



# FACT SHEET

## THE RIGHT TO BE FREE FROM BULLYING AND HARASSMENT

August 2023

All students have the right to be free from bullying and harassment in school – whether it is verbal, written, graphic, physical, or online. All forms of bullying and harassment are not permitted and require your school to investigate and intervene to ensure that the bullying and harassment does not continue.

Data and surveys on reports of bullying and harassment show that students are disproportionately bullied on the basis of race, LGBTQ identity, and disability.<sup>1</sup> The problem must be addressed promptly, as students who are bullied are at increased risk of experiencing health problems and academic struggles and are more likely to drop out of school.<sup>2</sup>

For more detailed information regarding student rights to be free from bullying and harassment, please see ELC's guide and advocacy toolkit, [What to Do When Your Child Is Bullied or Harassed: A Parent's Guide to Advocacy in Pennsylvania Public Schools](#). This guide includes sample letters, complaint forms, and other tools.

This fact sheet is also available in [Spanish](#) and [Chinese](#).

### WHAT IS BULLYING?

In Pennsylvania, a child meets the legal definition of being bullied if all the following boxes can be checked:

- Another student or group of students did something or said something highly offensive;
- The other student did what they did on purpose (“intentional act”);
- The other student’s action(s) took place in school (including virtual school), on school property, at a bus stop, or at a school event;
- The other student’s actions are severe, something that many students do to the victim or happens often to students in the school, and/or something that the other student did repeatedly;
- The other student’s conduct is so significant that it makes a big difference in the victim’s education, creates a threatening environment for the victim, or keeps the school from running normally.<sup>3</sup>

## WHAT IS HARASSMENT?

Harassment occurs if other students are targeting your child because they are a member of a “protected class,” which could include race, disability, ancestry, national origin (including immigration status and limited English proficiency), religion, sex (which includes gender identity and expression and sexual orientation, as well as sexual harassment), or due to use of a support animal.<sup>4</sup>

## WHAT IS THE DIFFERENCE BETWEEN BULLYING AND HARASSMENT?

The key difference between bullying and harassment is WHY other students are targeting the student being bullied. If other students are targeting your child because they are a member of a “protected class,” then your child may be experiencing harassment. Keep in mind that certain insults or statements based on stereotyping can be signals that they are targeting your child because your child has traits of a protected class. Some cities and school districts also provide legal protection on other bases as well. For example, the School District of Philadelphia specifically lists English language proficiency, socioeconomic status, and political beliefs as protected classes.<sup>5</sup>

## DOES MY SCHOOL HAVE AN OBLIGATION TO ADDRESS BULLYING OR HARASSMENT?

Yes. Teachers, administrators, and staff must report bullying or harassment they see. Schools have a legal duty to investigate and take action to keep children safe. This includes providing supports and interventions when bullying or harassment occurs outside of school (including on social media) if it is substantially interfering with your child’s education or causing a threatening environment.<sup>6</sup> Schools must also ensure that bullying and harassment are addressed to support student attendance.<sup>7</sup> Finally, schools have additional specific obligations to ensure a free, appropriate public education for students with disabilities.

Pennsylvania law also requires public schools to adopt a policy or amend their existing policy relating to bullying and incorporate the policy into the school entity’s code of student conduct. The policy must set forth disciplinary consequences for bullying and may provide for prevention, intervention, and education programs. The policy must also identify appropriate school staff to receive reports of incidents of alleged bullying. Each school entity must review its policy every three years.<sup>8</sup>

## WHAT CAN I DO IF MY CHILD IS BEING BULLIED OR HARASSED?

It is important to promptly report any bullying and harassment. You should keep notes that include: when the bullying takes place, details about what the other students say or do (including any screenshots), details about why the bully is discriminating against your child, names of the people targeting your child, and details about when and to whom you reported the bullying. Submit this information to the staff person responsible for investigating bullying and harassment complaints at your child’s school. You should use

your school's complaint form or, if your school does not have one, you can use our [checklist and sample complaint](#). If you are not satisfied with the school's investigation of your complaint, you can use the school's appeal process. You can also testify before the school board and ask them to take action.

You should also ask the school to create a safety plan if you are concerned for your child's safety. For examples of safety plans and information on other legal options if your school is not being helpful, see the advocacy tools in [ELC's parent guide](#).

You also have the option of submitting a complaint regarding harassment to the state civil rights agency, the Pennsylvania Human Relations Commission (PHRC), and/or to the U.S. Department of Education's Office of Civil Rights (OCR). Please see the advocacy tools in [ELC's parent guide](#) for further information and examples.

If your child is being disciplined for conduct or behavior that they engaged in as a response to bullying or harassment, you should raise this issue to the school and share your records of the bullying and harassment and any requests for an investigation. Please see ELC's [toolkit on suspensions and expulsions](#) for more information.

### WHAT CAN I DO IF MY CHILD WITH A DISABILITY IS BEING BULLIED OR HARASSED?

If your child with a disability is being bullied or harassed, you can follow the steps listed above. In addition, you should send a written request for an emergency meeting to the child's IEP team or 504 Plan team. This should be sent to the IEP team or 504 Plan team and you should copy the principal and the director of special education. During that meeting, you should discuss the bullying and harassment incidents, what your child needs, and what the school should do to address the harassment. If bullying or harassment has interfered with your child's progress in school, consider making changes to the child's IEP, conducting a new functional behavioral assessment, or revising a positive behavior support plan. See our [guide](#) on *The Right to Special Education in Pennsylvania* for additional legal options.

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The Education Law Center-PA (ELC) is a nonprofit, legal advocacy organization with offices in Philadelphia and Pittsburgh, dedicated to ensuring that all children in Pennsylvania have access to a quality public education. Through legal representation, impact litigation, community engagement, and policy advocacy, ELC advances the rights of underserved children, including children living in poverty, children of color, children in the foster care and juvenile justice systems, children with disabilities, English learners, LGBTQ students, and children experiencing homelessness.

ELC's publications provide a general statement of the law. However, each situation is different. If questions remain about how the law applies to a particular situation, contact ELC's Helpline for information and advice – visit [www.elc-pa.org/contact](http://www.elc-pa.org/contact) or call 215-238-6970 (Eastern and Central PA) or 412-258-2120 (Western PA) – or contact another attorney of your choice.

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<sup>1</sup> Rose, C. A., & Gage, N. A., Exploring the Involvement of Bullying Among Students with Disabilities Over Time. *Exceptional Children*, 83(3), 298-314 (2017). <https://doi.org/10.1177/0014402916667587>; U.S. Dept. Of Educ., 2015-2016 Civil Rights Data Collection: School Climate and Safety Report (2018), <https://ocrdata.ed.gov/assets/downloads/school-climate-and-safety.pdf>.

<sup>2</sup> See *Preventing Bullying Through Science, Policy, and Practice* 115-29 (Frederick Rivara and Suzanne Le Menestrel, eds. 2016) (finding that students who are bullied are more likely to experience depression, anxiety, and feelings of loneliness); Jaana Juvonen, *et al.*, *Bullying Experiences and Compromised Academic Performance Across Middle School Grades*, 31 *Journal of Early Adolescence* 152, 167 (2011) (noting how poor academic performance may manifest for bullied youth).

<sup>3</sup> 24 Pa. Stat. Ann. § 13-1303.1-A.

<sup>4</sup> See 43 Pa. Stat. Ann. § 955 (West); 42 U.S.C.A. § 2000d; 42 U.S.C.A. § 12182; 20 U.S.C.A. § 1681; *Davis Next Friend LaShonda D. v. Monroe Cty. Bd. of Educ.*, 526 U.S. 629 (1999).

<sup>5</sup> *The School Dist. of Phila.*, No. 248, 2 (2018).

<sup>6</sup> *Id.* See also *MacLean v. Borough of Hellertown*, No. 5:17-cv-02085-LKC (E.D. Pa. 2018) (plaintiff was subject to racial discrimination and harassment, which led to monetary settlement and injunctive relief where the school had to provide an anti-bullying program and anti-bias training); *Wible v. School District of Philadelphia*, No. 15-043169 (Phila. Cty. Ct. of Comm. Pls. 2018) (finding that school district violated Pennsylvania's antidiscrimination statute and acted with deliberate indifference to the bullying experienced by plaintiff, who was harassed for multiple years due to her gender presentation and not conforming to gender stereotypes); *Evancho, et al. v. Pine-Richland School District*, No. 2:16-cv-01537 (W.D. Pa. 2016) (complaint by plaintiff who was transgender and not permitted by the school district to use her preferred bathroom resulted in settlement and injunctive relief, where the school district rescinded its bathroom policy and updated its nondiscrimination policy to include gender identity); *United States v. School District of Philadelphia*, No. 10-cv-7301-SD (E.D. Pa. 2010) (U.S. Department of Justice's complaint alleging that school district failed to stop verbal and physical harassment against Asian students resulted in settlement, where school district agreed to address the harassment by implementing anti-harassment policies, training staff, and collecting data on complaints); *Enright v. Springfield School District*, No. 464, No. 04-cv-1653-JCJ (E.D. Pa. 2006) (school district found responsible under federal laws for sexual harassment of a young girl with a disability while on a school bus).

<sup>7</sup> See 24 P.S. §§ 13-1326 - 13-1354.

<sup>8</sup> 24 P.S. § 13-1303.1-A and Pa. Code § 12.3(c).