



Bullying and Special Education Students: What Must Schools Do To Avoid Liability?

Melinda Jacobs, Esq.

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What is Bullying?

- Verbal acts (name calling, teasing, shaming).
- Graphic and written statements (which may include cyber-bullying).
- Physical bullying.
- Emotional bullying.
- Destruction of property.
- Unauthorized release of confidential information.

Verbal Bullying

- Name-calling.
- Teasing.
- Shaming.
- Intimidating.
- Threatening.

Cyber-Bullying

- Cyber-bullying means bullying through the use of the Internet or other electronic device or means of transmission.
 - Email.
 - Facebook.
 - MySpace.
 - Cell phone texting/sexting.

Physical Bullying

- Hitting.
- Kicking.
- Harming with a weapon.
- Pushing/Shoving.
- Biting.
- Spitting on.

Emotional Bullying

- Social isolation.
- Subjecting another to ridicule.
- Making up stories/events for the purpose of embarrassing another student.
- Encouraging another student to perform an act or make a statement for the sole purpose of embarrassing the student.

Destruction of Property

- Defacing a locker or personal possessions.
- Destroying personal possessions.
- Hiding personal possessions.

Release of Confidential Information

- Telling others about embarrassing confidential information without the person's permission.

Landmark School Bullying Case

- *Davis v. Monroe County Bd. of Educ.*, 103 LRP 20059 (U.S. 1999).

Held: Schools may be liable for money damages if:

- Bullying/Harassment is based on student's disability;
- Bullying/Harassment is severe or pervasive enough to interfere with the student's education and creates a hostile environment;
- School officials knew about the bullying/harassment;
- School officials were "deliberately indifferent."

What is a “hostile environment”?

- *Dear Colleague Letter*, 55 IDELR 174 (OCR 2010).
 - A “hostile environment” is created when conduct is “sufficiently severe, pervasive, or persistent so as to interfere with or limit a student’s ability to participate in or benefit from the services, activities, or opportunities offered by a school.”

How Does This Affect Special Education?

- Special education students may be more likely to be subjected to acts of bullying and harassment.
- The same cases and laws on bullying/harassment that concern general education students also apply to special education students.

School Districts May Have a Greater Duty to Prevent Bullying of Students With Disabilities

- *K.M. v. Hyde Park Central Sch. Dist.*, 44 IDELR 37 (S.D.N.Y. 2005).
 - Mother of boy with PDD-NOS complained that her son was being teased about his disability and physically abused at school and on the bus.
 - Allegedly, school officials took no action.
 - The child became depressed and evidenced suicidal ideations.
 - Held: for the parent.

School Districts May Have a Greater Duty to Prevent Bullying of Students With Disabilities (cont'd)

- Held: LEAs may have a greater duty to protect a student with disabilities from harassment than they owe to general education students.
- Court: “Such a student ... probably is not on equal footing to defend himself against harassment from his more able peers, leaving him vulnerable to abuse that the District should have anticipated and worked harder to prevent.”

A Look at Special Education Bullying Cases ...

- What arguments are advanced by the parents of students with disabilities?
- How do the courts view allegations of bullying/harassment against students with disabilities?
- What factors are important to consider when deciding whether to defend or settle?
- What actions can schools take to avoid bullying/harassment litigation?

T.K. v. New York City Dep't Of Educ., 56 IDELR 228, remanded by, 112 LRP 8001 (E.D.N.Y. 2011)

- 12-year-old girl with LD.
- Ostracized by her peers at school.
- Subjected to physical bullying at school.
- Girl's grades declined, but still were passing.
- Was she denied FAPE as a result of bullying?

What Did the Court Say?

- Parents alleged that school officials knew about the bullying and refused to do anything about it.
- Court held that bullying becomes actionable under the IDEA when a student's educational benefit is "adversely affected."
- Parents DO NOT have to prove that their child is denied ALL educational benefit, or that they have regressed due to bullying.
- Held: Remanded to the ALJ to determine whether child suffered a deprivation of educational benefit.

Shore Reg'l. High Sch. Bd. of Educ. v. P.S., 41 IDELR 234 (3d Cir. 2004).

- Middle school boy with depression and labeled ED.
- Years of bullying due to his perceived sexual orientation.
- Boy attempted suicide in 8th grade.
- Parents requested transfer to neighboring LEA so that boy would not matriculate to high school with the gang of bullies.

What Did the Court Say?

- A. Bullying due to sexual orientation is not related to the boy's disability.
- B. Forcing the boy to attend high school with the gang of boys who had bullied him for years would constitute a denial of FAPE.
- C. Placement at the LEA high school with a behavior plan that called for weekly counseling and self-reporting satisfied the FAPE obligation.
- D. None of the above.

R.R. v. Kingsport City Sch. Dist., 45 IDELR 212 (SEA TN 2005)

- 9th-grade boy with an LD in written expression and ADHD was involved in 5 altercations (verbal and physical) with peers over a 7-month period.
- Parents complained to administrators about bullying.
- LEA developed and implemented a BIP (counseling; self-reporting of bullying; social skills training).
- LEA placed an adult escort with the boy throughout the school day.
- Boy was beaten up again – parents withdrew him and sued for denial of FAPE.

What Did the Court Say?

- A. Administrators took every action necessary in response to allegations of bullying.
- B. Student was denied FAPE because the school failed to prevent attacks after the parents' report of bullying.
- C. Getting into a fight with peers does not constitute bullying per se.
- D. None of the above.

Bullying as Disability-Based Discrimination

- Is the student disabled?
- Is the harassment/bullying about the student's disability?
- Is there an "adverse impact"?
- Does a "hostile environment" exist at the school?

Case Study #1

- A parent reports to the principal that her son (LD) was called being harassed by one particular boy in his class.
- Just as the parent was leaving, the mother of the accused student calls to report that her son (ADHD) was being harassed by the LD student.
- What should the principal do?

- A. Call both boys in and punish both.
- B. Nothing ... the behavior is not disability-related.
- C. Document the parents' concerns, keep an eye on the boys, and check to see if their teachers report any change in the boy's academic performance or behavior.
- D. Both A and C.
- E. None of the above.

M.P. v. Indep. Sch. Dist. No. 721, 38 IDELR 262 (8th Cir. 2003)

- A school health paraprofessional divulged to the school community that a 16-year-old student had been diagnosed with schizophrenia.
- Student was teased and physically harassed by peers.
- Student's grades declined, and his mental health condition deteriorated.
- Is this bullying? Disability-based harassment?

- A. No, this is not bullying or disability-based harassment.
- B. Yes, this constitutes disability-based harassment.
- C. The school district could be found liable for money damages.
- D. The paraprofessional could be found to have acted with bad faith or gross misjudgment.

P.R. v. Metro. Sch. Dist. of Washington Twp., 55 IDELR 199 (S.D. Ind. 2010)

- Middle school girl confided to her BFF that she was HIV+.
- The BFF passed this information on to others.
- The girl was teased and harassed for two years at school.
- LEA responded to each incident of bullying by meeting with alleged harassers, informing parents, and punishing the perpetrators.
- Was this enough to escape liability?

- A. Yes, the LEA acted appropriately.
- B. No, the LEA should have offered a private school placement to remove the girl from her tormentors.
- C. No, the LEA is responsible for preventing this type of bullying/harassment.
- D. Yes, because LEAs are not responsible for stopping all acts of bullying/harassment in schools.

Case Study #2

- 7th-grade girl with ADHD and a 504 plan loves Lady Gaga.
- Girl wears shirts with Gaga's photo to school, has a Gaga lunch box, Gaga stickers on her backpack, etc.
- Other students subject girl to daily ridicule (calling her "Monster Girl") because of her devotion to Lady Gaga and have defaced her notebook stickers.
- The girl's parents are threatening to file an OCR complaint. What will OCR say?

- A. There is no evidence of disability-based discrimination because the teasing has nothing to do with the girl's disability.
- B. There is evidence of disability-based discrimination because the girl has a 504 plan and a disability.
- C. Students with disabilities under 504 are protected against all forms of bullying/harassment by virtue of their protected-class status.
- D. None of the above.

Bullying and Asperger Syndrome

- The numbers of students with Asperger syndrome are increasing at a dramatic rate.
- Students with Asperger syndrome are frequent targets of bullying and harassment due to their social deficits and inability to engage in “typical” communication with peers.

J.E. v. Boyertown Area Sch. Dist., 56 IDELR 38 (E.D. Pa. 2011), aff'd, 57 IDELR 273 (3d Cir. 2011)

- Elementary school boy with Asperger syndrome.
- Mother requested placement in private school due to her fears that the boy would be subjected to bullying due to his disability.
- LEA proposed placement in a special education classroom with a transition plan and counseling services.
- Mother withdrew the child and sued seeking funding for private school.

What Did the Court Say?

- A. The LEA was ordered to fund the private school placement because it was reasonably foreseeable that the boy would be subjected to bullying in the public school environment.
- B. Fears about possible future acts of bullying do not constitute a denial of FAPE.
- C. The LEA's offer of placement and support services satisfied its obligation to provide FAPE.

M.Y. v. Grand River Academy, 54 IDELR 255 (N.D. Ohio 2010)

- High school student with Asperger Syndrome enrolled in a private school.
- Student was subjected to daily verbal and physical harassment; became depressed and suicidal.
- Headmaster informed the parents that it was his policy to “look the other way” at freshman hazing.
- 3 months after his enrollment, the student was expelled from the private school due to his inability to cope with the hazing and to perform academically.

What Did the Court Say?

- A. There is evidence of disability-based harassment.
- B. Private schools are exempt from complying with Section 504/ADA, so there is nothing the parents can do about the bullying.
- C. These parents could be entitled to money damages if the court finds evidence of bad faith or gross misjudgment.

Bullying and Personal Liability

- Can an individual teacher or administrator be personally liable for bullying a student with disabilities?

Mathers v. Wright, 56 IDELR 188 **(8th Cir. 2011)**

- 5th-grade teacher refused to instruct a student with intellectual disabilities who was placed in her general education classroom.
- Teacher excluded the child from recess and fire drills, and allegedly forced her to crawl on the floor in the classroom.
- Do the teacher's actions constitute "bullying"?
- Could the teacher be liable for money damages?

What Did the Court Say?

- A. This teacher is in BIG TROUBLE!
- B. No, the teacher cannot be personally liable because she is protected by “qualified immunity.”
- C. No, because teachers have the discretion to exclude students from certain activities.
- D. This teacher needs to get a lawyer, fast!

A Word About Personal Biases

- Sexual orientation (LGBT).
- Gender identity issues.
- Racial prejudices.
- Religious prejudices.

What Must You Do To Avoid Liability?

- Maintain anti-bullying policies and programs in your school district.
- Train staff to spot/stop bullying.
- Take ALL reports of bullying/harassment seriously.
- Meet with parents and students to hear complaints of bullying/harassment.
- Investigate, interview, and document!
- Punish the perpetrators (not the victim)!

Remember ...

- School districts are NOT liable for ALL acts of bullying or harassment.
- School districts are liable ONLY for acts of bullying/harassment when they are aware of this activity and fail to act reasonably.
- The law does not hold schools to a 100% standard of perfection – you cannot ensure that NO bullying or harassment will occur!