

# Your Right to be Free From Discrimination based on Disability

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## Your right to a discrimination-free learning environment means that you cannot be bullied and harassed because of your disability.

- Bullying and harassment on the basis of your disability that negatively affects your education is discriminatory and illegal. Harassment becomes discriminatory and illegal when it is: (1) directed at you because of your disability; (2) severe, pervasive, and objectively offensive; and (3) negatively affects your education. It is important that, if you have been bullied or harassed, you or your parents tell a school official or officials who has the authority to intervene (a dean, principal, or superintendent). Once a school knows that you are being discriminatorily bullied or harassed, the school must take steps to stop and prevent the bullying or harassment. This does not mean that schools are responsible for stopping bullying or harassment. It means that schools must take reasonable actions to eliminate it.

## Here are some examples of discriminatory and illegal bullying and harassment based on disability:

- Several students continually remark out loud to other students during class that a student with dyslexia is “retarded” or “deaf and dumb” and does not belong in the class; as a result, the harassed student has difficulty doing work in class and her grades decline.
- A student repeatedly places classroom furniture or other objects in the path of classmates who use wheelchairs, purposefully impeding the classmates’ ability to enter the classroom.
- A teacher subjects a student to inappropriate physical restraint because of conduct related to his disability, with the result that the student tries to avoid school through increased absences.
- A school administrator repeatedly denies a student with a disability access to lunch, field trips, assemblies, and extracurricular activities as punishment for taking time off from school for required treatment related to the student’s disability.
- Students continually taunt or belittle a student

with an intellectual disability by mocking and intimidating him so he does not participate in class.<sup>1</sup>

## You have a right to receive an education that “accounts” for your disability and to learn free from discrimination.

- You have all the same rights as other students, and many additional rights.
- If you are a student with a disability that interferes with your learning, you have the right to a “free appropriate public education” (commonly called a FAPE), which is a planned program of education and special services that takes account of your individual needs.
- You have a right to “specially designed instruction” – meaning that teachers must adapt the content (what is taught), methodology (how it is taught), or delivery of the curriculum to account for your disability.
- You have a right to “related services,” such as Occupational Therapy, Speech Therapy, Psychological Services, Social Work Services, and more, that you need to be successful in school.
- You have a right to receive all of the special instruction, services, and supports set forth in your Individualized Educational Program (IEP).<sup>2</sup>
- Your right to receive special education and related services must be provided by your school free of charge to your family. Your school may not ask your family to use private insurance to pay for an evaluation or service if there is any cost involved.
- If you are a student with a physical or mental impairment that substantially limits life activities such as your ability to care for yourself, perform manual tasks, see, hear, eat, sleep, walk, stand, lift, bend, speak, breathe, learn, read, concentrate, think, communicate, or work, then you are entitled to accommodations in school so that you receive the same educational benefits and opportunities as other students.<sup>3</sup>

### **You have a right to make “meaningful progress” in school in accordance with your potential.**

- If you have an IEP, you have a right to an appropriate program that allows you to make meaningful educational progress, and prepares you for employment and independent living. Merely because you are passing from grade to grade does not mean that the program is appropriate for you. You have the right to a program that ensures that you make educational progress in relation to your potential.
- You have the right to revise your IEP as necessary to ensure that you are making meaningful progress.

### **You have the right to be educated in the least restrictive environment and to access the general education curriculum to the greatest extent possible.**

- You have a right to be educated in “least restrictive environment” (commonly called the LRE), which means you must be educated in the regular education setting with your non-disabled peers to the maximum extent possible. This principle of “inclusion” means that you should not be in special classrooms or segregated from your non-disabled peers unless absolutely necessary. Any means of removing you from the regular education environment must occur only when the nature or severity of your disability is such that education in regular classes with the use of extra supports and services is not possible or will not ensure that you make progress in the general education curriculum.
- Your school must take steps to provide you with an education that allows you to make progress in the general education curriculum.
- Even if you are educated in a separate classroom in order to meet your individual learning needs, you should have opportunities to interact with non-disabled peers throughout the day through electives, lunch, gym, and extracurricular activities.

### **You have the right to be free from punishment for behavior that is caused by or related to your disability.**

- A school cannot punish you more harshly than it punishes children without disabilities under the same circumstances.
- In general, a school cannot punish you because of behavior caused by or related to your disability. Except in limited circumstances, a school cannot “change [your] educational placement” for violating a school rule when the conduct in question was a “manifestation” of your disability:
  - A “change in placement” for disciplinary purposes is either: (1) an exclusion from school for ten (10) or more school days in a row or

(2) a “pattern” of excluding you from school. In Pennsylvania, more than fifteen (15) total days of disciplinary exclusion in a school year, even if not in a row, is a “pattern” of exclusion, which is a change in placement.

- Behavior is a “manifestation” of your disability if the behavior: (1) was caused by your disability; (2) was substantially related to your disability; or (3) resulted from the school’s failure to implement your IEP.
- In limited circumstances involving weapons, drugs, and serious bodily injury, your school may change your educational placement for behavior that was a manifestation of your disability—and even then for only forty-five (45) days.
- Before a school may change your educational placement for violating a school rule, your IEP Team, which should include you, must review the IEP to determine whether or not the conduct in question was caused by or related to your disability. This is called a “manifestation determination review” (MDR) and team members must consider all relevant information regarding the child’s disability and its possible relationship to the behavior.<sup>4</sup>
- These protections are essential to ensuring that you are not excluded from school because you have a disability. If your school punishes you for behavior that is caused by or related to your disability, it is a form of discrimination.

### **Your parent or guardian has the right to participate in the special education process and to consent to or challenge any proposed changes in placement or services.**

- Your parent or parents<sup>5</sup> has the right to:
  - (1) be a member of the team that develops your educational program (IEP); (2) attend IEP Team meetings about your educational program and whether or not it is working to help you make educational progress; (3) receive written notice before your school wishes to evaluate you for eligibility or to change your educational program or placement; (4) understand every document your school asks your parent to sign; (5) disagree with your school about your educational program or placement, or its implementation, and to contest decisions made by your school with respect to your program or placement in mediation or hearing; (6) know and understand their rights in their preferred language including having documents translated into a language you understand and having an interpreter at IEP meetings; and (7) have access to all of your educational records.

For more information on your rights as a student with a disability, see Education Law Center's publication, *The Right to Special Education in Pennsylvania: A Guide for Parents and Advocates* available at [http://www.elc-pa.org/wp-content/uploads/2014/03/ELC\\_Right\\_to\\_SpecialEducation\\_revisedlinks\\_March2014.pdf](http://www.elc-pa.org/wp-content/uploads/2014/03/ELC_Right_to_SpecialEducation_revisedlinks_March2014.pdf).

## ENDNOTES

- 1 U.S. Dep't of Educ., Office of Civil Rights, Dear Colleague Letter, Prohibited Disability Harassment: Reminder of Responsibilities under Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act (July 25, 2000), available at <https://www2.ed.gov/about/offices/list/ocr/docs/disabharassltr.html>.
- 2 Individuals with Disabilities Education Act (IDEA) 20 U.S.C. § 1400, et seq. 22 Pa. Code § 14, et seq. (related to special education);
- 3 Section 504 of the Rehabilitation Act (Section 504), 29 U.S.C. § 701, et seq. 22 Pa. Code § 15, et seq. (related to handicapped students protected by Section 504) and Americans with Disabilities Act (ADA) 42 U.S.C. § 12101, et seq.
- 4 See 34 C.F.R. §300.523
- 5 Under the IDEA, a parent means a biological or adoptive parent; a foster parent; an individual who has the authority to act as the child's parent or who has the authority to make education decisions for the child (such as an EDM); a family member with whom the child lives who is acting as a parent (such as a grandparent or stepparent); a guardian who is legally responsible for the child's welfare (but not any employee of a child welfare agency); or a surrogate parent assigned by the local educational agency (such as the school district or charter school) or the early intervention agency or appointed by a court (known as "Educational Decision Maker"). See 34 CFR 300.30 and Pa. P.J.C.P. No. 147 and 1147. In Pennsylvania, an IDEA Parent continues to serve in this role until the student is 21 years old or graduates from high school.

*The information presented is not legal advice and should not be relied on as such. Every situation is different. To learn about how these laws may apply in your particular situation, please contact an attorney of your choice or contact the Education Law Center for a referral.*