disabled students who require specially designed instruction. The IDEA is not an anti-discrimination law like Section 504 or the ADA. The IDEA does not mention "bullying" or "harassment."

However, on July 25, 2000, the Office for Civil Rights and the Office of Special Education and Rehabilitative Services issued a joint "*Dear Colleague Letter*" concerning disability harassment and what laws apply. The letter identifies Section 504, the ADA, and the IDEA as applicable laws.

The letter defines disability harassment as:

> Intimidation 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.

The letter explains how disability harassment could lead to a denial of FAPE, as follows:

> Disability harassment that adversely affects an elementary or secondary student's education may also be a denial of FAPE under the IDEA, as well as Section 504 and Title II. The IDEA was enacted to ensure that recipients of IDEA funds make available to students with disabilities the appropriate special education and related services that enable them to access and benefit from public education. The specific services to be provided a student with a disability are set forth in the student's individualized education program (IEP), which is developed by a team that includes the student's parents, teachers and, where appropriate, the student. 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.

This letter is available at:
http://www2.ed.gov/print/about/offices/list/ocr/docs/disabharassltr.html

21. Does the U.S. Department of Education apply the same standard for investigating and responding to bullying or harassment claims as the federal courts?

No, the Department of Education's standard for investigating and responding to bullying or harassment claims is higher than the "deliberate indifference" standard applied by the federal courts. Deliberate indifference typically means that the school failed to respond reasonably to known harassment. The Department of Education, by contract, expects districts to prevent harassment from occurring in the first place, eliminate harassment of which it knows or should have known, and remediate its effects. As recipients of federal funds, school districts are subject to the standards enunciated by the U.S. Department of Education.

22. How does the Department of Education enforce these standards?

The Department's Office for Civil Rights (OCR) is responsible for enforcing anti-discrimination laws in the school system. OCR has jurisdiction over discrimination and harassment claims under Title IX (sex/gender), Title VI (race, color, or national origin), and Section 504 and Title II of the ADA (disability). Bullying claims could fall under OCR's jurisdiction if the bullying is harassment based on one of these protected characteristics.

In a recent investigation, OCR explained as follows:

A District may be held liable under Section 504 and Title II for student-on-student disability harassment if it was aware of the harassment, or in the exercise of reasonable care should have been aware of the harassment, but failed to take immediate and appropriate action to address the harassment and prevent its recurrence. *OCR Investigation*, 56 IDELR 84 (July 12, 2010).

23. New Guidance from OCR

On October 26, 2010, the Office for Civil Rights issued new guidance ("*Dear Colleague Letter*") regarding bullying which makes two things clear:

1. Districts must be conscious of whether any alleged bullying, teasing or hazing might also involve civil rights violations, meaning harassment of a student based on his or her membership in a category protected by state and federal law, such as gender, race, national origin, or disability.

    a. OCR does not have jurisdiction over claims based on sexual orientation, *but* the OCR guidance notes that some anti-gay actions amount to gender-based harassment in violation of Title IX.

b. OCR does not enforce anti-discrimination laws pertaining to religion, *but* the OCR guidance states that the agency would have jurisdiction of such claims if the religious-based harassment could arguably amount to national origin or ethnic discrimination.

2. Administrators "should look beyond simply disciplining the perpetrators" and must take a comprehensive approach to addressing and eliminating unlawful harassment.

This new guidance sets a higher bar than previously existed to promptly address, remediate, and prevent discriminatory harassment (which can take the form of bullying).

The guidance can be located at:
http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf.

24. What does OCR mean by a "comprehensive approach" to addressing and eliminating bullying or unlawful harassment?

The recent guidance from OCR emphasizes that it is very important for school officials to be proactive in an effort to prevent bullying and harassment. Here are some thoughts:

- Communicate to students and parents that making or posting threats, even online, even as a "joke," could result in discipline.
- Encourage kids to report threats.
- Provide an anonymous or private means for kids to make a report.
- Train your students on the difference between "snitching" and "seeking help." Snitching is informing on someone for personal gain. Seeking help is attempting to stop someone from being hurt.
- Consider having kids anonymously report people they believe to be victims of bullying.
- Get parents involved.
- Support the victims of bullying or cyberbullying by finding ways to resolve the situation.
- Be sure the policies and procedures are well-distributed and easy to use or access.
- Involve law enforcement as needed.

25. Three-step response recommended by OCR for handling unlawful harassment

OCR's Guidance states that "if an investigation reveals that discriminatory harassment has occurred, districts must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects,

and prevent the harassment from recurring." These steps could include the following:

- separate the accused harasser and the target
- provide counseling for the target and/or harasser
- take appropriate disciplinary action against the harasser
- provide training to students, staff, and parents to ensure that all students, their families, and school staff can recognize harassment if it recurs and know how to respond
- provide additional services to the student who was harassed in order to address the effects of the harassment
- include the issuance of new policies against harassment and new procedures by which students, parents, and employees may report allegations of harassment
- make sure that the harassed students and their families know how to report any subsequent problems, conduct follow-up inquiries to see if there have been any new incidents or any instances of retaliation, and
- respond promptly and appropriately to address continuing or new problems.

Note: these steps should not punish the victim or deny his or her right to FAPE. For example, removing the victim from a class or campus against the student's wishes would wrongfully punish the victim and may implicate FAPE.

26. Top 10 Things To Take Away Regarding Bullying

1. Set the Right Tone on Your Campus and with Your Parents.
2. Sweat the Small Stuff.
3. Be Proactive Not Only Reactive.
4. Consider Options Beyond Punishment.
5. Incorporate Your Parents In Your Programs.
6. Involve Police Only When Necessary.
7. Know and Follow Your Policy.
8. Know and Follow Your Student Code of Conduct.
9. Document Your Actions
10. When a Parent or Parent Representative Begins to Allege Failure to Address Bullying or Harassment, Contact Legal Counsel.

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