



Bullying in School

Bullying can range from being an irritation to being one of the most stressful and upsetting experiences that a student can face. Schools have an affirmative duty to prevent bullying and to protect their students.

The information below will provide you with some very basic information and help answer some frequently asked questions, but the information on this website is not legal advice and is not meant to be a substitution for seeking the advice of competent legal counsel. Your case is unique and you need legal advice that is specifically tailored to fit your needs. Our Hollingsworth & Zivitz, PC education team is here to provide you with the advice you need to make decisions that will have a lasting impact on your child's life. Contact Catherine Michael at Hollingsworth & Zivitz, PC to discuss any bullying issues your child has at school.

BULLYING IN SCHOOL- General Information

Unfortunately, bullying in both public and private schools is fairly common. Students are begin dreading to go to school and in situations where a school refuses to address the situation can quickly get out of hand. Students with disabilities are bullied and harassed in a greater proportion than the rest of the population. If bullying is a problem for your child, you need to immediately convene your child's IEP team and devise strategies for the school to stop the bullying and strategies for your child to cope with and report future incidents.

A bullied child who is bullied because of a special class -- such as gender, disability, race etc. -- may have a cause of action against the school under a Title IX construct that among other things turns on whether or not the school responded to the bullying with "deliberate indifference."

Bullying- FAQ's

What should do if my child is being bullied school?

The most important thing you can do is to document the entire situation by taking careful notes and asking questions as soon as you have been alerted to the incidents. If your child is also receiving e-mails and phone calls, document these and save all evidence of it. It is important to attempt to handle the situation promptly and to contact the school principal or guidance office.

How does the law define bullying?

20-33-8-0.2 Bullying Chapter 8. Student Discipline Sec. 0.2. As used in this chapter, "bullying" means overt, repeated acts or gestures, including: (1) verbal or written communications transmitted; (2) physical acts committed; or (3) any other behaviors committed; by a student or group of students against another student with the intent to harass, ridicule, humiliate, intimidate, or harm the other student.

Does the state recognize that bullying should be disciplined?

Yes. IC 20-33-8-13.5 Discipline rules prohibiting bullying required. Chapter 8. Student Discipline Sec. 13.5.

(a) Discipline rules adopted by the governing body of a school corporation under section 12 of this chapter must: (1) prohibit bullying; and (2) include provisions concerning education, parental involvement, reporting, investigation, and intervention.

(b) The discipline rules described in subsection (a) must apply when a student is:

(1) on school grounds immediately before or during school hours, immediately after school hours, or at any other time when the school is being used by a school group; (2) off school grounds at a school activity, function, or event; (3) traveling to or from school or a school activity, function, or event; or (4) using property or equipment provided by the school.

(c) This section may not be construed to give rise to a cause of action against a person or school corporation based on an allegation of noncompliance with this section. Noncompliance with this section may not be used as evidence against a school corporation in a cause of action.

Do schools have to have programs on bullying for its staff?

Yes, schools have to have a safety specialist training. See IC 5-2-10.1-11 School safety specialist training and certification program Chapter 10.1. Indiana Safe Schools Fund Sec. 11.

(a) The school safety specialist training and certification program is established.

(b) The school safety specialist training program shall provide: (1) annual training sessions, which may be conducted through distance learning or at regional centers; and (2) information concerning best practices and available resources; for school safety specialists and county school safety commissions.

(c) The department of education shall do the following: (1) Assemble an advisory group of school safety specialists from around the state to make recommendations concerning the curriculum and standards for school safety specialist training. (2) Develop an appropriate curriculum and the standards for the school safety specialist training and certification program. The department of education may consult with national school safety experts in developing the curriculum and standards. The curriculum developed under this subdivision must include training in identifying, preventing, and intervening in bullying. (3) Administer the school safety specialist training program and notify the institute of candidates for certification who have successfully completed the training program.

(d) The institute shall do the following: (1) Establish a school safety specialist certificate. (2) Review the qualifications of each candidate for certification named by the department of education. (3) Present a certificate to each school safety specialist that the institute determines to be eligible for certification.

If another student is bullying my child, can the school face liability for this?

Yes, a school can face liability for refusing to take action to address peer to peer bullying, particularly in cases where one student is disabled. The U.S. District Court, Southern District of New York allowed a mother to move forward with her claim that the Hyde Park Central School District intentionally discriminated against her son's developmental disorder and dyslexia. *K.M. ex rel. D.G. v. Hyde Park Central Sch. Dist.*, 44 IDELR 37 (S.D.N.Y. 2005). The court ruled that the district could be liable under Title II and Section 504 for its alleged failure to address peer-to-peer disability-based harassment among its students.

Title IX of the Education Amendments of 1972 provides in relevant part: No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance.

20 U.S.C. § 1681(a). Title IX will apply to most Local Educational Agencies (LEAs) in each State because of receipt of Federal financial assistance in some form.

When can schools who fall under Title IX face liability for damages?

1. The sexual harassment was so severe, pervasive, and objectively offensive that it could be said to deprive the plaintiff of access to the educational opportunities or benefits provided by the school;
2. The funding recipient had actual knowledge of the sexual harassment; and
3. The funding recipient was deliberately indifferent to the harassment.

What is an example of a case that included school district liability?

Davis v. Monroe County Board of Education, 526 U.S. 629, 653, 119 S. Ct. 1661 (1999). Some courts have held that a single occurrence may give rise to a finding of a hostile environment within the context of Title IX. See *Vance v. Spencer County Public School*, 231 F.3d 253, 259 (6th Cir. 2000); *Doe v. School Admin. Dist. No. 19*, 66 F.Supp.2d 57, 62 (D. Me. 1999).

Dane Patterson suffered extraordinary bullying, threats, and abuse (both verbal and physical) throughout much of middle school and through his freshman year of high school. He was teased, called names, pushed and shoved by other students, taunted by a teacher, and slapped. His locker was repeatedly vandalized. His clothes were urinated upon and his shoes thrown in the toilet. He was also sexually assaulted in a locker room incident. Not surprising, he was distraught and became withdrawn, at one time eating his lunch in the band room to escape his tormentors. The abuse he suffered from sixth grade through his ninth grade year is detailed in the Slip Opinion at 2-7.

School officials were aware of Dane's struggles. In the 7th grade, when taunting and bullying by other students was a daily occurrence, the principal offered to mentor Dane through his difficulties. *Id.* at 2. Near the end of his 7th grade year, he was referred for an evaluation to determine whether he was eligible for services under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400. He was found to be "emotionally impaired" under the IDEA and Michigan law. An Individualized Education Program (IEP) was developed and implemented for Dane. One of the benefits was his access to Ted Adams, his resource room teacher. With Adams' assistance, the 8th grade was a "good year." *Id.* at 4.

However, when Dane entered high school the following school year, the taunting and bullying began anew. At the beginning of the school year, Dane did not have Adams as a resource because Adams was a middle-school teacher. Dane did complain to the school counselor, who often interceded on his behalf with the students who taunted or bullied him. After the school counselor spoke to the offending students, the students did not bother Dane thereafter. The school investigated other incidents involving Dane and administered disciplinary measures when the perpetrators could be identified. No discipline was meted out where school officials could not ascertain who vandalized Dane's locker or his personal items. Adams, although a middle-school teacher, assumed his previous role with Dane, although on a more limited basis. The sexual assault by another student occurred near the end of Dane's freshman year. The school expelled the student who assaulted Dane and punished another student who aided in the assault. The school cooperated with law enforcement when the assault was later investigated at the instigation of Dane's family. *Id.* at 4-7, 18.

Dane did not return to the high school after the assault in the locker room. He completed his secondary education through off-site services and college placement courses. He now attends college. *Id.* at 7.

Dane's parents sued the school district and its superintendent, asserting claims under Title IX and the Equal Protection Clause of the Fourteenth Amendment. The Defendants moved for summary judgment, which the federal district court granted.

Severe, Pervasive, and Objectively Offensive Conduct

The district court had little difficulty in determining that Dane satisfied the first element in the Davis analysis. The student-on-student harassment was of a sexual nature; was severe, pervasive, and objectively offensive; and adversely impacted or denied Dane's access to educational opportunities or benefits through the public school. The persistent name-calling, taunting, bullying, verbal and physical abuse, and, ultimately, the sexual assault were unequivocally offensive or often sexual in nature. The harassment was lengthy and prolonged (his 7th and 9th grade years). The culminating event—the sexual assault—resulted in his not returning to the high school. *Id.* at 10-12.

Notice Requirement

There is no dispute that the bullying, taunting, name-calling, vandalizing of personal property, and other activities, most of which were of a sexual nature, had been reported to school personnel. School officials do not deny that they had actual knowledge of the incidents of sexual harassment. *Id.* at 12-13.

Deliberate Indifference

Plaintiffs, however, were unable to prove the third element: that the school district was deliberately indifferent to the harassment. The response of school personnel to Dane's complaints were not "clearly unreasonable." Id. at 13-14. The district court noted that "[t]he Supreme Court has stated that when discrimination has been determined to occur (such as when sexual harassment occurs), the responsible party has a duty to take reasonable, timely, age-appropriate, and effective corrective action. See *Gebser v. Lago Vista Ind. Sch. Dist.*, 524 U.S. 274, 288, 118 S. Ct. 1989 (1998) [school district was not deliberately indifferent to harassment arising from teacher-student sexual relationship as school district had no notice]. When a school district has knowledge that its remedial action is inadequate and ineffective, it is required to take reasonable action in light of these circumstances to eliminate the behavior." Id. at 14.

It is clear that deliberate indifference exists if a district's responses are so inadequate that students undergo harassment or are made more vulnerable to it as a result of the district's responses. [Citations omitted.] In the instant case, the Court finds that administrators at Hudson Area Schools repeatedly took adequate and effective remedial action reasonably calculated to end harassment, eliminate the hostile environment and prevent harassment from occurring again. The Court also concludes that, as a matter of law, Defendants' responses were not clearly unreasonable in light of known circumstances. Id. at 14-15.

The judge noted that the school responded to each complaint and, where a perpetrator could be identified, imposed student-specific discipline or intervention that was effective, at least in the sense that the previously offending students no longer engaged in the harassment or were otherwise prevented from doing so through expulsion. Id. at 15.

The district court also disagreed with the Plaintiffs that the school allowed a known environment of sexual harassment to permeate the school district and failed to respond to it. In addition to the specific interventions undertaken in response to Dane's complaints, the court detailed the school's attempts to address such activities: it adopted a policy prohibiting harassment, including sexual harassment; it brought in speakers to address character development; it initiated programs for students (one was for sexual harassment and bullying; another involved dating, bullying, and peer pressure; still another involved mentoring and peer mediation); it established policies for supervision of hallways, lunchrooms, and locker rooms, with school personnel trained to implement these policies; and it informed students of policies on acceptable student conduct, including the student code of conduct, which has also been incorporated into the Health class curriculum and specifically addresses harassment and bullying. Id. at 15-18.

"While Defendants' actions may not be exactly what Plaintiffs desired and while their actions may not have yielded the results Plaintiffs hoped for, applicable law provides that the Plaintiffs do not have a right to dictate the actions Defendants take." Id. at 18-19. The standard is whether the school officials acted "clearly unreasonable in light of known circumstances." Id. at 19. The district court found the school did not act in a clearly unreasonable fashion or with deliberate indifference either generally within the school district or specifically with regard to Dane. Id.

The district court judge also rejected The Equal Protection claim. The Equal Protection Clause requires public institutions to treat similarly situated individuals in a similar manner. However, in this case, the Plaintiffs have not identified any "similarly situated individual" much less demonstrated disparate treatment. Id. at 22.

The Defendants' Motion for Summary Judgment was granted. The Plaintiffs' complaint was dismissed with prejudice. Id.