



Share:



THE DIFFERENCE BETWEEN BULLYING AND HARASSMENT IN MASSACHUSETTS

One falls under civil rights law, the other anti-bullying law. Here's how it works.

By [Trevor Kupfer](#) on February 3, 2020

Updated on February 4, 2020



It's easy to make the mistake of thinking the number of complaints and disciplinary issues at schools have never been higher. They've always been high, says [Judy A. Levenson](#), an education attorney in Brookline. The reason it *feels* like there's more today is because the expectations and laws have shifted to make schools more responsible for taking action.

"More recently, in my work with K-12 schools nationally, there's been an alarming increase in the number of reported incidents based on gender, race, sexual orientation and other protected classes," says Levenson, who represents schools and districts in litigation and investigations. "And a lot of schools are finding it's occurring at younger and younger ages. For example, in some of my schools, there have been repeat incidents of kids using swastikas at a young age—they've marked it in the playground or bathroom stalls. But it also turns out that while these kids know that the swastika is something bad, they don't know what it is. It's a generation that really doesn't necessarily have that history or firsthand knowledge."



It's a good example for this area of law because, while taking action may *seem* straightforward, it's often anything but. This is why Levenson has shifted her work in recent years to coordinate trainings

FIND A
LAWYER

ASK SUPER
LAWYERS

LAWYERS
NEAR ME

FOR
LAWYERS

Lawyer
Login



Harassment often falls under anti-discrimination laws, Levenson says, but if a bullying act is based on a protected class (race, national origin, religion, disability, age, sexual orientation, gender identity), it can also be a civil rights violation.

“But you can have bullying without a civil rights context; the obligations then are different,” she adds.

Under the anti-bullying law, Levenson says, “the requirement is repeated conduct directed at a target that can cause some sort of hostile environment or cause the student to be placed in some sort of fear or injury. Whereas, under the civil rights laws, it can be any kind of unwelcome conduct based on a protected class that can be based even on a single severe incident and it doesn’t have to be directed at a target. In other words, if a kid is in the cafeteria and hears another group of kids making slurs about gay students, and this happens repeatedly or it’s a severe enough incident, that can trigger the school’s obligation to investigate under the federal anti-discrimination laws.”

The state laws in Massachusetts are very specific, Levenson adds, and they require school districts to have an anti-bullying plan in place. As a result, the state Department of Elementary and Secondary Education gives schools a model plan to base theirs on. But wait, there’s more: “The civil rights laws actually require broader types of investigations,” says Levenson.

“The federal Office for Civil Rights, back in 2010 or so, had sent out a guidance to schools basically saying that even if you label something bullying, that doesn’t mean that it won’t also trigger responsibilities under federal anti-discrimination laws. So, basically, the federal government is saying if the abusive behavior is based on a protected class like race, sex, or disability and creates a hostile environment, you’ve got to satisfy the requirements of the federal anti-discrimination law,” she adds.

Since the consequences have never been higher, and the legal responsibilities are both confusing and ever-changing, it’s of the utmost importance to [seek out trainings](#) and [legal experts](#).

“The best thing is to have your policies up to date, to be trained, to stay trained, and to consult with counsel,” Levenson says. “Because the administrators and the teachers, as well-intentioned and trained as they sometimes are, this is not their primary area or focus; this is not what they’re there for.”

SEARCH ARTICLES

Find articles published by Super Lawyers

Search by title or keyword

Search

FIND A
LAWYER

ASK SUPER
LAWYERS

LAWYERS
NEAR ME

FOR
LAWYERS

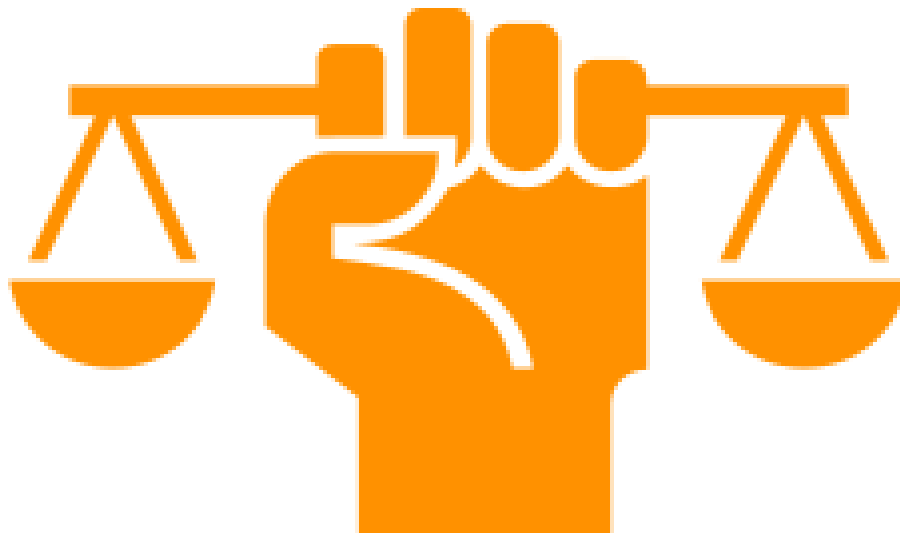
Lawyer
Login



CIVIL RIGHTS

What Civil Rights Laws Protect People with Disabilities?

An overview of disability rights in Maryland, and what to do to protect them



CIVIL RIGHTS

Masterpiece Theater

Parsing the recent Supreme Court decision on gay rights and religious freedom

FIND A
LAWYER

ASK SUPER
LAWYERS

LAWYERS
NEAR ME

FOR
LAWYERS ✓

Lawyer
Login



CIVIL RIGHTS

Can I Sue for Abuse in Prison or Jail?

What warrants legal action, what to prove, and how to pursue it in Illinois

[View More Civil Rights Articles »](#)

[Law Schools](#)

[FindLaw.com](#)

[LawInfo.com](#)

[Abogado.com](#)

[Law Firm Marketing](#)

[Find A Lawyer »](#)

[Browse Lawyers »](#)

[Ask Super Lawyers »](#)

[Watch Videos »](#)

[Top Lists »](#)

[Super Lawyers Articles »](#)

[Digital Magazine & App »](#)

[Award-Winning Editorial »](#)

[Selection Process »](#)

FIND A
LAWYER

ASK SUPER
LAWYERS

LAWYERS
NEAR ME

FOR
LAWYERS 

Lawyer
Login



© 2020 Super Lawyers®, part of Thomson Reuters. All Rights Reserved.
[Terms & Conditions](#) » [Privacy Policy](#) » [Cookies](#) » [Do Not Sell My Info](#) »