

THE DIFFICULT ISSUE OF SCHOOL BULLYING FROM A LEGAL PERSPECTIVE

Thursday, July 20, 2017

8TH Annual



SAFESCHOOLS
CONFERENCE

Presented by:

Cathy S. Holmes, Esq.

Dorothy McLaughlin, Esq.

BEST BEST & KRIEGER LLP

www.bbklaw.com



Education Law



Overview

- Why The Widespread Concern?
- What Has Changed?
- Federal Response
- State Response
 - What actually constitutes Bullying in California?
- Case Law
- How Do We Respond?
- Practical Tips



Why the Widespread Concern?

- **Bullying is nothing new**

- Schools have always had a responsibility to investigate incidents of harassment and intimidation based on disability, gender, race and ethnicity, etc.
- Schools have always been authorized to discipline students who bully, harass, intimidate, threaten, hit, kick, vandalize, etc.

- **But the stakes are now higher!**

- Increase in school violence nationwide;
- Mental health concerns in youth are on the rise;
- Litigation to hold school districts responsible is becoming significantly more prevalent.



What Has Changed?



What Has Changed?

- Differing Perceptions of the word “bullying”
- Prevalence of Technology
 - National awareness of school violence episodes
 - Cyberbullying – a new way of bullying
 - Psycho/social/emotional impact of mass distribution
 - Permanency of digital information
 - Technology empowers the traditionally less powerful
- Federal Response
 - U.S. Commission of Civil Rights
 - Office for Civil Rights, U.S. Department of Education
- State Response
 - Current State law



What Has Changed?

- **Recognized Link To School Violence**
- The act of bullying and the harm it causes have typically been given little consideration; bullying is believed to be a natural and unfortunate part of growing up. The prevalence of bullying has come under scrutiny more recently because of the major role of bullying as a precursor to the notorious and avoidable incidents of school violence across the nation. It is now known that bullying behavior is common among children and that the harmful and lasting effects on children deserve special attention.

Today, the link between bullying and later delinquent and criminal behavior can no longer be ignored.

-- Bullying at School, CDE



What Has Changed?

- **Link To Youth Suicide**
- Education Code § 215 – Suicide prevention policies must be in place for 2017-2018 school year for schools serving students in 7th to 12th grade.
 - Such policies must address the needs of high-risk groups such as
 - Youth bereaved by suicide
 - Youth with disabilities, mental illness, or substance abuse disorders;
 - Youth experiencing homelessness or in out-of-home settings, such as foster care; and
 - LGBTQ youth
- CDE's Model Youth Suicide Prevention Policy available here: <http://www.cde.ca.gov/ls/cg/mh/suicideprevres.asp>





Bullying in Schools



RISK FACTORS: No single factor puts a child at risk of being bullied or bullying others. Bullying can happen anywhere—cities, suburbs, or rural towns. Depending on the environment, some groups—such as lesbian, gay, bisexual, or transgender youth, youth with disabilities, and socially isolated youth—may be at an increased risk of being bullied.



WARNING SIGNS: There are many warning signs that may indicate that someone is affected by bullying—either being bullied or bullying others. Recognizing the warning signs is an important first step in taking action against bullying. Not all children who are bullied or are bullying others ask for help.



EFFECTS OF BULLYING: Bullying can affect everyone—those who are bullied, those who bully, and those who witness bullying. Bullying is linked to many negative outcomes, including impacts on mental health, substance abuse, and suicide. It is important to talk to kids to determine whether bullying-or something else-is a concern.

Stopbullying.gov

Statistics

Bullying Statistics

Students in grades 6-12 who experience bullying	28%
Students in grades 9-12 who experience bullying	20%
Students who bully others	30%
Students who have seen bullying	70.6%
School staff who have seen bullying	70.4%
Students who are bullied and notify adults about the bullying	20-30%



Statistics

Where Bullying Occurs

(Study on Middle School Students)

Classroom	29.3%
Hallway or Lockers	29.0%
Cafeteria	23.4%
Gym or PE class	19.5%
Bathroom	12.2%
Playground or Recess	6.2%



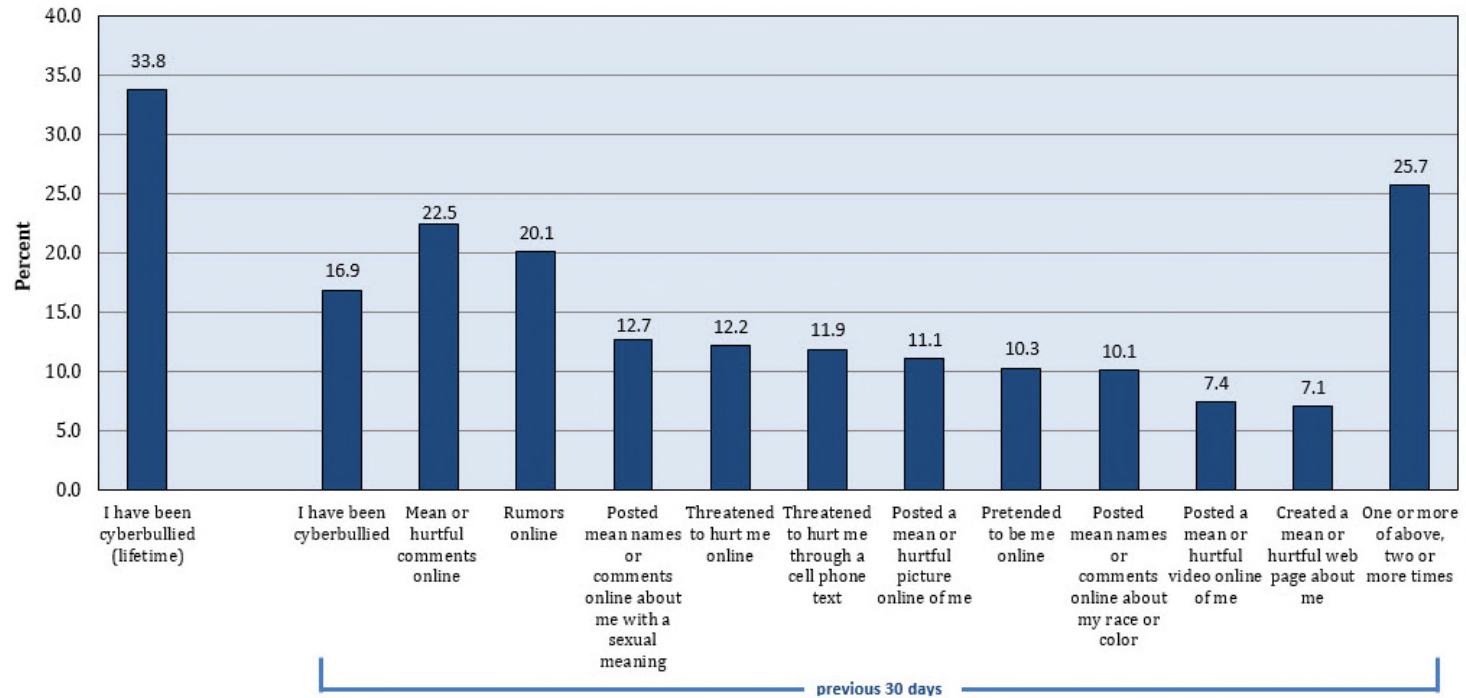
Statistics

Sameer Hinduja and Justin W. Patchin (2016)

Cyberbullying Victimization

N=5,707

Nationally-representative sample of 12-17 year old middle and high school students in the U.S.



Cyberbullying Research Center
www.cyberbullying.org



Stopbullying.gov,
<https://www.stopbullying.gov/media/facts/index.html>
(last visited June 30, 2017).

Bullying at School

A 2017 study from the Journal of Educational Psychology reported:

- There is an inverse relationship between peer victimization and children's academic performance.
- 24% of children in the study suffered from “moderate to severe peer victimization” during their school years.
- Victimization was higher in earlier school years.
- Victims of bullying had lower achievement scores, lower self - estimation of academic competence, and lower school engagement.

Gary W. Ladd et al., *Peer Victimization Trajectories From Kindergarten Through High School: Differential Pathways for Children's School Engagement and Achievement?*, JOURNAL OF EDUCATIONAL PSYCHOLOGY 1-16 (2017).



Federal Response



Federal Laws Governing District Responses to Bullying in California

- **Section 504 of the Rehabilitation Act of 1973**
(Prohibits discrimination on the basis of **disability**)
- **Title II & III of the Americans with Disabilities Act of 1990**
(Prohibits discrimination on the basis of **disability**)
- **Title IV & VI of the Civil Rights Act of 1964**
(Prohibits discrimination on the basis of **race, color, or national origin**)
- **Title IX of the Education Amendments of 1972**
(Prohibits discrimination on the basis of **sex**)
- **Individuals with Disabilities Education Act**
(Provides that **students with disabilities** receive a FAPE, as well as other heightened procedural protections.)



September 2011 Federal Response

- **Peer-to-Peer Violence + Bullying – Examining the Federal Response**
- In March, 2011, the U.S. Commission on Civil Rights selected peer-to-peer violence and bullying as the topic for its annual, statutorily mandated enforcement investigation.
- Commission elected to explore the federal enforcement of civil rights laws with respect to peer-to-peer violence based on race, national origin, sex, disability, religion and sexual orientation or gender identity.
- **Bullying triggers federal civil rights laws where it meets the heightened legal standard for harassment. That is, it targets students based on a protected classification, it creates a hostile environment, and schools have notice of the conduct but fail to address it.**

➤ <http://www.usccr.gov/pubs/2011statutory.pdf>



September 2011 Federal Response

- “[S]chool districts violate the federal civil rights laws that OCR enforces when harassment based on race, color, national origin, sex, or disability is sufficiently serious to create a hostile environment, and school employees encourage, tolerate, do not adequately address, or ignore the harassment.”
- Russlynn Ali, Department of Education Assistant Secretary for Civil Rights.
- “[DOJ]’s authority goes to harassment which is physical or verbal or other conduct that is sufficiently severe or pervasive to create a hostile environment that interferes with a student’s ability to learn.”
- Jocelyn Samuels, Senior Counselor to Department of Justice, Assistant Attorney General for Civil Rights.
- Key distinction: Federal civil rights laws, and the federal government’s enforcement of those laws, are limited to heightened incidents of harassment that do not include typical schoolyard bullying unless that bullying creates a hostile environment. Federal agencies do not have jurisdiction and will not take action against single incidents of playground taunting absent something like physical conduct that made a single incident sufficiently severe or pervasive to create a hostile environment.
- **Courts and agencies such as OCR generally equate bullying with harassment and use the terms interchangeably.**

➤ <http://www.usccr.gov/pubs/2011statutory.pdf>



Federal Legal Standards



- Under Section 504, Title II, and Title IX, schools are responsible for providing students with a non-discriminatory educational environment.
- Once a school has notice of possible harassment between students on the basis of disability or sex, it is responsible for determine what occurred, and for responding appropriately.



Federal Legal Standards



- A school may violate Section 504, Title II, or Title IX if:
 - The harassing conduct is sufficiently serious to deny or limit the student's ability to participate in, or benefit from, the educational program;
 - The school knew or reasonably should have known about the harassment; and
 - The school fails to take appropriate and effective responsive action.



Federal Legal Standards



- In determining whether a hostile environment exists, OCR examines all circumstances, including (first prong):
 - Type of harassment (physical v. verbal)
 - Frequency and severity of conduct
 - Nature of the student's disability
 - Age and relationships of the parties
 - Setting and context in which harassment occurred
 - Whether other incidents have occurred.
 - Other relevant factors



Federal Legal Standards



- In determining whether the school's response was appropriate, it considers whether it was “***prompt, thorough and effective.***”
- In all cases, the school must conduct an impartial inquiry designed to reliably determine what occurred.
- Response must be tailored to stop the harassment, eliminate the hostile environment, and remedy the effects of harassment on the victim.
- School must take steps to prevent the harassment from recurring, including disciplining the harasser, where appropriate.



2010 Dear Colleague Letter

- **55 IDELR 174 (OCR 2010).**
- Disability harassment under Section 504 and Title II has been defined as intimidation or abusive behavior toward a student based on disability.
- Districts have a duty to respond when disability-based peer harassment creates a hostile environment.
 - “Once a school knows or reasonably should know of possible student-on-student harassment, it must take immediate and appropriate action to investigate or otherwise determine what occurred.”
 - “If harassment has occurred, a school must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment, and prevent its recurrence. These duties are a school’s responsibility even if the misconduct also is covered by an anti-bullying policy and regardless of whether the student makes a complaint, asks the school to take action, or identifies the harassment as a form of discrimination.”



2010 Dear Colleague Letter

- Some bullying may require a more comprehensive response than merely disciplining the perpetrator or counseling the victim.
- **Some student misconduct that falls under a school's anti-bullying policy also may trigger responsibilities under one or more of the federal antidiscrimination laws enforced by the Department's Office for Civil Rights (OCR).**



State Response



California Law

Key California State laws that address bullying:

- California Education Code, § 234
- California Education Code, § 234.1
- California Education Code, § 234.2
- California Education Code, § 234.3
- California Education Code, § 234.5
- California Education Code, §§ 32261-32262
- California Education Code, § 32265
- California Education Code, § 32270
- California Education Code, § 32282
- California Education Code, § 32283
- California Education Code, § 48900(r)



What is Bullying?

- **California Education Code Section § 32261. Legislative findings, declaration, intent; Definitions**

(a) The Legislature hereby recognizes that all pupils enrolled in the state public schools have the inalienable right to attend classes on school campuses that are safe, secure, and peaceful. The Legislature also recognizes that pupils cannot fully benefit from an educational program unless they attend school on a regular basis. In addition, the Legislature further recognizes that school crime, vandalism, truancy, and excessive absenteeism are significant problems on far too many school campuses in the state.

(b) The Legislature hereby finds and declares that the establishment of an interagency coordination system is the most efficient and long-lasting means of resolving school and community problems of truancy and crime, including vandalism, drug and alcohol abuse, gang membership, gang violence, and hate crimes.



What is Bullying?

- **California Education Code Section § 32261 (cont'd.)**

(e) It is the intent of the Legislature in enacting this chapter that the School/Law Enforcement Partnership shall not duplicate any existing gang or drug and alcohol abuse program currently provided for schools.

(f) As used in this chapter, "bullying" has the same meaning as set forth in subdivision (r) of Section 48900.

(g) As used in this chapter, an "electronic act" has the same meaning as set forth in subdivision (r) of Section 48900.



What is Bullying?

- **California Education Code Section § 32261 (cont'd.)**

(c) It is the intent of the Legislature in enacting this chapter to support California public schools as they develop their mandated comprehensive safety plans that are the result of a systematic planning process, that include strategies aimed at the prevention of, and education about, potential incidents involving crime and violence on school campuses, and that address the safety concerns of local law enforcement agencies, community leaders, parents, pupils, teachers, administrators, school police, and other school employees interested in the prevention of school crime and violence.

(d) It is the intent of the Legislature in enacting this chapter to encourage school districts, county offices of education, law enforcement agencies, and agencies serving youth to develop and implement interagency strategies, in-service training programs, and activities that will improve school attendance and reduce school crime and violence, including vandalism, drug and alcohol abuse, gang membership, gang violence, hate crimes, bullying, including bullying committed personally or by means of an electronic act, teen relationship violence, and discrimination and harassment, including, but not limited to, sexual harassment.



What is Bullying?

- **California Education Code § 48900(r)(1):
(Grounds for Suspension/Expulsion)**
 - "Bullying" means any severe or pervasive physical or verbal act or conduct, including communications made in writing or by means of an electronic act, and including one or more acts committed by a pupil or group of pupils as defined in Section 48900.2, 48900.3, or 48900.4, directed toward one or more pupils that has, or can be reasonably predicted to have, the effect of one or more of the following:
 - (A) Placing a reasonable pupil or pupils in fear of harm to that pupil's or those pupils' person or property.
 - (B) Causing a reasonable pupil to experience a substantially detrimental effect on his or her physical or mental health.
 - (C) Causing a reasonable pupil to experience substantial interference with his or her academic performance.
 - (D) Causing a reasonable pupil to experience substantial interference with his or her ability to participate in or benefit from the services, activities, or privileges provided by a school.



What is Bullying?

- **California Education Code Section § 48900(r). (Cont'd.)**

(r) Engaged in an act of bullying. For purposes of this subdivision, the following terms have the following meanings:

(2) (A) "Electronic act" means the creation or transmission originated on or off the schoolsite, by means of an electronic device, including, but not limited to, a telephone, wireless telephone, or other wireless communication device, computer, or pager, of a communication, including, but not limited to, any of the following:

(i) A message, text, sound, video, or image.

(ii) A post on a social network Internet Web site, including, but not limited to:

(I) Posting to or creating a burn page. "Burn page" means an Internet Web site created for the purpose of having one or more of the effects listed in paragraph (1).

(II) Creating a credible impersonation of another actual pupil for the purpose of having one or more of the effects listed in paragraph (1). "Credible impersonation" means to knowingly and without consent impersonate a pupil for the purpose of bullying the pupil and such that another pupil would reasonably believe, or has reasonably believed, that the pupil was or is the pupil who was impersonated.

(III) Creating a false profile for the purpose of having one or more of the effects listed in paragraph (1). "False profile" means a profile of a fictitious pupil or a profile using the likeness or attributes of an actual pupil other than the pupil who created the false profile.

(B) Notwithstanding paragraph (1) and subparagraph (A), an electronic act shall not constitute pervasive conduct solely on the basis that it has been transmitted on the Internet or is currently posted on the Internet.

(3) "Reasonable pupil" means a pupil, including, but not limited to, an exceptional needs pupil, who exercises average care, skill, and judgment in conduct for a person of his or her age, or for a person of his or her age with his or her exceptional needs.



California Law

- **California Education Code § 48900.2. Sexual harassment as ground for suspension or recommendation for expulsion**

In addition to the reasons specified in Section 48900, a pupil may be suspended from school or recommended for expulsion if the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has committed **sexual harassment** as defined in Section 212.5.

For the purposes of this chapter, the conduct described in Section 212.5 must be considered by a reasonable person of the same gender as the victim to be sufficiently severe or pervasive to have a negative impact upon the individual's academic performance or to create an intimidating, hostile, or offensive educational environment. This section shall not apply to pupils enrolled in kindergarten and grades 1 to 3, inclusive.



California Law

- **California Education Code §212.5 states:**

"Sexual harassment" means unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone from or in the work or educational setting, under any of the following conditions:

(a) Submission to the conduct is explicitly or implicitly made a term or a condition of an individual's employment, academic status, or progress.

(b) Submission to, or rejection of, the conduct by the individual is used as the basis of employment or academic decisions affecting the individual.

(c) The conduct has the purpose or effect of having a negative impact upon the individual's work or academic performance, or of creating an intimidating, hostile, or offensive work or educational environment.

(d) Submission to, or rejection of, the conduct by the individual is used as the basis for any decision affecting the individual regarding benefits and services, honors, programs, or activities available at or through the educational institution.

- **Gender/Sexual Harassment**



California Law

- **California Education Code § 48900.3. Participation in act of hate violence as grounds for suspension or expulsion**

In addition to the reasons set forth in Sections 48900 and 48900.2, a pupil in any of grades 4 to 12, inclusive, may be suspended from school or recommended for expulsion if the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has caused, attempted to cause, threatened to cause, or participated in an act of, hate violence, as defined in subdivision (e) of Section 233.

- **Section 233 cites to Penal Code Section 422.6, 422.7, 422.75**
- **§ 422.6. Injury or threat to person or damage to property based on perception of person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation; Punishment; Other provisions of law.**
- **§ 422.7. (Second of two; Operative October 1, 2011) Additional punishment for hate crime committed for purpose of intimidating or interfering with constitutional rights of another.**
- **§ 422.75. Additional punishment for felony that is hate crime.**
- **Race, color, religion, ancestry, sexual orientation, etc.**



California Law

- **California Education Code § 48900.4. Engaging in harassment or intimidation as grounds for suspension or expulsion**

In addition to the grounds specified in Sections 48900 and 48900.2, a pupil enrolled in any of grades 4 to 12, inclusive, may be suspended from school or recommended for expulsion if the superintendent or the principal of the school in which the pupil is enrolled determines that **the pupil has intentionally engaged in harassment, threats, or intimidation, directed against school district personnel or pupils, that is sufficiently severe or pervasive to have the actual and reasonably expected effect of materially disrupting classwork, creating substantial disorder, and invading the rights of either school personnel or pupils by creating an intimidating or hostile educational environment.**

- **Harassment/Intimidation, Generally**



When Does Bullying Become Actionable?

Davis v. Monroe, 526 U.S. 629 (1999)

“The United States Supreme Court held that the recipient of federal educational levels may be held liable for violations of Title IX, 20 USC § 1681(a) pursuant to § 1983 if they are deliberately indifferent to known acts of sexual harassment.” Lindsley, et al. v. Girard School Dist., et al., 213 F.Supp.2d 523.

“Simple act of teasing and name-calling among school children” is not actionable.

Can we bank on this????



C.R. v. Eugene Sch. Dist. 4J, 835 F.3d 1142 (9th Cir. 2016)

- Seventh grader engaged in off (but near) campus sexual harassment of two younger students
- Student suspended challenge under the First Amendment
- Held: Suspension permissible under the First Amendment



Cyberbullying



Cyberbullying

- **Bullying committed by means of an electronic act, as defined in subdivision (r)(2)(A) of Education Code Section 48900, directed specifically toward a pupil**

(A) "Electronic act" means the creation or transmission originated on or off the schoolsite, by means of an electronic device, including, but not limited to, a telephone, wireless telephone, or other wireless communication device, computer, or pager, of a communication, including, but not limited to, any of the following:

(i) A message, text, sound, video, or image.

(ii) A post on a social network Internet Web site, including, but not limited to:

(I) Posting to or creating a burn page. "Burn page" means an Internet Web site created for the purpose of having one or more of the effects listed in paragraph (1).

(II) Creating a credible impersonation of another actual pupil for the purpose of having one or more of the effects listed in paragraph (1). "Credible impersonation" means to knowingly and without consent impersonate a pupil for the purpose of bullying the pupil and such that another pupil would reasonably believe, or has reasonably believed, that the pupil was or is the pupil who was impersonated.

(III) Creating a false profile for the purpose of having one or more of the effects listed in paragraph (1). "False profile" means a profile of a fictitious pupil or a profile using the likeness or attributes of an actual pupil other than the pupil who created the false profile.



Cyberbullying

- **Means**

- E-mailing/texting/instant messaging words, sounds, photos and images
- Telephone, computer, or any wireless communication device
- Facebook, MySpace, Twitter, and fake on-line profiles
- Other social networking, chat rooms and blogs
- YouTube or other Internet websites

- **Message**

- Mean, offensive, vulgar, or threatening messages; spreading rumors
- Sexting – sending sexually explicit photos, videos or messages
- Assuming another's identity to damage reputation or relationships
- Posting private or embarrassing information about another
- Forwarding a text or IM intended to remain private



Cyberbullying

- Special considerations

- **First Amendment / Free Speech Rights**

- Verbal threats are not protected if they are “true threats” and reasonably foreseeable that they will be taken seriously
 - Off-campus speech has greater protection (e.g., vulgar and offensive speech)
 - Tinker v. Des Moines test: Did the speech cause a “substantial disruption” or is reasonably likely to do so?

- **Jurisdiction**

- Is it sufficiently related to school activity or attendance?



J.C. v. Beverly Hills Unif. Sch. Dist., (2010) 711 F.Supp.2d 1094

- **Cyberbullying Case.**
- No discipline for YouTube video created off campus of students making derogatory comments about another student.
- Did not cause a substantial disruption on campus.
 - No threat of violence or verbal confrontations
 - No large effect on school activities
 - Video created off campus
- Must rise to something more than the “ordinary conflicts among middle school students that may leave them feeling hurt or insecure.”



Kowalski v. Berkeley County Schools II, 652 F.3d 565 (4th Cir. 2011)

- **Cyberbullying Case.**
- 2011 Fourth Circuit case - Court ruled that discipline was appropriate for student who created a website at home where students could post pictures and make derogatory comments regarding another student in their class.
- Caused an “actual or nascent” substantial disorder in the school.
 - Foreseeable that student’s conduct would reach the school, given that members invited were all students and the target was a student at the school.
 - Speech was targeted and derogatory; accessed on home and school computers.
- Student code of conduct adequately put student on notice.
 - Prohibitions were designed to regulate student behavior that would affect school’s learning environment.
 - Speech had a sufficient nexus to the school environment.



Wynar v. Douglas County School District, 728 F.3d 1062-1075 (9th Cir. 2013)

- **Cyberbullying Case.**
- Student instant messaged a friend a conversation that threatened several female students at his school, and discussed his “hit list”. Message was subsequently brought to attention of school administration by another student who was forwarded the message and drafter was arrested, suspended, and later expelled from school. Student sued alleging denials of procedural due process, substantive due process, violation of the First Amendment, negligence and negligent infliction of emotional distress. District Court granted summary judgment in favor of the District. Court of Appeal affirmed.
- Suspending a student for sending instant messages threatening to shoot classmates and the school district is not a violation of a student’s First Amendment right to freedom of expression.
- The messages “presented a real risk of significant disruption to school activities and interfered with the rights of other students.
- Schools can take disciplinary action if there is an identifiable threat of school violence.



Shen v. Albany Unified Sch. Dist., 2017

U.S. Dist. LEXIS 81526

- **Cyberbullying Case.**
- Students suspended from school for racially-charged Instagram posts on a private, personal account unconnected to school activity.
- Court enjoined disciplinary action against the students who were being disciplined, and potentially expelled.



Disability-Based Harassment/Bullying



Office for Civil Rights Rationale/Position:

- School districts are not responsible for the actions of a harassing student, **but rather for its own discrimination in failing to respond adequately.**
- A school district may violate Section 504, Title II and the regulations if:
 - (1) The harassing conduct was **sufficiently serious to deny or limit the students ability to participate in or benefit from the educational program;**
 - (2) District knew or reasonably should have known about the harassment; and
 - (3) District failed to take appropriate responsive action. **These steps are the district's responsibility whether or not the student who was harassed makes a complaint or otherwise asks the school to take action..."**



2013 Dear Colleague Letter



- **61 IDELR 263 (OSERS/OSEP, August 20, 2013)**
- Joint response.
- Bullying - characterized by aggression used within a relationship where the aggressor has more real or perceived power than the target, and the aggression is repeated, or had the potential to be repeated over time.
- Can involve “overt physical behavior or verbal, emotional, or social behaviors, and can range from blatant aggression to far more subtle and covert behaviors.”



2013 Dear Colleague Letter

- Emphasized that school districts “have an obligation to ensure that students with disabilities who are targets of peer bullying continue to receive a FAPE in accordance with their IEPs.”
- Cautioned that unless the student is no longer able to receive a FAPE, the district should keep the student in the current placement, specifically noting LRE concerns.
- Cannot attempt to resolve bullying by unilaterally changing the frequency, duration, intensity, placement, or location of the students’ special education services.



Los Feliz Charter School for the Arts, OCR Case **No 09-12-1431 (August 30, 2013)**

- Can a school be held responsible for failing to appropriately respond in cases where the school has set up a complaint process and the student and/or parents fail to access that process?



Los Feliz Charter School for the Arts, OCR Case **No 09-12-1431 (August 30, 2013)**

- Yes. OCR found that despite the complainants' failure to access the dispute resolution process governing discrimination complaints or the school's UCP, the school was still required to respond to the notice of harassment.
- In this case, clear notice was provided to several staff members and administration, and no formal investigation was convened.
- *"Each staff member was left to his or her own devices as to how best to respond to the information received. . ."*



2014 Dear Colleague Letter

- **114 LRP 45954 (OCR, October 21, 2014)**
- Prompted by “ever increasing” number of complaints concerning the bullying of students with disabilities and the effects of that bullying on their education.
- As part of the school’s response to bullying on any basis, the school should convene an IEP team or Section 504 meeting to determine whether the student is still receiving a FAPE.



2014 Dear Colleague Letter

- Unless it is clear from the investigation that there was no effect on the disabled student's receipt of a FAPE, **the school should convene an IEP or Section 504 team meeting to determine whether and the extent to which:**
 - The student's educational needs have changed;
 - The bullying impacted the student's receipt of a FAPE under the IDEA or Section 504; and
 - Additional or different services are needed, and to ensure that any needed changes are promptly made.



2014 Dear Colleague Letter

- There are no “hard and fast” rules governing how much of a change in academic performance or behavior is necessary to trigger the school’s obligation to convene an IEP or Section 504 meeting.
 - A sudden decline in grades, onset of emotional outbursts, increase in frequency or intensity of behavioral interruptions or a rise in absences would generally be sufficient.
 - One low grade of a straight “A” student who shows no other changes in academic progress or behavior will not generally trigger this meeting obligation.



Office of Administrative Hearings (OAH) v. Office for Civil Rights (OCR)

- **How do they differ?**
- **OAH Issues -**
Was a Student denied a FAPE Because:
 - District failed to provide safe learning environment?
 - District failed to ensure a student's safety in the educational environment/was subjected to harassment in the school setting?
 - District failed to consider evidence of student bullying?
 - Parent was denied right to sufficient parental participation given refusal to address bullying concerns in IEP meeting?
 - District refused to develop behavior plans or goals and objectives to address the bullying?
- **OCR Focus:**
 - Whether a Student's civil rights have been violated.
 - Whether Student has been discriminated against on the basis of his/her disability.

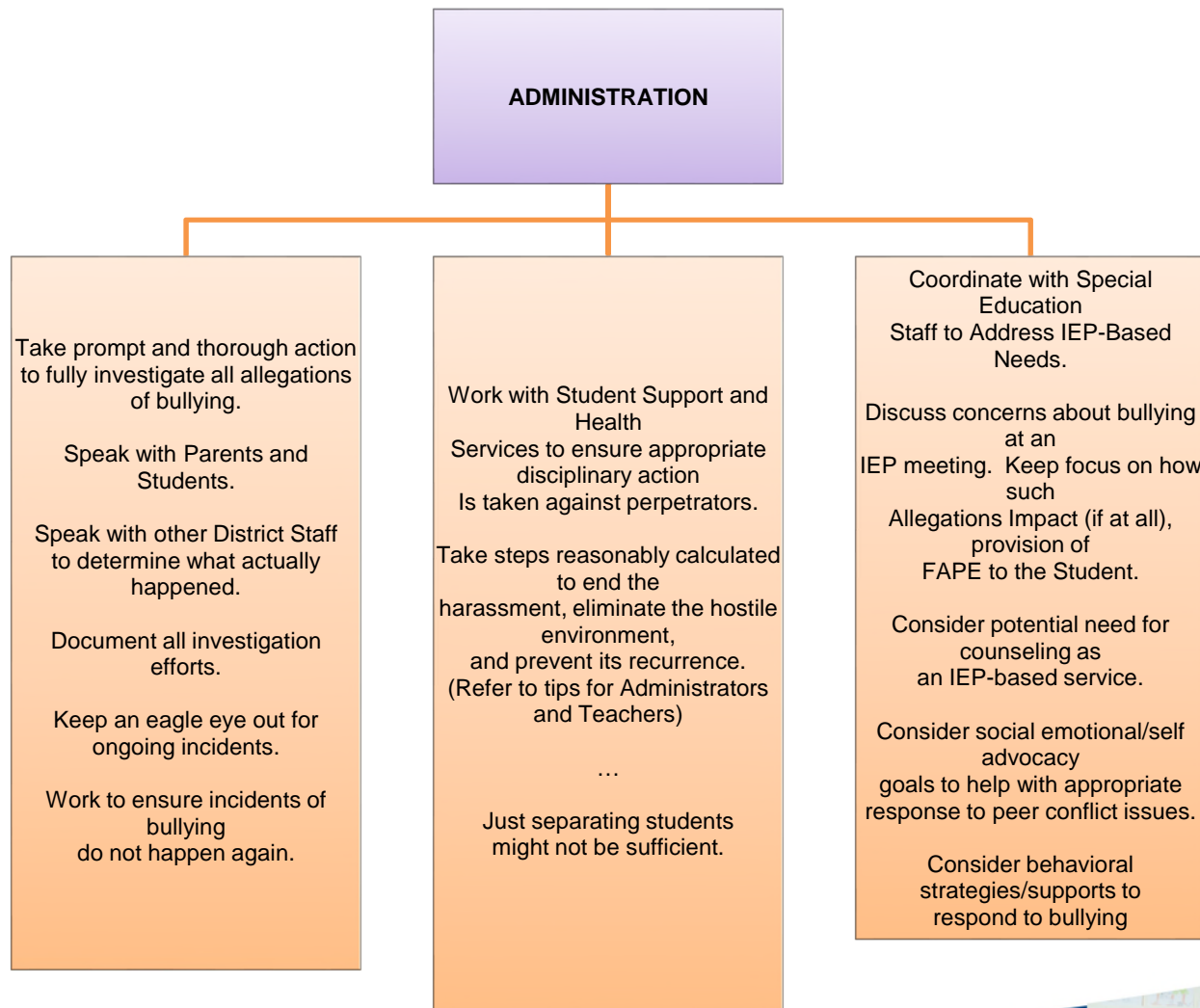


OAH v. OCR

- **How do they differ?**
- **OAH:**
 - Compliance with substantive FAPE. In cases of procedural violations, whether such rises to the level of a substantive denial of FAPE will be the focus.
 - ALJ's have cited to California Education Code Provisions (typically 48900.4) for the applicable definition of bullying.
- **OCR:**
 - Procedure, Procedure, Procedure!
 - Voluntary Resolutions – changes in Policies and Procedures.
- **How do we reconcile?**
- **The “It Takes A Village Approach.”**
- **Comply with both using all resources available.**



The “Village”...



M.L. v. Federal Way School Dist., 394 F.3d 634 (9th Cir. 2005)

- **IDEA Case with Disability Harassment Issue**
- Student presented with Autism and Intellectual Disability
- 3 primary claims:
 - Lack of regular education teacher participation at IEP
 - IEP inadequate
 - Teasing of disabled child caused a lack of FAPE. Court ruled there was insufficient evidence to support such a claim but did say: **“If a teacher is deliberately indifferent to teasing of a disabled child and the abuse is so severe that the child can derive no benefit from the services that he or she is offered by the school district, then child has been denied a FAPE.”**



Antioch Unified School District OCR Case No. **09-12-1462 (Sept. 20, 2013)**

- In response to alleged disability-based harassment against special education student, school:
 - Initially provided bathroom buddy in response to bathroom harassment incident (he couldn't identify perpetrator after being shown pictures in office)
 - Disciplined two other students for threatening to beat student up after school and moved their seats away from student;
 - After continued harassment, assigned 1:1 aide as part of IEP
 - Investigated other alleged threat against student, but found it was not corroborated. However, school still offered to move other student away from him in class.



Antioch Unified School District

OCR Case No. 09-12-1462 (Sept. 20, 2013)

- Despite investigations of each alleged incident and swift responses, OCR concluded: “The steps that the District took were clearly not sufficient to end the harassment.”
- OCR specifically found that the District “did not take any systemic steps to educate students at the school about the inappropriateness and harmfulness of their conduct or to train staff about understanding, preventing, and responding to disability-based harassment.”
- Main Point: Don’t forget staff and student training!



Temecula Valley Unified School District, OCR

Case No. 09-12-1125 (January 3, 2013)

- Parents of African-American student with IEP filed complaint alleging discrimination based on race and disability by other disabled students in ED class.
- Harassing students were disciplined, but incidents were not treated as discrimination because they viewed racial name calling as “inevitable” because of their disability.
- Only steps taken to remedy the effects of the harassment was that victim went for a walk with aide following an incident and spoke with administrator on several occasions.



Temecula Valley Unified School District, OCR

Case No. 09-12-1125 (January 3, 2013)

- “While the students who engaged in the conduct were also students with disabilities, and their disabilities may be relevant to identifying appropriate consequences for them, their disabilities do not change nor excuse the fact that some of the names directed by them to the student were deeply offensive.”
- Other than the instances of informal counseling, “the school did not undertake any efforts to work with the students regarding the particular significance and hurtfulness of using racial slurs.”
- OCR found no evidence that the student was harassed on the basis of disability.



T.K. and S.K. v. New York City Dept. of Educ.

2014 U.S. Dist. LEXIS 101277 (October 24, 2014)

810 F.3d 869 (January 20, 2016) – U.S. Court of Appeals, 2nd Circuit

- Parents of autistic third grade student brought an IDEA action against DOE alleging that its failure to properly address alleged bullying in school resulted in a denial of FAPE.
- The IHO concluded that determined that even though the DOE failed to properly investigate and respond to the incidents of bullying, the student was nonetheless not denied a FAPE because her educational opportunities were not significantly impaired by the bullying.
- The SRO vacated the IHO's findings that the school had failed to properly investigate and respond to these incidents, and upheld its findings that the student was not denied a FAPE.



T.K. and S.K. v. New York City Dept. of Educ. (Cont'd.)

- “A disabled student is deprived of a FAPE when school personnel are deliberately indifferent to or fail to take reasonable steps to prevent bullying that substantially restricts a child with learning disabilities in her educational opportunities.”
- “The conduct does not need to be outrageous in order to be considered a deprivation of rights of a disabled student. It must, however, be sufficient severe, persistent, or pervasive that it creates a hostile environment.”
- Relying on student’s new need to bring dolls to school for comfort, her aide’s testimony that classmates treated her like a “pariah” and laughed at her trying to participate in class, her 54 tardies/absences, and her pediatrician’s testimony that she “was not as happy as she had been before,” her reduced classroom involvement, her increased reliance on her aid, and her “significantly elevated BMI” resulting from her 13 pound weight gain, the Court reversed the determination that the bullying did not restrict student’s learning opportunities.



T.K. and S.K. v. New York City Dept. of Educ. (Cont'd.)

- The Court also upheld the IHO's determination that the DOE failed to properly investigate and respond to the alleged bullying incidents.
- Court further found that the IEP team failed to properly address the bullying because the IEP team precluded all discussion of the issue at the meeting, and did not consider a "anti-bullying program" in the child's IEP."
- The DOE had argued that it added goals and counseling services to address the issue, but the court found this insufficient, noting that they only had a "secondary effect of decreasing her vulnerability to bullying. Instead, they put the burden of adjusting to bullying on L.K."
- Court further found parent participation issues, finding that a lay person "would not have recognized these IEP changes to be reasonably calculated to provide a FAPE in light of the serious problem of bullying by others."
- U.S. Court of Appeals upheld reimbursement for private placement on grounds that Department denied student a FAPE as a result of the procedural violation of refusing to discuss peer bullying as part of the IEP Team process (denial of parental participation grounds). Court did not decide whether the failure to address bullying in the IEP amounted to a substantive denial of FAPE.



4 Cases Where OAH Found No Bullying

- Parents on Behalf of Student v. Los Angeles Unified Sch. Dist.,
OAH Case No. 20150507 (Nov. 5., 2015)
 - Student not subjected to bullying; no evidence that other student intended harm
- Parents on Behalf of Student v. Antioch Unified School Dist.,
OAH Case No. 2014120518 (June 29, 2015).
 - No bullying found; relationship between the students at issue not characterized by aggression or power imbalance



4 Cases Where OAH Found No Bullying (con.)

- Parents on Behalf of Student v. San Mateo-Foster City Sch. Dist., OAH Case No. 2016100430 (Dec. 21, 2016)
 - No bullying found; 4 of 6 incidents only involved “minor bumps and scratches” expected from young children. The other two incidents were accidents and did not constitute bullying.
- Parents on Behalf of Student v. Newport-Mesa Unified School Dist., OAH Case No. 2016101114 (April 26, 2017)/Newport-Mesa Unified School Dist. v. Parents on Behalf of Student, OAH Case No. 2016090853 (April 26, 2017)
 - Student failed to meet burden of proof re bullying



Prompt and Thorough Response to Allegations is Key

- Corvallis Sch. Dist., 115 LRP 61 (SEA OR 12/12/14)
 - Oregon school district avoided having to reimburse parents of a teen with Asperger syndrome for their unilateral placement of him in a private school. Judge found conclusion that student was denied a FAPE was not warranted as the district reasonably addressed the bullying and took steps to prevent it from recurring.
 - Court distinguished facts from those set forth in T.K., noting specifically that the district had changed the harasser's lunch rotation and made him subject to a "cease and desist order" – violation of which would result in disciplinary action; district personnel implemented strategic seating in classes; upped their monitoring of the teen's interactions with the other student, and increased shadowing during passing times and breaks.



Prompt and Thorough Response to Allegations is Key

- G.M. by Marchese v Dry Creek Joint Elem. Sch. Dist., 114 LRP 54294 (9th Cir. 12/24/14 – unpublished decision).
 - Court of Appeals upheld findings that school district personnel appropriately responded to five reported incidents of disability-based bullying by a PE classmate.
 - Of note were facts that the PE teacher and counselor spoke to the offender about his misconduct; PE teacher prohibited the offender from working with the student; Assistant principal suspended another schoolmate who punched the student's arm hard enough to cause bruising.
 - 9th Circuit agreed with District Court ruling finding that the parents failed to present evidence that the District acted with deliberate indifference or that the student was denied any educational benefits



Parents on Behalf of Student v. William S. Hart Union High Sch. Dist., OAH Case No. 2016020807 (April 28, 2016)

- Student with a disability and a history of disciplinary incidents entered into expulsion agreement with district.
- After a subsequent incident involving lizards, the district, without conducting a manifestation determination, suspended student, saying that expulsion would follow, given student's breaking his contract.
- ALJ held significant procedural error on district's part – student entitled to manifestation determination.



Prompt and Thorough Response to Allegations is Key

- Nevills ex rel. A.N. v. Mart Indep. Sch. Dist., 115 LRP 17173 (5th Cir. 04/21/15 – unpublished decision).
 - 5th Circuit Court of Appeals held in an unpublished decision that parents failed to demonstrate deliberate indifference to disability-based harassment.
 - Three judge panel found that school districts do not have to “purge” their schools of bullying to avoid liability under Section 504 and Title II. Rather, the deliberate indifference standard focuses on whether district personnel reasonably responded to reported incidents of peer harassment.
 - Not all alleged offenders were required to have been punished. Court concluded that notes from the principal’s investigations supported her decision not to discipline some students.
 - Court specifically recognized that principal had hired an outside organization to conduct teacher training on bullying and scheduled a presentation on bullying for the fifth and sixth grade boys. Training was conducted using “two nationally-recognized programs designed to teach kindness and compassion to students.”



Visnovits v. White Pine County Sch. Dist., **115 LRP 17196 (D. Nev. 04/21/15)**

- U.S. District Court, District of Nevada granted the school district's motion for summary judgment finding that high school student with a visual impairment failed to show that school district personnel was deliberately indifferent to the alleged bullying.
 - Noting that the 9th U.S. Circuit Court of Appeals has yet to adopt a test for deliberate indifference to disability harassment, the Court applied the deliberate indifference standard for sexual harassment found in *Davis v. Monroe*.
 - Test required Student to prove (1) she had a disability; (2) she was harassed on the basis of disability; (3) the harassment was so severe or pervasive that it created an abusive educational environment; (4) the district knew about the harassment; and (5) the district was deliberately indifferent to the harassment.
 - Student stated she did not know why the classmate would target her; Student testified that she did not "advertise" her disability; Student stated that she did not report prior incidents of harassment to a teacher or school administrator despite feeling bullied by a classmate in the past, thus leading court to conclude student was unable to show the district knew about the purported harassment and thus could not prove that the District was deliberate indifferent to the classmate's conduct.



McClarnon v. Bedford Community Sch. Dist., **115 LRP 27748 (U.S.D.C., So. Dist., Iowa.** **04/20/15)**

- Court denied school district's motion for summary judgment on the grounds that a ninth grade student with a specific learning disability did not have to show that his football teammates understood the precise nature of his impairment.
- Teammates' general knowledge of the student's special education services, along with their comments that he was "stupid" and "dumb" could establish a link between the alleged harassment and the student's disability.
- Court rejected school district's argument that the teammates' purported conduct could not qualify as disability harassment when the nature of the student's disability was not common knowledge.
- Student only needed to demonstrate that his teammates' alleged actions were "reasonably connected" to his disability.
- Court classified the record evidence as "skimpy" but still noted that the teammates' purported taunts of "idiot" and "moron" suggested a link to the student's SLD. Student was also hospitalized for a head injury after two teammates reportedly threw footballs at his head.



Bullying and LGBTQ Youth



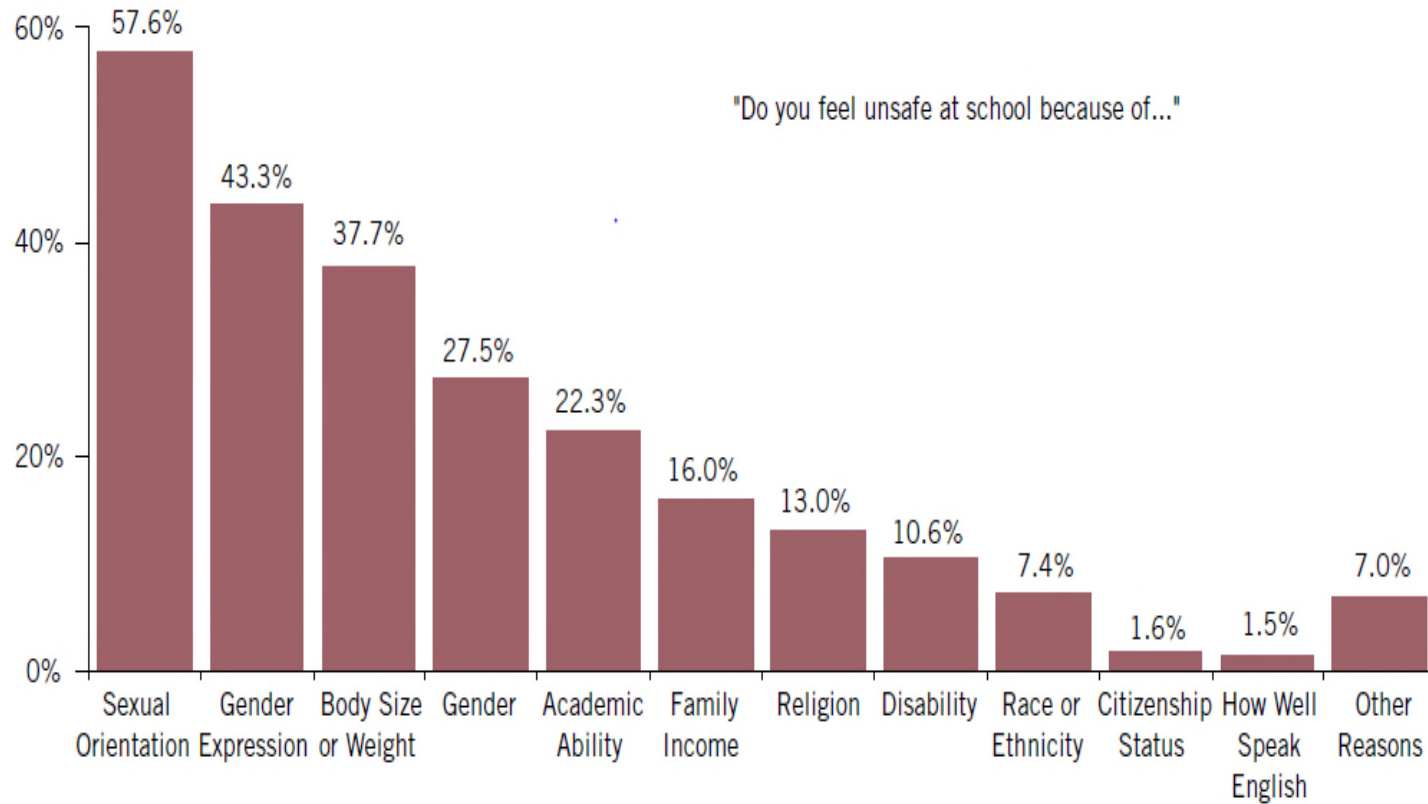
Statistics About Bullying of Students who Identify or are Perceived as LGBTQ

- 57.6% of LGBTQ students felt unsafe at school because of their sexual orientation, and 43.3% because of their gender expression.
- 31.8% of LGBTQ students missed at least one entire day of school in the past month because they felt unsafe or uncomfortable, and a tenth (10.0%) missed four or more days in the past month.
- Most reported avoiding school functions and extracurricular activities (71.5% and 65.7%, respectively) because they felt unsafe or uncomfortable.
- The vast majority of LGBTQ students (85.2%) experienced verbal harassment (e.g., called names or threatened) at school based on a personal characteristic, most commonly sexual orientation (70.8% of LGBTQ students) and gender expression (54.5%).
- 13.0% of LGBTQ students were physically assaulted (e.g., punched, kicked, injured with a weapon) in the past year because of their sexual orientation and 9.4% because of their gender expression.
- 48.6% of LGBTQ students experienced electronic harassment in the past year (via text messages or postings on Facebook), often known as cyberbullying.
- 59.6% of LGBTQ students were sexually harassed (e.g., unwanted touching or sexual remarks) in the past year at school.
- 57.6% of LGBTQ students who were harassed or assaulted in school did not report the incident to school staff, most commonly because they doubted that effective intervention would occur or the situation could become worse if reported.

Joseph G. Kosciw et al., 2015 NATIONAL SCHOOL CLIMATE SURVEY xvi-xviii (GLSEN 2015).



Figure 1.1 LGBTQ Students Who Felt Unsafe at School Because of Actual or Perceived Personal Characteristics



Joseph G. Kosciw et al., 2015 National School Climate Survey 12 (GLSEN 2015).



February 22, 2017 Dear Colleague Letter on Transgender Students

- Department of Justice and Department of Education withdrew statements of policy and guidance reflected in 2016 Dear Colleague Letter on Transgender Students because it did not contain “extensive legal analysis or explain how the position [requiring access to sex-segregated facilities based on gender identity] is consistent with the express language of Title IX.”
- Several courts have reached different conclusions regarding transgender issues.
- The Departments withdrew the guidance documents since they believe that “there must be due regard for the primary role of States and local school districts in establishing educational policy.”
- Schools must still provide protection for LGBT students in order for them to “learn and thrive in a safe environment.”



OCR Instructions Regarding Complaints Involving Transgender Students

- Rely on Title IX, decisions of Federal courts, and OCR guidance documents when evaluating sex discrimination complaints (regardless of if the individual is transgender).
- Evaluate each allegation separately.
- Search for a permissible jurisdictional basis for OCR to retain and pursue complaint.
- Ensure there is sufficient information before proceeding with an investigation.



Donovan v. Poway Unif. Sch. Dist., (2008) 167 Cal.App.4th 567

- **Gender/Sexual Orientation Harassment**
- Students were subjected to anti-gay slurs, violence, and death threats while attending school.
- When investigating bullying based on sexual orientation, school may be liable if:
 - Student suffered “severe, pervasive and offensive” harassment, which effectively deprived plaintiff of equal access to educational benefits and opportunities;
 - School district had “actual knowledge” of the harassment;
 - School district acted with “deliberate indifference” despite such knowledge.



Donovan v. Poway Unif. Sch. Dist. (Cont'd)

- **Gender/Sexual Orientation Harassment**
- School was “deliberately indifferent” to the plight of students.
 - District did not investigate comments once students made them aware of them.
 - Only told involved students it was against the rules.
- Harassment was so severe students had to leave the school for independent study.



Reese v. Jefferson School Dist. No. 14J, (2000)

208 F.3d 736

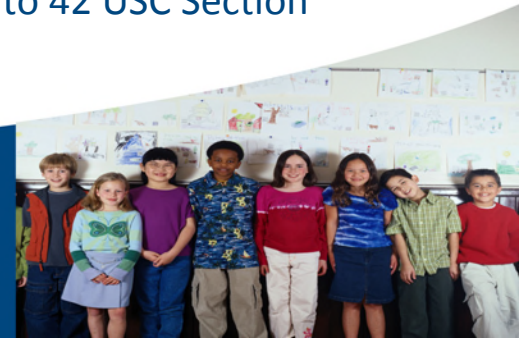
- **Gender/Sexual Harassment Case**
- Court held District not liable for incident during “Senior Skip Day” in which girls hit boys with water balloons.
- Conduct was not sufficiently severe, pervasive, and objectively offensive.
- No showing of actual knowledge of harassment.
- School was not “deliberately indifferent.”



The Money Problem

- Section 1983 Actions:

- **Drain and Drain v. Freeport Union Free School District, Freeport High School, et. al., U.S. District Court, Eastern District of New York, 115 LRP 10019 (January 14, 2015).**
 - Teen who was violently attacked and bullied by a high school classmate could not demonstrate that her New York district violated her constitutional due process rights by failing to protect her. Court found that the district neither created the danger of the assault nor had a special relationship with the teen and recommended the dismissal of the Student's Section 1983 claim.
- **Burge v. Colton School District, U.S. District Court, District of Oregon, Portland Division, 2015 U.S. Dist. LEXIS 51596 (March 3, 2015).**
 - While certain claims against the District did not prevail, Court found it should enter a judgement in favor of Student declaring that the school district's conduct and policies violated plaintiff's First Amendment rights to free speech, directing defendant to remove plaintiff's suspension from his school records and awarding plaintiff his reasonable attorneys' fees, costs and disbursements pursuant to 42 USC Section 1983.



The Money Problem

- Section 1983 Actions:

- **V.S. by Sisneros v. Oakland Unified Sch. Dist., 65 IDELR 234 (N.D. Cal. May 28, 2015.**
 - Court denied the school district's motions to dismiss, holding that the parent of a student with a severe intellectual disability held viable claims to pursue Section 1983 and Section 504 claims against the District.
 - Claims centered around school district's alleged failure to respond to reports of bullying on the school bus. District maintained it was unaware of the alleged harassment which occurred on a bus owned and operated by an independent contractor. Parent purportedly did not contact district officials until after lawsuit was filed. Complaint asserted that bus driver told parents that she had contacted district officials about the bullying and had not received a response.
 - "The allegation that the district and its employees and agents are deliberately failing to protect [student] from known bullying and assault on the school bus because she is unable to report the danger herself is sufficient to state a claim for relief under Section 1983."
 - Court also held that the parent pleaded a Section 504 violation by alleging that the student's physical assaults by peers (allegedly in response to her echolalia), prevented her from accessing her transportation services. Court granted motion to dismiss on this issue because parent mistakenly sought relief under Title II instead of Title II.



The Money Problem

- S.R., a Minor, by Joel Rosenstein and Cheri Rosenstein in Their Capacity as Parents and His Legal Guardians, and Joel Rosenstein and Cheri Rosenstein, Individually v. The Borough of Ramsey Board of Education, et al. (March 30, 2012).
 - Action by a middle school student and parents who alleged the school board and teachers negligently allowed an attack on a student by failing to supervise students and maintain order at school.
 - **School Board agreed to pay \$4.2 million through settlement.**



The Money Problem

- Justin Kinchen, a minor by his guardian ad litem Kenya Kinchen. v. Paterson Board of Education and J.G. (February 21, 2012).
 - Student and parents alleged that the school board failed to ensure proper supervision of the student's classmate, who allegedly had a history of bad behavior that included hitting and threatening people, and vandalizing property. Immediately prior to the underlying incident which caused the student blindness in one eye, it was alleged student had been sent to the gymnasium without supervision after misbehaving in another area of the school, and it was there that he reportedly punched the victim, who was attending gym class at the time.
 - **School Board agreed to pay \$ 1.2 million through settlement.**



The Money Problem

- Sawyer Rosenstein, a minor by his parents and guardians ad litem Joel Rosenstein and Cheri Rosenstein v. Ramsey Board of Education, John Ciano, Carol Carlson, Krista Occhuito, Alfonso Romeo, Kevin Sabella, Richard Weiner, Joseph Sabato, Eileen Smith and Kenneth Major. (February 15, 2012).
 - Action by a twelve-year old student who was reportedly punched in the stomach by another student while at school which ultimately left him paralyzed below the waist.
 - **School Board agreed to pay \$4.2 million through settlement.**



The Money Problem

- American Civil Liberties Union on Behalf of Russell Dickerson III v. Aberdeen School District No. 5 (March, 2012).
 - Student alleged he endured relentless bullying and harassment from the time he entered junior high until he graduated from high school. Student claimed he was fondled, stripped of his clothes in the hallway and spat on, because of his race and because students perceived him to be gay. Student alleged others hurled a litany of gay slurs and variations of the "N" word at him, taped derogatory words to his back, his backpack and his locker. In 2007, students created a website impersonating and mocking him and posted harassing and racist comments about him, including a threat by one commenter to lynch him. Student claimed school officials were made aware of the harassment, but did little or nothing to stop it.
 - **School Board agreed to pay \$100,000.00 through settlement..**



The Money Problem

- Tracey Schweer, as GAL for A.S., a Minor v. Beaverton School District (May, 2012).
 - Sixth grader allegedly bullied and assaulted by peer from September, 2009 through January, 2010 on at least three separate occasions, and bullied by another student earlier in the year.
 - District contended that the school's administrators and teachers were only aware of one confirmed incident between the students.
 - Police notified and case went to Juvenile Court.
 - 4-day suspension of alleged perpetrator imposed. Behavior plan for other student created. Avoidance contract put in place; lockers moved; students placed in different classes.
 - Staff denied request to move other student to a different core team of teachers.



The Money Problem

- Tracey Schweer, as GAL for A.S., a Minor v. Beaverton School District (May, 2012).
 - Student appealed administrators' decision about the proposed team change to the District's superintendent and school board.
 - Both supported the decision and refused to reverse it.
 - Student was removed from school and home schooled for the rest of the year.
 - Student contended that the incidents resulted from the district's failure to train its staff and supervise its students, and that student became extremely depressed and anxious as a result.
 - Additional claim for invasion of privacy based on school staff speaking to student's treating physician.
 - **Student awarded \$200,000 for the negligence claims and \$100,000 for invasion of privacy.**



Practical Points to Take Away

- Always keep in mind the District's duty to all students.
- Remember that only taking disciplinary action against a student who engages in bullying may not be enough. The District may need to take additional proactive action(s) to protect itself from potential liability.
- Investigate fully, as soon as you are aware of, or have reason to know of, potential bullying of students.
- If conduct occurs off campus, determine what the repercussions will be on campus and investigate immediately. (If many students on campus are affected by the off-campus bullying, it is more likely action can be taken.)
- Speak with *all* students and/or other witnesses with relevant information.



Effective Evidence-Based Practices for Preventing and Addressing Bullying

- Developed by OSERS and OSEP in conjunction with “Dear Colleague Letter” 61 IDELR 263 (2013).
 - Teach appropriate behaviors and how to respond (students and all school personnel).
 - Provide active adult supervision to correct behavior problems early on.
 - Train and provide ongoing support for staff and students. (For disabled students, instruction on how to respond to and report bullying, consistent with their IEPs).
 - Develop and implement clear policies to address bullying.



Effective Evidence-Based Practices for Preventing and Addressing Bullying

- Monitor and track bullying behaviors. Recommends that schools gather data collection from multiple sources, including student surveys, and be “linked to existing data systems to track frequency, types, and location of bullying behavior, other contextual factors, adult and peer responses, and perceptions of safety and school climate.”
- Notify parents when bullying occurs.
- Address ongoing concerns. If a school suspects that bullying is becoming a school-wide problem, a team-based, data-driven problem solving process should be initiated.
- Sustain bullying prevention efforts over time.



What Else Should Districts Be Doing?

- Do not be “deliberately indifferent.”
- Take direct action to end the problem
- Find ways to ensure the bullying stops and is dealt with such that it does not reoccur.
- Document, document, document!
- Institute preventative policies and workshops/counseling.
- Incorporate methods of dealing with bullying into the IEP process for special education students.
- Analyze whether FAPE has been impacted/denied for special education students.
- Regularly review and update policies/practices, as needed.



Anything Else?

- Review and update District Policies and internal practices consistent with new law
- Provide regular training:
 - Students – Assemblies, Student papers
 - Teachers
 - Parents – PTOs
 - Counselors/School Psychologists
 - Administrators
 - Review Insurance Limitations and District Protection



Administrators

- Schedule playground supervision and make sure students are monitored in class, hallways, restrooms, the cafeteria, and areas identified in the school survey as “hot spots” for bullying.
- Schedule regular schoolwide assemblies and teacher/staff development to raise awareness and communicate the policy of intolerance for bullying behavior.
- Establish a schoolwide rule that states, “No Put-Downs, No Name Calling.”
- Post clear expectations for behavior, including the no-bullying rule and the consequences for breaking that rule.
- Establish a confidential reporting system for students (targets of bullying and bystanders) to safely report details of bullying incidents without fear of retaliation.
- Provide schoolwide and classroom activities designed to build students’ self-esteem, such as showcasing special talents, hobbies, interests, and abilities. For example, feature in the school newsletter individual student essays or articles based on student interview.

Bullying at School, CDE



Teachers

- Model behavior that is inclusive and promotes respect for all students.
- Provide students with opportunities to talk about bullying and enlist their support in defining bullying as an unacceptable behavior.
- Develop an *action* plan for what students are to do if they observe a bully or are confronted by a bully.
- Share with students the responsibility for the classroom's social and physical environment to reinforce acceptable behavior.
- Post and publicize rules against bullying, including fair and consistent consequences for bullying.
- Refer both the bully and his/her target to counseling.
- Have students and parents sign behavior contracts consistent with written and communicated behavior codes for students, teachers, and staff. →

Counseling and Student Support Office Website



Teachers

- Maintain constant monitoring of cafeterias, playgrounds, and “hot spots” where bullying is likely to occur but direct adult supervision may not be present.
- Take immediate action when bullying is observed so that both the target and the bully know that mistreating someone is not tolerated. Notify the parents of both the target and the bully and attempt resolution expeditiously at school.
- Create cooperative learning activities in which students change groups for balance and interest, and equal treatment of all the participants may be ensured.
- Incorporate classroom activities designed to build self-esteem and spotlight individual talents, interests, and abilities.
- Implement a *buddy system* so that students pair up with a particular friend, an older student mentor, or someone they can depend on for support, particularly if they are new to the school.
- Form friendship groups that support children who are regularly bullied by peers.
- Develop peer mediation programs to help students learn to communicate and resolve issues among themselves.

Counseling and Student Support Office Website



Some Available Resources:

- **California Department of Education – Sample Bullying Policies:**

<http://www.cde.ca.gov/ls/ss/se/samplepolicy.asp>

- **California Department of Education – Bullying FAQ:**

<http://www.cde.ca.gov/ls/ss/se/bullyfaq.asp>

- **Cyberbullying: Policy Considerations for Boards:**

<http://www.csba.org/~media/AFF96056D6E4454B8B5298DF29EF4D65.ashx>



Some Available Resources:

- **US DHH and US DOE hosted website:**
<http://www.stopbullying.gov>
- **National Parent Center funded by OSEP:**
<http://www.pacer.org/bullying>
- **Peer to Peer Violence + Bullying. Examining the Federal Response; U.S. Commission on Civil Rights, September, 2011**
<http://www.usccr.gov/pubs/2011statutory.pdf>



Some Available Resources

- The Technical Assistance Center on Positive Behavioral Interventions and Supports (PBIS), funded by OSEP: <http://www.pbis.org>
- National Dissemination Center funded, funded by OSEP: <http://nichcy.org/schoolage/behavior/bullying/>
- National Center on Safe Supporting Learning Environments, funded by US DOE: <http://safesupportingschools.ed.gov/index.php?id=01>
- US Government Website developed by 12 federal agencies (including the US DOE and the White House): <http://www.FindYouthInfo.gov/>
- 2015 National School Climate Survey: <https://www.glsen.org/sites/default/files/2015%20National%20GLSEN%202015%20National%20School%20Climate%20Survey%20%28NCS%29%20-%20Full%20Report%200.pdf>



Additional Studies

- Stephen S. Leff and Christ Feudtner, *Tackling Bullying: Grounds for Encouragement and Sustained Focus*, 139 PEDIATRICS 1-2 (2017).
- William E. Copeland et al., *Adult Psychiatric Outcomes of Bullying and Being Bullied by Peers in Childhood and Adolescence*, 70 JAMA PSYCHIATRY 419-426 (2013).
- Scott W. Ross and Robert H. Horner, *Bully Prevention in Positive Behavior Support: Preliminary Evaluation of Third-, Fourth-, and Fifth-Grade Attitudes Toward Bullying*, 22 JOURNAL OF EMOTIONAL AND BEHAVIORAL DISORDERS 225-236 (2014).



The End.



Thank you for coming.

