



## Too much? Too little? Too late? U.S. Department of Education Advice on Harassment in Schools

by Amy J. Borman

ATTENTION SCHOOL ADMINISTRATORS: OPERATING UNDER  
YOUR CURRENT ANTI-BULLYING AND HARASSMENT  
POLICIES MAY NOT BE ENOUGH!

On October 26, 2010, the U.S. Department of Education's Office for Civil Rights issued an advisory letter by Russlyn Ali, assistant education secretary for civil rights, addressing requirements for when a school responds to harassment. While Ali commends schools for their implementation of anti-bullying policies, she stresses that these policies might not be enough. Specifically, a school's anti-bullying policy might not encompass all of the school's responsibilities to students who are victims of discriminatory harassment.

According to Ali, regardless of whether the conduct is classified as bullying, teasing or harassment, if the conduct is based on race, color, national origin, sex or disability it is discriminatory harassment and falls under federal civil rights statutes.

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About the photo: Associate Patrick A. Sadowski at our new Findlay office.



Under these federal civil rights statutes, it is not enough for the school to discipline a discriminatory harasser. The school also must eliminate the hostile environment created by the harassment, address its effects and take steps to ensure that the harassment does not recur.

Ali illustrates how a school can fulfill these responsibilities through various hypothetical situations. One such situation concerns the harassment of a gay high school student. The student was called names, physically assaulted and threatened, in part, because he did not conform to the stereotypical norms of how teenage boys are expected to act. The harassment ultimately drove the student to withdraw from extracurricular activities. The school responded by reprimanding the harassers consistent with its anti-bullying policy.

According to the advisory letter, this was not enough. Because the student identified himself as gay, the school failed to investigate whether the harassment was sex-based discrimination. Title IX prohibits harassment based on sex or sex-stereotyping. When a student is harassed for his lesbian, gay, bisexual, or transgender (LGBT) status, that harassment may also be based on the student's failure to act as his peers believe a "boy" should act. Even though the student did not identify the harassment as sex-discrimination, the school had a duty to investigate and determine whether the student was subjected to gender-based harassment and had rights under Title IX.

In this situation, because the harassment was based in part on sex-stereotyping it falls under Title IX. Therefore, the school's responsibilities included an obligation to take immediate action, eliminate the hostile environment and prevent it from recurring. The school could have satisfied these obligations by giving notice to the student's teachers about the harassment, aggressively monitoring of the places where the harassment occurred by school personnel, training school personnel on the school's discrimination policies and providing school wide education on civil rights and tolerance.

So what? What happens if, like in the above hypothetical, the school simply follows its current anti-bullying policy and disregards the advisory letter?

Schools could lose federal money. At a press conference addressing the release of the advisory letter on October 26, 2010, Ali explained that in extreme situations, a school could lose federal money if it failed to comply with federal civil rights laws, including, the advisory letter.

While the advisory letter does not make any radical legal changes, it is the most comprehensive explanation on how civil rights statutes apply in the context of harassment in schools.

In light of this new guidance, schools are encouraged to reevaluate their anti-bullying and harassment policies and procedures to ensure that they comply with federal civil rights laws. While the letter is geared towards elementary and secondary schools, it specifically states that its legal principles also apply to post secondary institutions. Therefore, colleges and universities are also encouraged to reevaluate their anti-bullying and harassment policies.

For additional information on anti-bullying policies and civil rights, there are several articles available which include.

- "News Analysis: ED Bullies Schools Over Bullying," *The Education Gadfly* Volume 10, Number 40. October 28, 2010

- “Anti-Gay Bullying May Violate Civil Rights. Ed. Dept. Warns,” by Christine A. Samuels, *Politics K-12 Blog*, October 26, 2010, [blogs.edweek.org/edweek/campaign-k-12/2010/10/sexual\\_orientation\\_harassment.html](http://blogs.edweek.org/edweek/campaign-k-12/2010/10/sexual_orientation_harassment.html).
- "Groups Empower LGBT Students, Allies and Other School Community Members to Build a Record of Bullying, Harassment, or Discrimination," National Black Justice Coalition's web site, September 28, 2010, [www.nbjc.org/news/glsen-pflag-launch-claim.html](http://www.nbjc.org/news/glsen-pflag-launch-claim.html).
- *Jarron Draper v. Atlanta Public School District, U.S. District Court, Georgia*, 2008.
- *The Boston Globe*, "Nine Teens Charged in Girl's Bullying," March 30, 2010.

*Should you have any questions or concerns about your anti-bullying policy, please contact Ms. Borman at our Columbus office (614-564-1445).*



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