

# **Bullying and the Law: A Guide for Parents**

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*[Adele Kimmel](#) is the head of Public Justice's [Anti-Bullying Campaign](#), which represents bullying victims and their families in lawsuits designed to hold school districts and officials accountable when they fail to protect children from bullying. The Campaign's goal is to help make systemic change to the culture of school districts, so they do a better job of preventing bullying and responding appropriately when bullying occurs. Public Justice is a national public interest law firm supported by a not-for-profit organization, the Public Justice Foundation.*

Schools are responsible for maintaining a safe learning environment for all students. This responsibility includes taking steps to prevent bullying and to stop it when it occurs. The unfortunate reality is that our schools aren't doing enough to protect students from bullying. Despite anti-bullying laws and policies across the country, adult leaders at schools often turn a blind eye. Eight of out every 10 times a child gets bullied at school, no adult intervenes. This is partly because half of our country's school administrators and educators haven't received training on how to prevent or respond to bullying.

This guide will help you understand what the law requires school districts and employees to do to address bullying. It's designed to give you information on what you can reasonably expect from schools when your child is being bullied, and what your options are when schools don't do enough to protect your child.

## **What can you do when your child is being bullied by other students?**

There are some great resources available—including The BULLY Project's [Parent Action Toolkit](#)—to help you communicate with your children and their schools about bullying. I encourage you to use those resources and to try to resolve the issues with the school first, before contacting an attorney. If your efforts to work things out with your child's school fail, please feel free to [contact Public Justice for legal assistance](#).

Here are some things to consider if you're thinking about seeking legal help:

## **Is school bullying against the law?**

Every state has anti-bullying laws that require schools to take action to address and prevent bullying. There are also other state laws that may apply when a school fails to protect a child from bullying. There is no federal law against school bullying, but some types of bullying take the form of discriminatory harassment, and there are federal laws that prohibit that kind of conduct. For example, schools have responsibilities under federal civil rights laws to protect children who are bullied because of their race, color, ancestry, ethnic background, sex or disability.

## **What is bullying under the law?**

There is no uniform definition of bullying under the law. This is partly because there is no federal law that prohibits school bullying. In addition, state anti-bullying laws all define “bullying” somewhat differently.

To take legal action for school bullying, several factors are typically involved:

- Physical abuse that hurts a child’s body or possessions
- Verbal abuse, which involves saying or writing mean things, including name-calling, threats and offensive graffiti
- Social abuse, which involves hurting a child’s reputation or relationships, such as spreading rumors or excluding someone on purpose
- The abuse is repeated over time
- The abuse involves a real or perceived power imbalance—such as physical strength, access to embarrassing information, or popularity—to control or harm a child
- The abuse causes serious harm to a child—physically, emotionally and/or psychologically

Bullying is not the occasional hurtful taunt, teenage “drama,” or bickering among peers with equal power.

Bullying lawsuits based solely on verbal or social abuse generally fail. Most successful suits involve abuse with a physical component that has been happening for at least a couple of months and has serious negative effects on the child—such as depression, post-traumatic stress disorder, excessive absenteeism, deterioration in general physical health, lower grades, and/or withdrawal from the school.

## **How do I figure out what the school is obligated to do?**

- Look at the anti-bullying policies in your child’s school and school district. These policies are usually on the schools’ and school districts’ websites, and in student and parent handbooks.
- Look at your state’s anti-bullying laws. For a quick and easy way to find your state’s anti-bullying laws, see the map on click on the map on [Bullying and the Law](#) or visit [stopbullying.gov](http://stopbullying.gov).

## **What can I do when the school isn't doing enough to stop the bullying of my child?**

Make sure to document the incidents of bullying, any complaints about the incidents made to the school, and the school's responses. The BULLY Project's [Parent Action Toolkit](#) provides detailed guidance on what to do. Here are some key steps for protecting your child's rights:

- Write down the basis for bullying your child is facing, such as race, ethnicity, gender, sexual orientation, disability, appearance, etc.
- Describe the nature of the bullying, such as verbal taunts, physical abuse, sexual harassment, social exclusion, online threats, rumors, etc.
- Make a list of everyone who is doing the bullying. Are they students, teachers, or other adults?
- Describe where the bullying is occurring. Is it on the bus, at school, during after-school activities, online, etc.?
- Create a timeline to show how long this been going on.
- Write down the effects of the bullying on your child.
- Write down the names of all people to whom you or your child have complained.
- Make sure to notify school officials, including the principal. It's a good idea to notify the superintendent, too.
- It helps to notify the school in writing, such as through e-mail or a letter, especially if your efforts to talk through the issues with school officials have failed.
- Follow up phone conversations and meetings with an e-mail, so you have a paper trail.
- Keep copies of all letters, e-mails and other documents, including any screenshots of relevant social media.
- If your child has been physically assaulted, take pictures of the injuries and document when the assault occurred.

## **What legal options do I have when the school fails to protect my child from bullying?**

There are a variety of legal options available when schools fail to meet their obligations to protect students from bullying, and the best choice depends on the nature of the bullying and your goals. Possible options include:

- Filing a [complaint](#) against the school district with the U.S. Department of Education's Office for Civil Rights
- Filing a lawsuit against the school district and/or school employees

- Filing a lawsuit against the family of the student who has bullied your child
- Pursuing a criminal investigation in extreme cases, such as when your child has been assaulted

This guide focuses on your legal options against school districts and employees, which is the best way for making systemic change to the culture within schools, so they do a better job of preventing and responding to bullying.

### **Can I file a lawsuit if my child’s school is violating state anti-bullying laws?**

The short answer is “maybe.”

State anti-bullying laws do not allow you to file a suit against a school district for violating those laws. The good news is that a school’s obligations to address bullying are not limited to state anti-bullying laws or the school’s anti-bullying policies. There are federal, state, and local laws that impose additional obligations on schools to address student-on-student or “peer” bullying. Though none of these other laws specifically prohibit bullying, they may be used to try to stop bullying.

### **I think the bullying my child is suffering is discriminatory harassment. Are there laws that protect my child from this?**

Yes. There are federal civil rights laws that prohibit discrimination based on:

- Race
- Color
- National origin (meaning ancestry or ethnic background)
- Sex
- Disability (physical, mental or learning)

For a good description of school districts’ obligations under the federal civil rights laws, read the [guidelines on harassment and bullying](#) published by the U.S. Department of Education’s Office for Civil Rights (known as “OCR” for short). OCR’s guidelines apply to all schools that receive federal funds. This covers all public schools, but not private schools.

Student-on-student bullying may also trigger a school district’s responsibilities under the U.S. Constitution, which prohibits discrimination in public schools based on many of the same characteristics protected by the civil rights laws.

Here are some examples of bullying that public schools may be obligated to address under federal law:

- **Racial harassment:** Students are putting racially offensive notes in African-American students' lockers and notebooks, using racial slurs, threatening African-American students who try to sit near them in the cafeteria, tripping them in the hallways, and sometimes provoking fights with African-American students.
- **National origin harassment:** Students are drawing anti-Semitic graffiti, including swastikas, on bathroom stalls, desks and Jewish students' notebooks. Students use anti-Semitic slurs when talking with Jewish students, try to shove coins in Jewish students' mouths, and threaten to beat up Jewish students unless they hand over some money.
- **Sexual harassment:** Students are targeting a new girl in school, routinely calling her a "slut," spreading rumors about her sexual behavior, sending her threatening text messages, grabbing her buttocks or breasts, and tripping and pushing her in the halls.
- **Gender-based harassment:** Students are targeting a student they believe is gay, taunting him with anti-gay slurs to his face and on social networking sites, threatening him and physically assaulting him, and ridiculing him because he's in the drama club, is effeminate, and wears clothing that isn't typical for boys.
- **Disability harassment:** Several students repeatedly call another student with a learning disability "stupid" and "retard" at lunch and on the school bus. They often tackle the student, hit him on the head with their binders, and steal items from his locker.

Some state laws also protect your child from discriminatory harassment. In fact, some state laws prohibit a broader range of discrimination than the federal civil rights laws. For example, in addition to prohibiting discrimination based on race, color, national origin, sex and disability, some state laws prohibit discrimination on the basis of:

- sexual orientation
- gender identity or expression
- personal appearance

Student-on-student bullying may also trigger a school district's responsibilities under state constitutions.

### **Are schools only obligated to address bullying that involves discriminatory harassment?**

No. Schools also have legal obligations to address bullying that doesn't fit neatly into any of the categories protected under civil rights laws. For example, when students are being bullied because they are perceived as different in some way—such as nerdy or weird—then there may be legal options available under state laws.

Generally, you can't sue a school district under federal law based on a duty to protect children from bullying. Many federal courts have found that schools do not have a special duty to protect children from bullying, even though our children are in a school's custody for so many hours in a day.

Typically, your best legal option for this kind of general bullying is to file a lawsuit under state law. The law varies a great deal from state-to-state, but here are some some general guidelines:

- There are many state laws that cover both public and private schools.
- You don't always have to show that the school actually knew about the bullying. Sometimes it's enough to show that school employees should have known about the bullying.
- Most states recognize that schools have a duty to supervise and protect students' safety. If schools violate this duty—either because they were negligent or grossly negligent in the way they handled bullying—and a student suffered harm because of this, then it may be possible to hold a school district or its employees accountable for that harm.
- There are lots of ways that public school districts and employees can defend themselves against lawsuits filed under state law, so these lawsuits are not easy to win.

### **When is a school required to take action to try to stop bullying?**

Generally, when schools become aware of bullying, they must take prompt action to investigate it, followed by steps to try to stop it. These duties are a school's responsibility even if a student hasn't complained.

But if schools don't know about the bullying, they can't be expected to stop it. To protect your legal rights, it's best to report the bullying. Follow the school's procedures for reporting bullying. If that doesn't help, make sure to report the incidents to the principal and superintendent because they have authority to take corrective action.

### **Are schools only responsible for bullying that happens in school?**

No. Schools must also address bullying that happens on the school bus, during extracurricular activities before or after school, and on field trips.

Sometimes, schools also have to address bullying that occurs through electronic technology—known as cyberbullying. This is true even when the cyberbullying happens off school grounds. Although the law in this area is still in an early stage of development, you should request that a school take action when cyberbullying happens off campus. Here's why:

- The law generally recognizes that, if there is a sufficient connection between off-campus cyberbullying and the school environment, and the online bullying “substantially disrupts” the school environment, then a school may take disciplinary action against the aggressor.
- More often than not, off-campus cyberbullying is accompanied by traditional forms of bullying at school, so there is a connection between what's happening on and off campus.
- Online bullying often causes substantial disruption at school, leading to increased bullying at school.

So, when a school says it can't do anything about online bullying that occurs off school property, that's not true. There are many circumstances where a school can take action.

### **What steps should schools take to stop bullying?**

This will vary depending on the nature and extent of the bullying. At a minimum, a school should:

- make sure that the bullied 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 retaliation
- respond promptly to address continuing or new problems

Appropriate steps to stop bullying may include:

- separating the accused aggressor and the target of the bullying (without requiring the bullied student to change his or her class schedule)
- providing counseling for the target and/or the aggressor
- taking disciplinary action against the aggressor
- training for the aggressors and the larger school community

### **Are schools required to take any particular disciplinary action to stop bullying?**

No. Schools have a lot of discretion to decide whether and how to discipline a student for bullying.

### **If my child is still bullied after the school has disciplined every known aggressor, does the school have to do more?**

Maybe, but not necessarily. This is typically determined based on the facts in each bullying case. Some courts have found that disciplining every known aggressor was enough. Others have found that the school should have done more when it knew that just disciplining the known aggressors was ineffective in stopping the bullying.

### **When should I contact an attorney for help?**

It may be helpful to contact an attorney when:

- You have repeatedly notified the school that your child is being bullied
- The school hasn't taken sufficient action to stop the bullying

- The bullying of your child is severe and ongoing
- Your child is suffering serious effects from the bullying

Lawsuits against school districts that fail to protect children from bullying play a very important role in curbing bullying, but they are a solution of last resort—when efforts to get schools to act appropriately have failed.

If you are thinking about filing a lawsuit to protect your child, please feel free to [contact Public Justice for legal assistance](#). Call 202-797-8600 or e-mail us at [caseintake@publicjustice.net](mailto:caseintake@publicjustice.net).

Even if Public Justice can't assist you, we may be able to help you find a local attorney who can. If you already have an attorney, we may be able to assist the attorney with your case.

### **How will a lawsuit affect my child?**

**Please be aware that participating in a lawsuit is a stressful and intrusive process.** When a child has been traumatized by bullying, he or she may not be able to handle the stress of a lawsuit. Talk with your children and listen to them if they say they really don't want to file a lawsuit. It could further traumatize them, especially if they go through the whole process and end up losing the lawsuit.

On the other hand, some children find the process helpful in healing and want to file a lawsuit—whether for vindication or to make sure others don't suffer like they have. So if your children are up to doing this, they can make a real difference for themselves and for other bullied students.

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\* This guide is for informational purposes only and not for the purpose of providing legal advice. Because the law changes and can vary from state to state, this information is not guaranteed to be up to date or applicable to your exact situation.