

TIPS & TOOLS FOR FAMILIES: Addressing Discrimination in Schools

Discrimination is the unfair or unequal treatment or harassment of a person because they are part of a group, referred to as a protected class. A **protected class** consists of people who share common characteristics and are protected from discrimination and harassment under the law.¹

Discriminatory harassment is:

Based on a protected class +

Serious enough to create a hostile environment

And for there to be a legal claim, school employees must not have addressed it adequately.

Discriminatory harassment does not need to be directed at a specific person and can include:

- Threats
- Name-calling
- Derogatory jokes
- Physical assault
- Other behavior that is physically threatening, harmful, or humiliating²

Protected Classes under Washington State Law are:

- Race and Color
- National Origin
- Religion and Creed
- Sex
- Gender Identity
- Gender Expression
- Sexual Orientation
- Veteran or Military Status
- Disability
- Use of Service Animal

A **hostile environment** exists when the discriminatory harassment is severe, pervasive, or persistent enough to interfere with a student's ability to participate in or benefit from services, activities, or opportunities that the school or district has offered. Students experiencing a hostile environment can seem sad or angry, more physically ill than usual, get lower grades, or avoid school.

When is the school district responsible?

A district must take steps to address discriminatory harassment when **it knows or reasonably should have known it is happening**. If it is happening in class, in the hallways, at recess or on the bus and is witnessed by school staff, those staff should report it to the principal so the school can respond effectively.

Districts must also amend any of their policies that could have the unintended effect of discriminating against a student or group of students based on their protected class.

¹ Equity and Civil Rights Office, Office of Superintendent of Public Instruction. *Discrimination, Discriminatory Harassment, and Sexual Harassment: Dispute Resolution*. Retrieved from:

<http://www.k12.wa.us/Equity/DiscriminationComplaint/DiscriminationComplaints.pdf>

² See above.

How do I know if it is discrimination or something else?

You might find it difficult to figure out if the problem that your child is experiencing is because of discrimination or something else. If your child falls into one of the protected classes, has experienced a hostile environment, and the school has not addressed the issue, consider these questions:

- Why do I think this problem is happening?
- Why does my child think this problem is happening?
- Why does my child's teacher think this problem is happening?
- Has this problem happened to anyone else? Why?

If your child is experiencing discrimination, share that with the district so that staff can investigate and respond appropriately.

Things to Think About Before Meeting with the School or District

- Write down everything that you or your child can remember about the incident(s), such as the date(s), time(s), and people involved. Bring your written notes to meetings with the school or district
- Consider what your child and the school needs to resolve this situation. Think about:
 - What changes would need to happen to address the school climate or culture so that this behavior did not repeat for your child or other students?
 - What supports might staff and/or other students need to make school more welcoming of everyone?
 - What does your child need to feel safe and comfortable at school? Think about how to address not just the individual incident, but also the school climate or culture. One tool might be a safety plan to ensure that the accused harassers will not be in the same classroom or area.
- Individual discipline of students might be appropriate, but often this kind of action will not end the hostile environment or prevent harassment from happening again.

Check out: Office of the Superintendent of Public Instruction, Equity and Civil Rights (June 30, 2016). *Complaints about Discrimination*:

<http://www.k12.wa.us/Equity/ComplaintOptions.aspx>

Next Steps

After pursuing an informal resolution meeting with the school or district, families might consider filing a formal complaint:

OPTIONS FOR FILING FORMAL COMPLAINTS

School Districts

- You can file a complaint directly with the school district via the school principal or the district's civil rights coordinator. For more information: <http://www.k12.wa.us/Equity/Complaints.aspx>

Washington State Office of the Superintendent of Public Instruction Office of Equity & Civil Rights

- OSPI Office of Equity & Civil Rights will consider complaints about discrimination, discriminatory harassment, and sexual Harassment once the school district complaint options have been pursued. For more information: <http://www.k12.wa.us/Equity/DiscriminationComplaint/DiscriminationComplaints.pdf>

U.S. Department of Education Office for Civil Rights (OCR)

- OCR enforces federal civil rights that prohibit discrimination in programs or activities based on race, color, national origin, sex, disabilities, and age. For more information: <https://www2.ed.gov/about/offices/list/ocr/index.html>

Washington State Human Rights Commission (WSHRC)

- WSHRC enforces the Washington Law Against Discrimination (RCW 49.60), which prohibits discrimination in employment and in places of public accommodation, including schools. For more information: www.hum.wa.gov/ComplaintProcess

U.S. Department of Justice (DOJ), Educational Opportunities Section

- DOJ enforces federal civil rights laws that prohibit discrimination on the basis of race, color, national origin, sex, disability, and religion in public schools. For more information: www.justice.gov/crt/about/edu

Complaints in Detail: Agency and Laws/Policies Enforced	Written Complaint Required?	Timeline for Filing Complaint	Timeline for Completion of Investigation/Decision by Agency
School District Non-discrimination policy and procedure. ³	Yes ⁴	See policy; No less than 1 year. 10 calendar days to appeal to school board (or 30 calendar days if no response from Superintendent)	Within 30 calendar days of complaint: Written response from Superintendent. If appealed to school board: Hearing within 20 calendar days and written decisions within 10 calendar days with information provided on option of appealing to OSPI.
OSPI – Equity & Civil Rights⁵ RCW 28A.642.010 WAC 392-190	Yes	Within 20 calendar days <i>after receiving a school board's decision</i> , unless extended by OSPI for good cause	OSPI “may initiate an investigation”; No specific timeframe for completion of investigation. After an investigation, OSPI will issue a written decision.
Washington State Human Rights Commission (WSHRC)⁶ Washington Law Against Discrimination RCW 49.60	Yes	Within 6 months of the date of the alleged discrimination	Contact WSHRC for more details about their public accommodation discrimination complaint process.
U.S. Dept. of Education Office of Civil Rights (OCR)⁷ <ul style="list-style-type: none"> • Title VI • Title IX • Title II: ADA • Section 504: Rehabilitation Act • Age Discrimination Act 	YES	Generally within 180 calendar days of alleged discrimination unless the time is extended by OCR for good cause shown	OCR investigates complaints “in a timely manner” and will update complainants on the investigation. At the conclusion of the investigation, OCR provides written findings.
U.S. Department of Justice (DOJ)⁸ <ul style="list-style-type: none"> • Title IV • Title VI • Title IX • ADA • Section 504: Rehabilitation Act • Equal Educational Opportunities Act (EEOA) 	Yes	No	No specific time limit

³ WAC 392-190 (School districts must adopt and implement complaint and appeal procedures to investigate and resolve allegations of unlawful discrimination and discriminatory harassment.)

⁴ Districts may also adopt an informal complaint procedure but when using that informal procedure, districts must notify complainants of the right to file a formal complaint. WAC 392-190-065.

⁵ <http://www.k12.wa.us/Equity/ProhibitingDiscrimination.aspx>

⁶ Human Rights Commission <http://www.hum.wa.gov/discrimination-complaint>

⁷ <http://www.ed.gov/about/offices/list/ocr/complaintintro.html>

⁸ Educational Opportunities Section <https://www.justice.gov/crt/educational-opportunities-section>;

<https://www.justice.gov/sites/default/files/crt/legacy/2011/09/22/filecomp.pdf>