

Responding to Discriminatory Harassment and Bias at School

Perhaps you receive a report that a student is being called racial slurs and has had their religious headscarf pulled off on the school bus, or perhaps you receive a HIB complaint alleging a student is being mocked for their disability. What are your next steps? When does a harassment, intimidation, and bullying (HIB) incident or complaint indicate discrimination may be occurring, and if this is the case, what is your school district's legal obligation to respond? These are some of the most common questions we hear from educators and parents.

This training handout will help school districts¹ distinguish between HIB and discriminatory harassment in order to properly respond, and it will outline relevant local processes, tools, and best practices. It will also address some of the most common issues arising from the Equity and Civil Rights Office's discriminatory harassment investigations and outreach to school districts.

Key Definitions

Harassment can take many forms, such as threats, spreading rumors, name-calling, derogatory jokes, gestures, drawings or cartoons, physical assault, or any other harmful or humiliating conduct. It can be directed at an individual or an entire protected class, does not require an intent to harm, and can occur as a one-time incident or as a series of smaller acts. However, two forms of harassment have specific legal definitions.

Harassment, Intimidation, and Bullying (HIB)²

HIB is defined as any intentional electronic, written, verbal, or physical act including, but not limited to, one shown to be motivated by any characteristic in Washington's education nondiscrimination laws or other distinguishing characteristics, when the intentional electronic, written, verbal, or physical act:

- Physically harms a student or damages the student's property;
- Has the effect of substantially interfering with a student's education;
- Is so severe, persistent, or pervasive that it creates an intimidating or threatening educational environment; or
- Has the effect of substantially disrupting the orderly operation of the school.

¹ This training handout references "school districts," but this training and referenced legal obligations apply to all LEAs, including charter schools.

² RCW [28A.600.477](#).



Each school district is required to adopt a HIB policy and procedure that incorporates WSSDA’s model anti-bullying policy and procedure: 3207 and 3207P.³

Discriminatory Harassment

Bullying or harassing conduct rises to the level of discriminatory harassment⁴ when it (1) is based on a student’s **protected class** and (2) creates a **hostile environment**. Discriminatory harassment can involve conduct between students, employee-to-student conduct, and conduct involving school visitors—provided the conduct occurs during a school-sponsored program or activity or if the impact of off-campus conduct has created a hostile environment for students at school.⁵

Protected Classes in Washington

A protected class is a group of people who share common characteristics and who are protected from discrimination and harassment based on actual or perceived membership in those classes under federal or state law. The following are protected classes under Washington law:

- Race and color
- National origin
- Religion and creed
- Sex
- Disability
- Sexual orientation
- Gender expression
- Gender identity
- Veteran or military status
- Use of a trained dog guide or service animal

Hostile Environment

Harassment creates a hostile environment when the conduct is so **severe, pervasive, or persistent** that it limits a student’s ability to participate in, or benefit from, the school’s services, activities, or opportunities. A hostile educational environment can impact a student’s school life in any number of ways.

³This training will not cover a district’s obligation to respond under its HIB policy and procedure. However, it is critical to understand how to distinguish incidents of HIB from incidents of discriminatory harassment, to ensure that your school district is applying and following the correct procedure(s) in response.

⁴ This training will not cover sexual harassment, since it is subject to a different set of definitions, policies/procedures, and laws and regulations. For more information about responding to sexual harassment, review [OSPI’s Bulletin No. 058-20](#) or the other resources on the Equity and Civil Rights Office’s [website](#), which include a recent [webinar](#).

⁵ Additional information about a school district’s obligation to respond to off-campus conduct can be found on page 11 of this handout.

For example, a student being impacted by a hostile environment might experience physical illness or anxiety, perform more poorly in class, quit extracurricular activities, miss class more frequently, or start to misbehave. As a result, determining whether a hostile environment exists for a particular student should always be an individualized, case-specific analysis.

Responding to Discriminatory Harassment⁶

Discriminatory harassment is established by a preponderance of evidence showing (1) a student was harassed based on their actual or perceived membership in a protected class; (2) the harassment was sufficiently serious to create a hostile environment; (3) the school district knew, or should have known, about the harassment; and (4) the district did not respond appropriately.

If an investigation reveals that the harassment was based on a student's actual or perceived membership in a protected class *and* created a hostile environment, an appropriate response must include prompt and appropriate action to investigate and prompt and effective steps reasonably calculated to end the harassment; eliminate the hostile environment; prevent its recurrence; and, as appropriate, remedy its effects.

Remember, the label used to describe an incident (e.g., HIB, bullying, hazing, teasing, etc.) should not necessarily determine how a school district should respond, or which procedure the district should apply and follow. Instead, the district must assess the nature of the conduct itself to figure out an appropriate response, as well as which procedure to apply and follow.

When is a school district "on notice" of possible discriminatory harassment?

A school is "on notice" when it **knows or reasonably should know** of possible discriminatory or sexual harassment occurring during a school program or activity.

A school district can receive notice of possible harassment in many ways. In

Examples of when a school district would be on notice:

- Anti-Semitic graffiti is found on school grounds.
- A student tells a teacher that they are being teased because of their sexual orientation.
- An athletic director hears members of the student section use a racial slur at a school sporting event.
- A principal overhears students discussing the transphobic comments one of their friends received on Instagram.
- A news article discusses a "culture of bullying" towards students with disabilities at a school.


⁶ WAC [392-190-0555](https://www.wa.gov/govpub/summary.aspx?id=132222).

some cases, the harassment is in plain sight, was witnessed by a school employee, or was reported directly to the school. In other cases, the school district learns of the harassment indirectly, from sources such as social media, the local news, or a community report. Still in other cases, the harassment may be pervasive, openly practiced, or well known among students and employees.

Regardless of how it becomes aware of possible discriminatory harassment, the school district should immediately notify its Civil Rights Coordinator so that the coordinator can determine how to investigate and respond. The specific steps in an investigation will vary depending upon the nature of the allegations, the source of the complaint, the age of the student(s) involved, the size and administrative structure of the school, and other factors. However, in all cases the inquiry must be prompt, thorough, and impartial.

Responding Absent a Written Complaint⁷

School districts must investigate and respond any time staff know or should have known about potential discrimination or discriminatory harassment—even if no one files a written complaint. For example, if a school district receives a verbal complaint of harassment based on national origin, the school district should investigate the complainant's concerns, take appropriate steps to respond, and ensure that the complainant is provided with information about how to file a written complaint if they wish to use a more formal procedure.



Civil Rights Coordinators are responsible for ensuring that all informal and formal discrimination complaints are promptly investigated and resolved.

WAC 392-190-060

A school principal or Civil Rights Coordinator is often the best person to handle informal discrimination complaints or concerns. When trying to resolve such concerns, it is important to listen to each side, focus on the facts, clarify the relief or resolution sought, answer any questions, and inform the complainant about their right to file a formal complaint.

Responding to a Written Complaint⁸

Anyone may file a formal (written) complaint of discrimination with a school administrator or the Civil Rights Coordinator. A formal complaint is any written correspondence that describes the specific acts, conditions, or circumstances alleged to be discriminatory.

Once a formal complaint is received, the school district must follow its discrimination complaint procedure (usually WSSDA's 3210P or equivalent) in response. As the employee responsible for

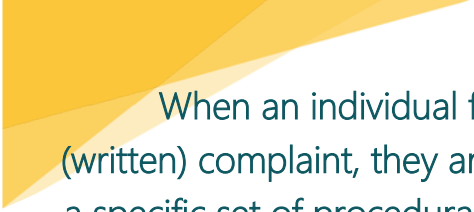
⁷ WAC [392-190-0555](#).

⁸ WAC [392-190-065](#).

ensuring all discrimination complaints are properly investigated and resolved, the Civil Rights Coordinator must:

- Provide the complainant a copy of the school district's discrimination complaint procedure in a language the complainant can understand;
- Ensure that the district conducts a prompt and thorough investigation into the allegations in the complaint; and
- Following the completion of the investigation, provide the district superintendent (or designee) with a full written report of the complaint and the results of the investigation.

The district superintendent (or designee) must then respond in writing to the complaining party within thirty calendar days after the school district received the complaint. The district's response must be provided in a language the complainant can understand and must include:



When an individual files a formal (written) complaint, they are entitled to a specific set of procedural protections found in state law and in the LEA's own discrimination complaint procedure.

WAC 392-190-065

1. A summary of the results of the investigation;
2. A determination as to whether the school district violated chapter 392-190 WAC or the OSPI guidelines;
3. Notice of the complainant's right to appeal, including where and to whom the appeal must be filed; and
4. If a violation was found, any corrective measures deemed necessary.

Corrective measures must be implemented as expeditiously as possible but no later than 30 calendar days after the district's written response to the complainant, unless otherwise agreed to by the complainant.

Coordinating Supportive Measures

School districts may need to coordinate supportive measures to protect students during an investigation or when it is on notice of discrimination, but a written complaint has not been filed. For example, if a parent alleges another student is harassing their child based on their gender identity, the school district should provide support to the student impacted by the harassment and may need to increase supervision of the alleged aggressor until an investigation is complete.

Interim measures should be individually tailored to each student's needs, and can include:

- Access to counseling services
- Measures to avoid contact between involved students (e.g., separation in the classroom, use of different hallways)
- Staff escort between classes or additional staff supervision in areas of the school
- Alternate transportation
- Academic support services (e.g., tutoring)
- Academic accommodations (e.g., rescheduling exams and assignments, providing alternative course completion options, or changes in class schedule)
- Changes in work schedule or job assignment of employees
- Limiting an individual or organization's access to facilities or activities
- Modifications to the attendance policy

Basic Principles of Discrimination Investigations

Civil Rights Coordinators must ensure that all discrimination investigations adhere to the following basic principles.

Prompt. A school district must complete an investigation and respond in writing to formal complaints of discrimination *within 30 calendar days* after the district received the complaint, unless otherwise agreed to by the complainant or if exceptional circumstances related to the complaint require an extension of the time limit. If an extension is needed, the district must notify the complainant in writing of the reasons for the extension and the anticipated response date.⁹

Impartial. The Civil Rights Coordinator must ensure that any investigator or decision-maker of a discrimination complaint remains independent, impartial, and objective. If the Civil Rights Coordinator is concerned about an investigator's ability to be unbiased or impartial, or the perception that they will not conduct a fair investigation, they should delegate this responsibility to another trained school district administrator, outside agency, or third-party neutral investigator. A lawyer may serve as a third-party neutral investigator only if none of the parties to the complaint (i.e., complainant, respondent, school district) are clients of the lawyer.

Thorough. The Civil Rights Coordinator must ensure a thorough investigation takes place. This means that the scope of the investigation is broad enough to include each allegation in the complaint and the investigator conducts a thorough search for relevant evidence.

Preponderance of the evidence. Discrimination investigations must draw conclusions based on a preponderance of the evidence. Another way to say this is that the evidence must establish a greater than 50% likelihood the allegation is true.¹⁰

⁹ WAC [392-190-065](#).

¹⁰ Note that in sexual harassment investigations, the evidentiary standard required may be higher. Each school district should review its current sexual harassment policy and procedure to determine if this is the case.

Systemic response. The Civil Rights Coordinator must also look for, investigate, and address any broader trends or systemic issues that may be revealed by a single discrimination complaint. For example, if the evidence in an investigation indicates a HIB complaint alleging discrimination was not referred to the Civil Rights Coordinator for review and investigation under the Nondiscrimination procedure, the Civil Rights Coordinator should consider whether the root of the problem is isolated to the one complaint or if other HIB complaints alleging discrimination were also not treated as possible discrimination.

Consider Using the IRAC Method

One method investigators may use to organize and analyze the evidence collected during a discrimination investigation is IRAC, which stands for **I**ssue, **R**ule, **A**nalysis, **C**onclusion.

Issue: Identify the primary legal issue(s) raised in the complaint.

Identify the primary legal issue in the allegation. Next, it can often help to phrase the issue as a question (which the investigator will then seek to answer during the investigation). For example:

- Original allegation: Student B used a racial slur toward Student A in class.
- Legal Issue: Discriminatory harassment.
- Issue-turned-question: Did Student A experience discriminatory harassment based on race when Student B used a racial slur toward her in class?

If the complaint includes more than one allegation, repeat the process for each one.

Rule: For each issue, identify the relevant rule and break it into elements.

Continuing with the above example, the relevant rule (i.e., legal standard) is for discriminatory harassment based on race. Breaking that rule into elements looks like:

1. Was the alleged conduct based on Student A's actual or perceived race?
2. Did the alleged conduct create a hostile environment?
 - a. Was the conduct severe, pervasive, or persistent?
 - b. Did the conduct limit Student A's ability to participate in or benefit from the services, activities, or opportunities offered by the school or district?
 - c. When on notice, did the district investigate, end any harassment, eliminate the hostile environment, address its effects, and ensure harassment does not reoccur?

Analysis: Gather evidence and apply it to the rule

The goal of the investigation is to gather evidence related to each element in the rule. The investigator is trying to determine whether each element is proved or disproved by a preponderance of the evidence. During the investigation, the investigator should:

- **Review relevant documents.** The compliance coordinator should review any documents that may shed light on the complaint, including any history of the issue, patterns of behavior, previous records of misconduct, and responses to past incidents.

Some examples of relevant documents may include policies, procedures, and school handbooks; student files; personnel files; discipline records; IEPs; Section 504 plans; and letters, notes or emails regarding the incident.

- **Conduct interviews and gather other evidence.** The compliance coordinator should interview all parties and witnesses as soon as possible to get a clear picture of what happened. Interviews should be planned and the interviewer should consider the following tips:
 - Interview the complainant first, when possible
 - Interview parties and witnesses individually, not in groups
 - Re-interview people if additional questions or inconsistencies arise
 - Remind interviewees about confidentiality and anti-retaliation provisions
 - Allow interviewees to have a representative present if requested, so long as the representative does not speak for the interviewee or interfere with the interview
 - Encourage each person interviewed to be as specific as possible
 - Keep detailed notes of questions and answers

Conclusion: Is it more likely than not that discriminatory harassment has occurred?

After completing the investigation, apply the facts to the rule to determine whether it is more likely than not (a “preponderance of the evidence”) that each element of discriminatory harassment was established. If a preponderance of the evidence cannot establish each element, then there is no violation.

Remedies and Corrective Action

If a preponderance of the evidence establishes that discriminatory harassment occurred, the school must implement corrective measures to eliminate that discrimination as expeditiously as possible, but no later than 30 calendar days after the superintendent's written response.

If the school district determines that a student experienced discriminatory harassment, it must take reasonable, prompt, age-appropriate, and effective action to end the harassment and prevent it from happening again—either to the targeted student or to others. If the school district fails to do so, it must remedy the effects of the harassment on the targeted student that could have been otherwise avoided if it had responded promptly and effectively.

The appropriate steps should be tailored to the specific situation. The school district may need to develop and publicize new policies or conduct staff or student training. Access to counseling, discipline for the aggressor(s), or further separation of the targeted student and aggressor may

be necessary depending on the nature and severity of the harassment. Responsive measures should be designed to minimize the burden on the targeted student as much as possible.

If the initial response does not stop the harassment and prevent it from happening again, the school district may need to take additional, stronger measures.

Coordinating with Other Complaint Processes

Why a HIB Investigation and Response May Not Be Enough¹¹

Harassing conduct is often first raised in a HIB report and investigated and addressed using a school district's HIB policy and procedure. In some cases, this response may be sufficient.

However, there are two situations when a HIB response may not be enough—and when the school district is legally obligated to apply both its HIB policy and procedure *and* its nondiscrimination policy and complaint procedure:

1. If, on its face, a HIB report includes allegations of conduct that is based on a student's actual or perceived membership in a protected class; and
2. If, during a HIB investigation, the school district learns that the alleged conduct is based on a student's actual or perceived membership in a protected class.

While both sets of policies and procedures outline certain required investigation and response timelines and parameters, only the

Examples of when a HIB investigation and response would not be enough:

1. *A school district receives an online HIB report from a parent, who writes that her daughter is being bullied by her basketball teammates because of her race.*
2. *Same fact pattern as above, except that in the HIB complaint, the parent does not explain that the bullying is related to race. Instead, it is only after the HIB investigation begins that the investigator learns that the student was being called a racial slur by her teammates.*

In either situation, as soon as the school district was on notice that the bullying was based on protected class (student's race), it must immediately notify the Civil Rights Coordinator so the coordinator can determine whether to also open a civil rights investigation.

¹¹ WAC [392-190-059](#). Note also that the same principle applies to allegations involving sexual harassment, although in that instance, the school district may need to also apply its sexual harassment policy and complaint procedure (WSSDA's 3205 and 3205P or equivalents).

nondiscrimination policy and discrimination complaint procedure also require a district-level response.

Ultimately, it is the school district that is responsible for recognizing when the nature of the conduct is discriminatory and for promptly notifying the Civil Rights Coordinator so that the correct policy and procedure can be applied in response.

Working with Law Enforcement

Because they are subject to a different legal standard, police investigations or reports are not themselves determinative of whether discrimination or harassment occurred under civil rights laws. If a school district and law enforcement agency are investigating the same facts, the school should not wait for the conclusion of a criminal investigation or criminal proceeding to begin their own investigation. If requested, the district may temporarily delay fact-finding while police are gathering evidence, but the school must promptly resume when complete. In the meantime, the district should not delay the implementation of supportive measures. Districts are encouraged to proactively discuss their obligations with local law enforcement before an incident arises.

Frequently Asked Questions

What if one of the students who was bullied has a disability?

The bullying of a student with a disability *on any basis* can result in a denial of a Free Appropriate Public Education (FAPE) under the Individuals with Disabilities Act (IDEA) or Section 504 of the Rehabilitation Act (Section 504). Accordingly, under Section 504, as part of a school's appropriate response to bullying, whether it is bullying based on disability or any other basis, the school should convene the IEP team or the Section 504 team to determine whether, because of the bullying, the student's needs have changed such that the student is no longer receiving FAPE.

The effects of bullying could include, for example, adverse changes in the student's academic performance or behavior. If the school suspects the student's needs have changed, the IEP team or the Section 504 team must determine the extent to which additional or different services are needed, ensure that any needed changes are made promptly, and safeguard against putting the onus on the student with the disability to avoid or handle the bullying.

Ultimately, unless it is clear from the school's investigation into the bullying conduct that there was no effect on the student with a disability's receipt of FAPE, the school should, as a best practice, promptly convene the IEP team or the Section 504 team to determine whether, and to what extent: (1) the student's educational needs have changed; (2) the bullying impacted the student's receipt of IDEA FAPE services or Section 504 FAPE services; and (3) additional or different services, if any, are needed, and to ensure any needed changes are made promptly. By doing so, the school will be in the best position to ensure the student's ongoing receipt of FAPE.

For additional comprehensive guidance, review OCR's 2014 Dear Colleague Letter: [Responding to Bullying of Students with Disabilities](#).

What if the harassment occurs on social media or off-campus?

Even if discriminatory harassment occurred off campus, the school district should still investigate to determine whether the conduct occurred in the context of an education program or activity or had continuing effects on the student at school.

If the harassment took place in the context of an education program or activity of the school, the school district must investigate the complaint as if it occurred on campus. Even if the misconduct did not occur in the context of an education program or activity, the school district must still consider the effects of off-campus misconduct when evaluating whether there is a hostile environment on campus. Because students often experience the continuing effects of off-campus discriminatory harassment while at school, the school district will need to address that hostile environment in the same manner in which it would address a hostile environment created by on-campus misconduct.

What about free speech protected under the First Amendment?¹²

Federal and state laws and regulations prohibiting discriminatory harassment are not intended to restrict the exercise of any expressive activities protected under the U.S. Constitution. However, discriminatory harassment is not protected speech under the First Amendment.¹³

To rise to the level of discriminatory harassment that is prohibited under federal and state law, the harassment must include something beyond the mere expression of views, words, symbols, or thoughts that some person finds offensive. The conduct must also be considered sufficiently serious to deny or limit a student's ability to participate in or benefit from the educational program. Thus, OCR's standards require that the conduct be evaluated from the perspective of a reasonable person in the alleged target's position, considering all the circumstances, including the alleged target's age.

What if the targeted student does not want to file a complaint?

A school district is responsible for investigating and addressing discriminatory harassment about which it knows or reasonably should have known. This is a school district's responsibility regardless of whether a student has complained, asked the school to act, or identified the conduct as a form of discrimination.

Even when the student does not want to file a complaint or ask the school to act, the school is still responsible for assessing possible impacts to other students or staff. However, to the extent

¹² U.S. Dep't. of Educ., Office for Civil Rights, [Dear Colleague Letter re: the First Amendment to the U.S. Constitution](#) (July 28, 2003).

¹³ Schools are permitted to censor student expression if they can reasonably forecast the speech will substantially disrupt school activities or invade the rights of others. [Tinker v. Des Moines Indep. Cmty. Sch. Dist.](#), 393 U.S. 503 (1969).

possible and required by law, the school should work to maintain student confidentiality while addressing broader impacts of harassment.

To the greatest extent possible, the decision to pursue a formal investigation is left with the targeted student, and it is a decision that can be revisited at any point. Let the targeted student know that this is like a stop light (stop, wait, ask for investigation) and can change at any time if they choose. Be clear with the student about the school's responsibility to take broad action outside of the formal complaint process.

Isn't this just "kids being kids"?

Students can be affected by harassment at any age. Consider the age and maturity of students when responding to allegations of harassment, and take age-appropriate steps to address the behavior.

Best Approaches for Districts in Crisis

Below are themes from technical assistance OSPI's Equity and Civil Rights Office provides school districts when they are responding to discriminatory harassment. See the resources below for more thorough best practices and strategies for responding to discriminatory harassment and bias incidents and crises at school.

- Consider impacts on individuals and the community. Discriminatory harassment and bias rarely happen in isolation. Be sure your response is aimed at addressing both the immediate incident and systemic concerns.
- Widely share your school district's commitment to anti-bullying and anti-discrimination. Publish clear instructions for how to report concerns about bullying and discrimination.
- Provide ongoing support to targeted students, checking in to learn if they have any ongoing concerns or need additional supportive measures.
- Embrace your community partners.
- Consult with legal counsel to ensure your school district is meeting its legal obligations.
- Revisit your school district's policies, procedures, and systems for preventing and responding to bullying and discriminatory harassment.

"A school climate that encourages inclusion and promotes tolerance does not guarantee that bias incidents won't happen. Instead, it creates an atmosphere in which these acts are less likely to gain momentum and more likely to be quickly and widely denounced."

– *Learning For Justice, [Responding to Hate and Bias at School](#)*

Resources on Responding to Discriminatory Harassment and Bias at Schools

- [WAC 392-190-0555](#)—OSPI regulation regarding discriminatory harassment and a school district’s obligations to respond.
- [WAC 392-190-059](#)—OSPI regulation regarding Harassment, Intimidation, and Bullying prevention policy and procedure, and procedures for potential discriminatory harassment.
- [WAC 392-190-065](#)—OSPI regulation regarding discrimination complaint procedures for school districts.
- OSPI’s [Discriminatory and Sexual Harassment](#) webpage.
- U.S. Department of Education, Office for Civil Rights (OCR), [Guidance on Schools’ Obligations to Protect Students from Student-on-Student Harassment on the Basis of Sex; Race, Color and National Origin; and Disability](#)—Dear Colleague Letter concerning schools’ obligations to protect students from student-on-student harassment on the basis of sex; race, color and national origin; and disability. The letter clarifies the relationship between bullying and discriminatory harassment, provides examples of harassment, and illustrates how a school should respond in each case.
- U.S. Department of Education, Office for Civil Rights, [Dear Colleague Letter: Responding to Bullying of Students with Disabilities](#)—Dear Colleague Letter explaining that the bullying of a student with a disability on any basis can similarly result in a denial of FAPE under Section 504 that must be remedied.
- Learning for Justice, [Responding to Hate and Bias in School](#)—This guidance outlines steps a school district should take before a crisis occurs, when there’s a crisis, and after the worst is over.
- Anti-defamation League (ADL), [No Place for Hate Incident Response Guide](#)—includes best practices and strategies to respond to bias incidents in middle or high schools. Includes education on specific incidents, including incidents related to antisemitism, racism, anti-immigrant bias (xenophobia), anti-Muslim bigotry, anti-LGBTQ+ bias, and disability antisemitic incidents, racist incidents.
- U.S. Department of Justice, Community Relations Service, [Preventing and Responding to Bias and Hate Incidents in K-12 Educational Settings, A Toolkit for School & Community Leaders](#)
- PACER’s National Bullying Prevention Center, [Students with Disabilities and Bullying](#)
- U.S. Department of Health and Human Services, [Stopbullying.gov](#)

These resources are provided for informational purposes only.