WHAT'S THE LAW ON MISCONDUCT & BULLYING?

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ALTHOUGH BULLYING MAY MANIFEST ITSELF ON CAMPUS IN SEVERAL FORMS, IT IS SIMPLY A FORM OF HARASSMENT, INTIMIDATION OR ASSAULT DIRECTED AT A STUDENT.

Bullying now has a place front and center among educators, policymakers and courts. The misconduct now known as "bullying" is known by prior generations of educators and juvenile justice agencies as merely delinquency in its traditional forms, often involving groups or enhanced by technology. The current victims of harassment, assaults and property destruction are as desperate for help as those of prior generations. These students do not care what label is given to it as long as the campus misconduct is monitored and prevented.

School resource officers, who are brought into the safe schools environment, not as an outsider but as a core part of the educational family, bring a different perspective to bullying than their educational partners. The current belief among many educators that solutions to bullying are difficult to identify and implement has never been valid as a matter of law. To the SRO "bullying" is not a complex issue. The word adds nothing to longstanding legal prohibitions against its many forms of misconduct. Courts and juvenile justice agencies stand ready to confront the perpetrators and protect the victims of bullying. In addition, courts are beginning to assess liability judgments against schools that do not have an effective response to bullying.

However, as a matter of policy, there is an enormous challenge to educators to find the right formula for intervening in a manner that protects students and the school climate without making every disruption a criminal case. Legislators, federal and state, have recently begun to show impatience with local educators by passing laws that dictate rules for addressing bullying. The SRO needs to understand this area of education reform to effectively assist in stopping the harassment, intimidation, and assaults.

TEST YOUR "BULLYING IQ" ON THE FOLLOWING SCENARIOS:

1. A junior high school boy became the focus of harassment by bullies because he wore earrings and an unusual hairstyle and enjoyed martial arts. Educators did almost nothing after witnessing several bullying incidents. After one incident, the victim received a three-day out-of-school suspension while a bully had a one-day in-school suspension. The harassment continued over four years and became so bad that it caused the boy to leave school. Will the educators be liable for failure to stop the bullying?

   Y  N

2. A female student was harassed by a male, special education bully for three years. The harassment continued and escalated to the point where the special education bully began stalking the student, and at one point, he trapped her in a weight room for half an hour. Defendants talked to the bully about his behavior until the weight room incident, when they finally began watching him throughout the day to keep him away from the student. The victim filed suit claiming that school officials were aware of the harassment but did nothing to remedy it. Will the educators be liable for failure to stop the bullying?

   Y  N

3. A sixth-grade student, whose family emigrated from Germany, experienced harassment from other students when she enrolled in public school. The bullies regularly called her crude names, grabbed or shoved her into walls, grabbed her book bag, and stole and destroyed her homework. The bullying continued into high school. School officials did not ever discipline the bullies nor inform law enforcement as a result of any of these incidents. Will the educators be liable for failure to stop the bullying?

   Y  N

4. During his sixth and seventh grade years in public school, a boy was harassed by several classmates. The bullies teased him, called him "queer", "faggo", "pig" and "man boobs" on a daily basis. They pushed and shoved him in the hallways and into lockers. An educator who was told about
5. A group of students sued the local high school for failing to stop anti-homosexual bullying that occurred over several years. The harassment included taunts and pornography placed inside or written on their lockers. In one incident, the bullies assaulted one student who needed hospitalization. The students brought these and other incidents to the attention of educators but little action was taken. Will the educators be liable for failure to stop the bullying?

Y  N

BULLYING BASICS

When the focus shifts from the label “bullying” to the misconduct itself, the path to addressing bullying is well lit and straightforward. Although bullying may manifest itself on campus in several forms, it is simply a form of harassment, intimidation or assault directed at a student. It does not matter whether it involves the use of relationships rather than fists or property destruction instead of an assault. Rumors, name calling, teasing, and shunning may be the weapons bullies use against another student. Cyber bullying may also be used as a form of social aggression in which the Internet or other digital technologies are used, even reaching students at home where young people have a right to feel safe.

Recent legislation by the States has taken the lead in shifting the focus from labels to misconduct. The laws of 47 states specifically address the definition, urgency and the procedure that safe school teams should follow to control the campus climate. (See all state statutes listed at the end of this article).

For example, Indiana law is typical of the reform when it defines bullying as, "[O]vert, repeated acts or gestures, including...verbal or written communications transmitted;...physical acts committed; or...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". (I.R.S. § 20-33-8-13.5 and § 20-33-8-0.2). Alaska law is typical of the duties created by the 47 states when it declares that, "[E]ach school district shall adopt a policy that prohibits the harassment, intimidation, or bullying of any student. Each school district shall share this policy with parents or guardians, students, volunteers, and school employees....[and] shall report to the department...all incidents resulting in suspension or expulsion for harassment, intimidation, or bullying". (A.R.S. § 14.33.200).

The contribution of the federal government to bullying reform is significant. Several policies link federal funding to a duty by the school to implement policies that will contribute to a bully-free environment. See Title IX ("[N]o person...shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." 20 U.S.C. § 1681(a). See also The Safe and Drug-Free Schools and Communities Act of 1994 (20 U.S.C. §§ 7101. A grant program that supports schools, and colleges that develop anti-violence and anti-drug initiatives.). Also see, Juvenile Accountability Block Grants (42 USCS § 3796ee. A grant program that aims to encourage research-based bullying, cyber bullying, and gang prevention.). See, The Violence Against Women Act (42 USCS § 14043-c Grants to combat domestic violence, dating violence, sexual assault, and stalking in middle and high schools).

All of this reform sits upon the preexisting foundation of juvenile law and education law. Juvenile law creates a forum for intervention and prevention when the misconduct is a violation of the law. Education law gives school officials authority to stop behavior that is disruptive, that violates the rights of others, and that is inconsistent with the education mission.

SROs, as a member of the safe schools team have training that already makes them aware of the illegal forms of this misconduct. The SRO is considered a "school official" when assisting educators in enforcing the law for criminal acts of bullying or when intervening based on the school code of conduct. When bullying is thriving and local campuses are unsafe, it is usually because the safe schools team has lost sight of its duty to stop bullying and/or becomes timid due to misunderstandings about what policies work. The policy solution to the challenges of bullying lies in the three worlds of young people - their families, schools and the juvenile justice system.

5. A group of students sued the local high school for failing to stop anti-homosexual bullying that occurred over several years. The harassment included taunts and pornography placed inside or written on their lockers. In one incident, the bullies assaulted one student who needed hospitalization. The students brought these and other incidents to the attention of educators but little action was taken. Will the educators be liable for failure to stop the bullying?

Y  N

BULLYING THAT CONSTITUTES A CRIME

If the campus is to be kept safe from crime (the primary mission of the school safety movement), then bullying that constitutes a crime should trigger a strict, consistent response, documented in the safe schools plan or the crisis plan. It is important that the SRO makes sure that the response of the school does not conflict with the sworn duty to enforce the law, the core purpose for which law enforcement exists.

The SRO is still a peace officer and does not have discretion to ignore or delay in responding to crime on campus in any form and student victims of this criminal activity deserve prompt intervention from the SRO for criminal misconduct that violates their rights. Delaying or interfering with a response to bullying in criminal form fails so far outside of the authority of the educator that it would be seen as an abuse of discretion at best and, at worst, obstruction of justice.

BULLYING THAT CONSTITUTES CHILD ABUSE

The warning above is particularly compelling when it involves bullying that triggers the mandated reporting policies involving child abuse and endangerment. Studies suggest that local agencies underreport their suspicions. See David Finkelhor & Gail L. Zellman, Flexible Reporting Options for Skilled Child Abuse Professionals, 15 Child Abuse & Neglect 335, 335-41 (1991), (noting that over 40% of mandated reporters violate reporting laws and proposing solutions for improving compliance). The child abuse laws of the states define abuse broadly enough to include patterns of bullying inflicted by anyone upon a juvenile. See Texas Family Code § 261.001: ("Mental or emotional injury inflicted upon the child by other than accidental means; Physical harm and genuine threat."). See CalWel & Inst Code § 18951(e); ("Wilful mental injury, negligent treatment, or maltreatment of a child under the age of 18 by a person"). See Connecticut Gen. Stat. § 46b-120: ("A condition that is the result of maltreatment... exploitation, deprivation of necessities, emotional maltreatment or cruel punishment.").
STATE STATUTES ON BULLYING

Alabama: 16-28B-3
Alaska: 14.33.200
Arizona: 15-341
Arkansas: 6-18-514
California: 48900
Colorado: 22-32-109.1
Connecticut: 10-222h
Delaware: 4112D
Florida: 1006.147
Georgia: 20-2-751.4
Hawaii: 8-19-6
Idaho: 18-917A
Illinois: 5/27-23.7
Indiana: 20-33-8.0-2
Iowa: 280.28
Kansas: 72-6256
Kentucky: 525,070
Louisiana: 17-416.13
Maine: 1001
Maryland: 7-424
Massachusetts: ALM GL ch. 71, 37O
Michigan: 380.1300a
Minnesota: 121A.03
Mississippi: 37-11-20
Missouri: 160.775
Nebraska: 79-267
Nevada: 388.133
New Hampshire: 193-F.3
New Jersey: 18A:37-14
New Mexico: 6.12.7
New York: NY CLS Educ 2801-a
North Carolina: 115C-407.5
North Dakota: 12.1-17-07
Ohio: 3313.666
Oklahoma: 24-100.4
Oregon: 339.356
Pennsylvania: 13-1303.1-A
Rhode Island: 16-21-24 and 16-21-26:
South Carolina: 59-63-120
Tennessee: 49-6-1015
Texas: 37.001
Utah: 53A-11a-102
Vermont: 16 V.S.A. 11
Virginia: 22-1-279.6
Washington: 28A.300.285
West Virginia: 18-2C-3
Wisconsin: 118.13

For other resources, see www.WiredSafety.org; www.stopcyberbullying.org; and www.ikeepsafe.org.

This strategy is a "best policy" for safe schools teams, because those who report are protected from liability by immunity from suit when investigations prove negative. Although the determination that a student is being abused involves the exercise of discretion, once that determination is made, a school official must act. Once a school official is aware of abuse, all discretion is stripped away: an educator "must," report abuse to other members of the juvenile justice community. In such cases, the safe schools team would automatically expand to include the expertise and resources of the local social welfare agencies as well as police.

BULLYING THAT VIOLATES ONLY THE CODE OF CONDUCT

There is considerable doubt that this category exists at all. As a practical matter, all bullying tends to be severe enough to trigger accountability under both the law and the education code. However, strategic use of the code of conduct is important. When educators use their authority to establish a clear and enforceable standard of conduct, violations of the code serve as an early warning of the need for intervention before the behavior escalates into severe victimization and criminal misconduct.

Educators can effectively use their authority to be out in front of bullying with tools endorsed by the courts for this purpose.

- Increasing supervision of students during lunch, recess, and unsupervised places where students might be bullied.
- Monitoring use of the schools computer systems.
- Blocking MSN Messenger (a source of bullying because of its anonymous nature).
- Blocking any web-based e-mail accounts.
- Use of classroom-based antibullying programs to teach that bullying is wrong and should be reported.
- Use of an anonymous "bully box" that allows children to anonymously report bullying episodes.
- Role-playing and assertiveness training.
- Use of video cameras on school buses, on school property, and in buildings to record instances of bullying and to act as a deterrent.
- Establishment and enforcement of a zero-tolerance bullying policy that includes all school personnel, from teachers to cafeteria workers, coaches, and janitors.
- Switching schools. If the school and community fail to cooperate, the student should expedite the changing of schools to get out of an abusive environment.

In the I.Q. test, the answer is "Yes" to each of the fact patterns. In Question One, the school district was found liable by a jury for by being deliberately indifferent to the harassment that the jury found was so severe, pervasive, and objectively offensive that it violated the victim's rights. Theno v. Tonganoxie Unified Sch. Dist. No. 464, 377 F. Supp. 2d 952 (2005).

In Question Two, the court found that where a school district has knowledge that its attempts to stop bullying are ineffective, it is required to take additional action to eliminate the bullying. Its failure to do so is a form of discrimination. Jones v. Ind. Area Sch. Dist., 397 F. Supp. 2d 628 (2005).

Question Three involves school officials that were found to be deliberately indifferent to bullying. The court ruled that when schools have actual knowledge of the bullying they have a duty to take appropriate action and are not allowed to continue to use methods that fail to address what they know is happening. Vance v. Spencer County Pub. Sch. Dist., 231 F.3d 253 (2000).

Question Four is simply a case of uncommitted educators who did not take bullying seriously. The court ruled that although the school had responded to the complaints of harassment, it was aware that the verbal reprimands were not stopping the overall harassment and that the victim continued to have problems. The court found that the school's isolated success with individual perpetrators did not shield it from liability as a matter of law. Patterson v. Hudson Area Sch., 551 F.3d 438 (2009), cert den., 130 S. Ct. 299 (U.S. 2009).

Question Five underscores the value of proper training and participation by all members of the safe schools team. The court held that the right to be free from bullying based on sexual orientation is clearly established. School officials do not enjoy immunity from liability when they fail to respond to a pattern of bullying. Educators are required to act reasonably to implement effective policies. Flores v. Morgan Hill Unified Sch. Dist., 324 F.3d 1130 (2003).

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