

"How I Advise My Clients" is a Special Ed Connection® feature that provides expert opinions from attorneys and education consultants for overcoming common problems and core challenges in the field. Each installment will include insights from multiple stakeholders, offering you a variety of perspectives to strengthen your efforts to serve students with disabilities.

Have a particular challenge or topic for which you'd like a professional opinion from our Special Ed Connection® experts? Email Lisa Bocchino at lbocchino@lrp.com.

Key points:

- **Ensure IEP team has information about bullying situation**
- **Review bullied student's IEP to determine need for change in services**
- **Find out if other students with disabilities have been similarly bullied**

'HOW I ADVISE MY CLIENTS': How should a district respond when a student with a disability is being bullied?

When a student with a disability is the alleged victim of bullying, you must investigate to ensure the bullying is not affecting the student's ability to learn. You must also ensure that the student is not exacerbating the situation.

So what information should an IEP team gather when it learns a student with a disability is being bullied? What steps must districts take to address bullying in a student's IEP to ensure the student receives FAPE?

Special Ed Connection® posed these and other questions to two experts in the field. Their responses are included below, edited for length and clarity.

• **Tim Mahoney, school attorney, Frazer & Feldman LLP:**

When a classified student is being bullied, the IEP team should review the student's IEP. Properly documenting the recommendations described below can allow staff to appropriately address the student's needs while ensuring the school district gets credit for these efforts in the event of a dispute. See generally, *T.K. and S.K. v. New York City Dep't of Educ.*, 67 IDELR 1 (2d Cir. 2016), and 56 IDELR 228 (E.D.N.Y. 2011); and *OSERS Guidance Memorandum*, 61 IDELR 263.

1. Ensure the IEP team has the right information to identify the student's abilities and needs. This should include information regarding the bullying, such as where it occurs, when and how often it happens, what form the bullying takes, and the effect the bullying has on the student's education -- such as access to services and/or impediments to making progress on already-drafted goals. The IEP team should include whoever investigates the bullying in the discussion. In addition, consult with behavioral specialists, school psychologists, social workers, and other specialists where appropriate to complement the team's expertise.

2. The IEP team should draft goals to correspond to each need. Examples may include: a) goals to address learning to identify bullying behaviors and situations and what actions to take to report them; b) goals to improve social skills, such as sharing and taking turns; c) speech or counseling goals to learn pragmatics to address learning to interpret and respond to social cues and non-verbal language; and d) goals to address following the play transitions of peers.

3. Add or modify services to ensure the goals can be implemented. Consider supplementary services or program modifications, such as preferential seating, an aide to shadow the child during unstructured times to ensure safety, early arrival or dismissal from class, or the creation of a "safe harbor," allowing the student to discretely exit the classroom briefly when she is feeling bullied.

4. Describe in the management needs section supports the student may require that are not purely a direct program, service, or supplementary aid. These may include: a) notation directing separation of the student from his aggressor by varying schedules or classroom assignments; b) inclusion of a safety plan outlining what the student should do if he is feeling bullied; and c) separate in-service training for school staff and classroom peers to address bullying and disabilities. Also include any schoolwide or districtwide positive behavioral supports or anti-bullying initiatives.

• **Howie Knoff, creator and director, Project ACHIEVE:**

The school district needs to analyze the situation from several perspectives: student/family, ecological, functional assessment, and instruction/intervention.

Student/family: Sit down with the student and his family to ensure that everyone has the same knowledge and understanding of the situation, including how the district will analyze and address it. Factor in the student's age, disability, and related developmental factors so that communication with him is at his level of understanding. The student and parents need to know that they will be protected by the school and what to do and whom to go to if the bullying continues or expands.