

BUSD LAW & POLICY: GUIDANCE & SUPPORT 2020-2021

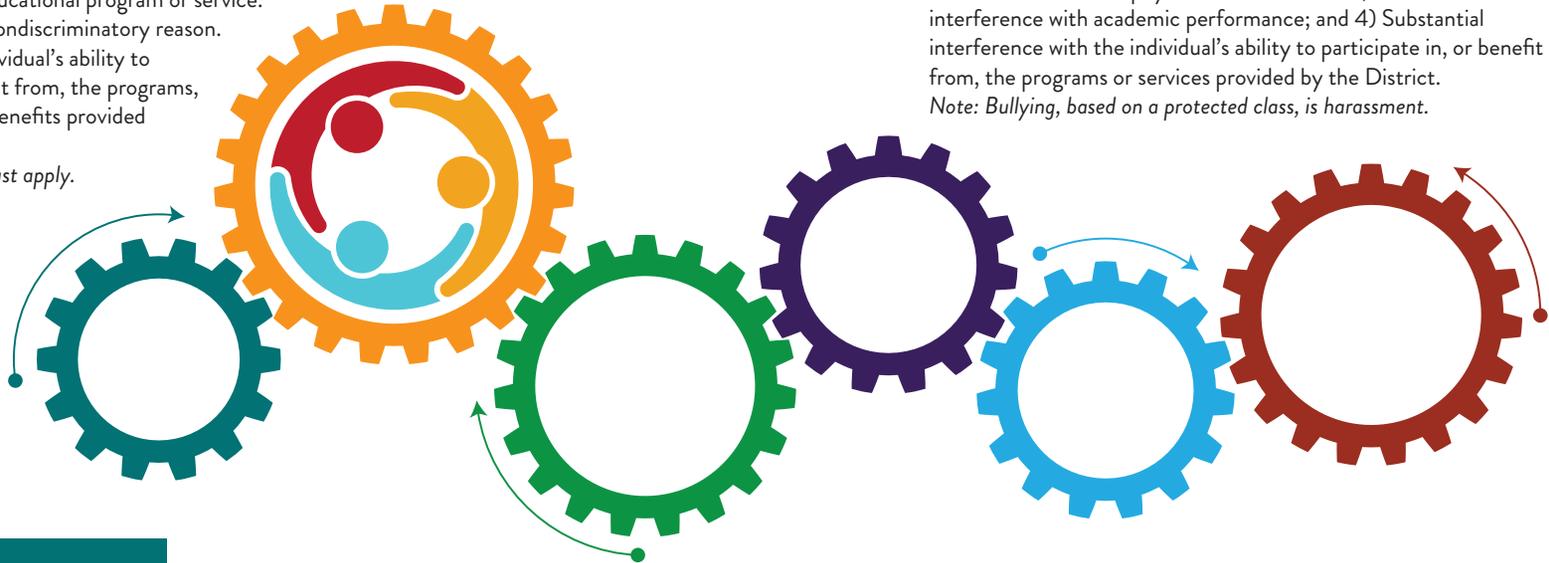
DISCRIMINATION

The act of prohibiting or barring access to the District's educational programs, services and activities based on an individual's protected class status.

LEGAL ELEMENTS

1. Different treatment based on a protected class.
2. In the context of an educational program or service.
3. Without a legitimate nondiscriminatory reason.
4. Interferes with the individual's ability to participate in, or benefit from, the programs, services, activities, or benefits provided by the District.

Note: All four elements must apply.



RETALIATION

The act of revenge against someone for self-advocacy, or advocacy on behalf of others, based on an individual's protected class status.

LEGAL ELEMENTS

1. Did the target engage in a protected activity?
Examples: complaints of discrimination or harassment; advocating on behalf of someone based on their protected class status or an educational program or service (i.e., categorical programs, special education, Section 504)
2. Was the target subjected to an adverse action after or contemporaneously by the District?
3. Is there a connection or causal link between the protected activity and the adverse action?

Note: All three elements must apply.

HARASSMENT

The act of targeting an individual based on his/her/their protected class status.

LEGAL ELEMENTS

1. The target is subjected to unwelcome conduct.
2. The unwelcome conduct is related to an individual's protected class status.
3. The conduct is objectively offensive to a reasonable person of the same characteristics.
4. The conduct is sufficiently severe, persistent, or pervasive.
5. Interferes with the individual's ability to participate in, or benefit from, the programs, services, activities, or benefits provided by the District.

Note: With the exception of sexual harassment, all five elements must apply.

BULLYING

Bullying is any severe or pervasive, physical, or verbal act or conduct, including written/electronic communications, committed by a pupil(s), that has, or can be reasonably predicted to have, the effect of one or more of the following:

- 1) Reasonable fear of harm to person or property;
- 2) Substantially detrimental effect on physical or mental health;
- 3) Substantial interference with academic performance;
- and 4) Substantial interference with the individual's ability to participate in, or benefit from, the programs or services provided by the District.

Note: Bullying, based on a protected class, is harassment.

TERMS, DEFINITIONS & EXAMPLES

1. Severe – A physical altercation that leads to severe harm. Emotional abuse that leads to suicidal ideation or attempts. Sexual misconduct such as touching, groping, skin-to-skin contact, assault, or rape.
2. Persistent – The frequency at which the target is being harassed by the accused.
3. Pervasive – The frequency in which the accused is harassing others, other than the target.
4. Hostile Environment – The environment becomes so unsafe and toxic, the individual no longer has the ability to participate in, or benefit from, the programs, services, activities, or benefits provided by the District.