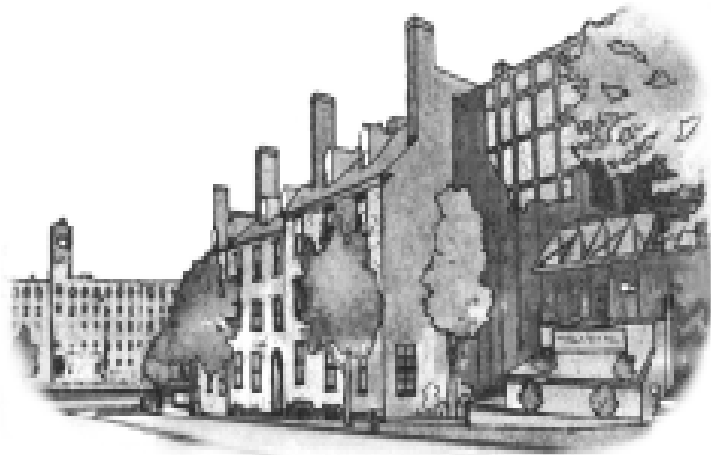


Bullying, Sexual Harassment, and Racial Insensitivity

October 3, 2008



***Wadleigh, Starr & Peters, P.L.L.C.
Serving New Hampshire since 1899***

**By: Dean B. Eggert, Esquire
Alison M. Minutelli, Esquire
WADLEIGH, STARR & PETERS, P.L.L.C.
95 Market Street
Manchester, New Hampshire 03101
Telephone: 603/669-4140
Facsimile: 603/669-6018
E-Mail: deggert@wadleighlaw.com
aminutelli@wadleighlaw.com
Website: www.wadleighlaw.com**

About the Authors

Dean B. Eggert, Esquire (JD., UCLA; B.A., Wheaton College) is a partner in the firm of Wadleigh, Starr & Peters, P.L.L.C. Mr. Eggert is a jury trial attorney. Over the last 21 years he has had extensive experience representing school districts in its special education matters at the administrative and appellate levels. He has also provided in-service seminars to school districts on issues of risk management in the field of special education law.

Alison M. Minutelli (JD., Franklin Pierce Law Center; B.A. Brandeis University) is an associate in the firm of Wadleigh, Starr & Peters, P.L.L.C. Ms. Minutelli practices in the areas of school law and civil litigation.

A Word of Caution

No two cases are exactly alike. This material is designed to provide Administrators with a broad understanding of the law pertaining to certain aspects of violence prevention in the school setting. This material does not include every aspect of the law. You are strongly encouraged to seek a legal opinion from your legal counsel regarding any specific case.

I. Overview

The purpose of this material is to assist administrators in understanding the state's legal response to the problem of bullying and hazing in our public schools, as well as to provide an overview of harassment and racial insensitivity in the school setting.

II. The Pupil Safety and Violence Prevention Act of 2000

A. Legislative History

In 2000 the state legislature adopted the "Pupil Safety and Violence Prevention Act of 2000." RSA 193-F:1, et seq. The Pupil Safety and Violence Prevention Act was a direct response to incident school violence which had occurred throughout our nation. Educators and lawmakers alike observed a persistent theme where the perpetrator of violence had been the victim of bullying in the school setting.

In 2004, the legislature amended the Pupil Safety and Violence Prevention Act to mandate that schools provide a tangible remedy to the problem of bullying.

B. The Purpose and Intent

The purpose of the Pupil Safety and Violence Prevention Act is set forth in RSA 193-F:2:

All pupils have the right to attend public schools that are safe, secure and peaceful. One of the legislature's highest priorities must be to protect our children from violence by dealing with harassment, including 'bullying,' in our public schools.

The intent of the Pupil Safety and Violence Prevention Act was also to avoid the creation of a persistently dangerous school. In 2003, the legislature adopted NH RSA 193-G:1, et seq., which identifies a "persistently dangerous school," for purposes of school choice under the No Child Left Behind Act.¹

¹ A persistently dangerous school is a school in which 3 of the following acts have occurred as separate incidents during the period of one school year for 3 consecutive years:

- a. Homicide under RSA 630;
- b. First or second degree assault under RSA 631:1 and RSA 631:2;
- c. Aggravated felonious sexual assault under RSA 632-A:2;
- d. Arson under RSA 634:1;
- e. Robbery as a class A felony under RSA 636:1, III; or
- f. Unlawful possession or sale of a firearm or other dangerous weapon under RSA 159.

RSA 193-G:1(I)(a)-(f).

Once a school has been identified as a persistently dangerous school, the school has a duty to notify the parents of that school's status and to provide the parents or guardians of the pupil attending the school of the option to transfer the pupil from the school to another school within the same school district, consistent with local school board policy. In addition, if a student is a victim of certain enumerated crimes, the school district shall, within five days of being notified of the incident, notify the parents or guardians of the pupil of the option to transfer the pupil to another school within the same school district consistent with local school board policy. RSA 193-G:4(I)-(II).

In typical legislative fashion, homicide is included as one of the offenses allowing the victim to transfer schools. NH RSA 193-G:1(I)(a). Obviously a school district cannot transfer the child who has been the victim of homicide. However, the other crimes, first or second degree assault, aggravated felonious sexual assault, arson, robbery or unlawful possession or sale of a firearm or other dangerous weapon, might very well give rise to a victim and the right to transfer. NH RSA 193-G:4(II).

C. The Laws Pertaining to Pupil Safety and Violence Prevention

RSA 193-F:3 is the centerpiece of the Pupil Safety and Violence Prevention Act. The components of this provision are set forth below:

1. Adoption of a Pupil Safety and Violence Prevention Policy

The local school board must adopt a Pupil Safety and Violence Prevention Policy which addresses pupil harassment also known as "bullying," in a manner consistent with the provisions of the Pupil Safety and Violence Prevention Act. The policy must include language which details the action that will be taken by a local school board to resolve and remediate occurrences of pupil harassment.

At a minimum, policies should include the following:

- A statement that pupil harassment/bullying are prohibited
- A definition of pupil harassment/bullying
- A statement that training will be provided to students and teachers
- Examples of interventions that will be used to resolve and remediate bullying

The school board's actions to resolve and remediate occurrences of pupil harassment need not be limited to traditional disciplinary action, but could include the following:

- The transfer of the bullying student to another setting;

- Honoring the request of a parent to transfer their victimized child to another setting;
- Creating and implementing a safety plan for the victimized child;
- Referral for special education and related services;
- The development and implementation of a positive behavioral intervention plan;
- The removal of privileges as a consequence of bullying behavior; and
- Mandated counseling

The State Board of Education must develop and distribute a technical assistance advisory for the purpose of providing guidance to school districts on the implementation of pupil safety and violence prevention policies. RSA 186:11(XXXVI).

2. Notification and Reporting Requirements

At the beginning of each school year, school districts are required to provide parents, legal guardians or “other persons responsible for the welfare of the pupil” with written notice of the district’s Pupil Safety and Violence Prevention Policy and the process whereby disciplinary decisions and other actions taken by the school board to resolve and remediate pupil harassment can be appealed at the local and state level.

Any:

- School employee; or
- Employee of a company under contract with a school or school district

who has witnessed or has reliable information that a pupil has been subjected to insults, taunts, or challenges, whether verbal or physical in nature which are likely to intimidate or provoke a violent or disorderly response that violates the school bullying policy shall report such incident to:

- The principal; or
- Designee

who shall in turn report the incident to the Superintendent and the school board. RSA 193-F:3(II)(a).

The principal or designee shall by telephone and in writing by first-class mail, report the occurrence of any incident of bullying or pupil harassment to the parent or legal guardian of all pupils involved within 48 hours of the occurrence of the incident. The notice shall advise the individuals involved of their due process

rights, including the right to appeal to the State Board of Education. RSA 193-F:3(II)(b).

If the underlying act involves an act of theft, destruction, or violence in a safe school zone, then the public school employee may also have a duty to make a report in accord with RSA 193-D.

3. Waiver of the Notification Requirement

The Superintendent may within 48 hours of the event grant the principal a waiver from the notification requirement if the Superintendent deems such waiver to be in the best interest of the child. Any waiver granted shall be in writing. RSA 193-F:3(II)(b).

4. The Local School Board's Duty to Remediate and Resolve Bullying

The school board is required to define within its policy the remedies available to respond to bullying. In addition, the school board is required to take specific action when it has been advised of an occurrence of pupil harassment. The board is also required to notify "all parties involved," of its decision. RSA 193-F:3(III).

If the local appeal process has been exhausted or the school board has exhausted its remedies under its local policy, the "aggrieved party," (which could be the victim or the bully) has the right to appeal the decision to the State Board of Education. The State Board of Education is required to notify all parties in writing of its decision. Id.

5. Training

The local school board is authorized to provide opportunities for educators to have the knowledge and skills necessary to prevent and respond to acts covered under the subject of bullying or pupil harassment.

NH RSA 193-F:4 specifically states that there is no required curriculum or material with regard to the prevention of pupil harassment and that the failure to use a particular curriculum is not considered a violation of the Act.

6. Immunity and Liability Protection

Any school employee or employee of a company under contract with the school or school district who, in good faith, reports violations to the principal or designee "shall be immune from any cause of action which may arise from the failure to remedy the reported incident." RSA 193-F:5.

III. The Law Pertaining to Hazing

Educational institutions, including high schools, or organizations operating at or in conjunction with an educational institution are guilty of a misdemeanor if they:

- Knowingly permit or condone student hazing;
- Knowingly or negligently fail to take reasonable measures within the scope of their authority; or
- Fail to report to law enforcement authorities any hazing reported to it by others or of which it otherwise has knowledge.

RSA 631:7(II)(b)(1)-(3).

A. Definition

Hazing is defined as “any act directed toward a student, or any coercion or intimidation of a student to act or to participate in or submit to any act, when:

- Such act is likely or would be perceived by a reasonable person as likely to cause physical or psychological injury to any person; and
- Such act is a condition of initiation into, admission into, continued membership in or association with any organization.”

RSA 631:7(I)(d)(1)-(2).

B. Duties of Educational Institutions

Educational institutions may not knowingly permit or condone student hazing. Additionally, educational institutions must take reasonable measures within the scope of their authority to prevent student hazing.

Any hazing activities reported to school officials, and any incidents of hazing activities that school officials have actual knowledge of, must be reported to local law enforcement authorities.

IV. Racial Insensitivity

Title VI states:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

42 USC 2000d.

In addition, the State Board of Education is also responsible for ensuring that “there shall be no unlawful discrimination in any public school against any person on the basis of sex, race, creed, color, marital status or national origin in educational programs, and that there shall be no denial to any person on the basis of sex, race, creed, color, marital status or national origin of the benefits of educational programs or activities.” RSA 186:11(XXXIII). Local school boards are required to adopt “a rule to ensure that there shall be no unlawful discrimination on the basis of sex, race, age, creed, color, marital status or national origin in educational programs or activities consistent . . . “ Ed 303.01(i).

Racial insensitivity may rise to the level of harassment or discrimination. Thus, it is important that districts promptly respond to claims of racial insensitivity. For example, the case of Malcolm W. v. Novato Unified School District, 2002 WL 31770392 (Cal. App. 1st Dist. Dec. 11, 2002), involved a discrimination claim based in part on racially insensitive remarks made by students.

Facts: In February 1998, school A (located in the Novato School District) hosted a basketball game against school B. Plaintiffs, both African-American, were members of the School B basketball team. Prior to the game, approximately 15 students from school A arrived at the game dressed in costumes. “Though the exact description of the costumes varies, at least one student was wearing a ‘black afro wig’ and some had on face paint.” *Id.* During the team warm-ups, plaintiffs overheard some of the students chanting racial slurs; they reported the chants to their coach, who instructed them to return to the locker room. The coach reported the incident to the school B vice principal, who reported the incident to the principal of school A. The principal discussed the incident with the group of students, and the chanting stopped. After the game, school A conducted interviews with students who were at the game, held an emergency staff meeting to discuss the incident, sent a letter of apology to school B, met with school B and the basketball team on two separate occasions to apologize, and issued announcements to the student body at school A regarding the importance of sportsmanship and respect. Plaintiffs filed suit, alleging (among other things) racial discrimination.

Held: For the district. Despite a history of racial hostility at school A, the district was not deliberately indifferent when it responded to the incident at the basketball game. The district took active efforts, before and after the basketball game, to develop racial sensitivity and eliminate racist behavior among students, parents, faculty, and administrators.

Racial insensitivity as an example of conduct that could constitute bullying or harassment in the policy adopted in accord with the Pupil Safety and Violence Prevention Act.

V. Sexual Harassment

A. Overview

Title IX states:

No person . . . shall, on the basis of sex, be excluded from participation in, be denied the benefit of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance.

20 USC 1681(a). The United States Supreme Court has held that Title IX may be enforced through a private right of action, and that plaintiffs may obtain damages for violations of Title IX. Franklin v. Gwinnett County Pub. Sch., 503 U.S. 60, 76 (1992) (damages); Cannon v. Univ. of Chicago, 441 U.S. 677, 717 (1979) (private right of action).

B. Elements of a Title IX Claim

To establish liability under Title IX, a plaintiff must prove the following:

1. That the school receives federal funding;
2. That the student was subject to severe, pervasive, and objectively offensive harassment
3. That the harassment deprived the student of educational opportunities or benefits;
4. That the school was deliberately indifferent to the harassment; and,
5. That the school's deliberate indifference caused the student to be subject to harassment.

Fitzgerald v. Barnstable School Committee, 504 F.3d 165 (1st Cir. 2007).

Deliberate indifference “requires more than a showing that the institution’s response to harassment was less than ideal.” Id. at 171. Instead, it “requires a showing that the institution’s response was ‘clearly unreasonable in light of the known circumstances.’” Id. (citation omitted).

In addition, to “subject a student to harassment, the institution’s deliberate indifference must, at a minimum, have caused the student to undergo harassment, made her more vulnerable to it, or made her more likely to experience it.” Id. (citation omitted).

C. Adoption of a Sexual Harassment Policy

School boards must adopt written policies and procedures prohibiting sexual harassment in the schools. See e.g. Ed 306.04(a)(9). The policy adopted by the board must be written in age appropriate language, and be published and available in written form to all those who must comply. Ed 303.01(j). In addition, the policy must contain the following elements:

- A statement that sexual harassment is against the law and against school district policy;
- A definition of sexual harassment with examples of actions that might constitute harassment;
- The names and roles of all persons involved in implementing the procedure
- A description of the process so all parties know what to expect, including time frames and deadlines for investigation and resolution of complaints
- A prohibition against retaliation toward anyone involved in a complaint;
- A description of possible penalties, including termination;
- A requirement that a written factual report be produced regardless of the outcome of the investigation
- At least one level of appeal of the investigators recommendation; and,
- A clear statement that someone can bypass the internal process and proceed directly to the New Hampshire commission on human rights with address and phone number, or office of civil rights, with address and phone number.

Ed 303.01(j)(1)-(10).

VI. Liability Exposure for Inappropriate Responses to Bullying, Hazing and Sexual Harassment

The following cases are a sample, not an exhaustive list, of the case law pertaining to bullying, hazing and sexual harassment.

A. Teacher-Student Harassment, Marquay v. Eno

The New Hampshire Supreme Court has not yet had occasion to interpret either RSA 193-F or RSA 631:7. The Court has heard cases involving teacher-on-student abuse. Marquay v. Eno, 139 N.H. 708 (1995), provides some guidance as to liability for inappropriate responses to bullying and hazing.

Facts: Plaintiffs, three women who were students in the Mascoma Valley Regional School District, brought suit alleging that they were “exploited,

harassed, assaulted, and sexually abused by one or more employees of the school district.” The plaintiffs also alleged that school employees were either aware, or should have been aware, of the sexual abuse. Plaintiffs sought damages from the abusing employees, the non-abusing employees, the district, and the administration, alleging in part that the defendants were civilly liable for violating RSA 169-C:29 (child abuse reporting statute), and that the defendants had a duty to protect

Held: Districts and/or administrative units have a duty not to hire or retain employees that it knows or should know have a propensity for sexually abusing students. If the plaintiff can establish that the school know, or reasonably should have known of such a propensity, then the school will be liable for the foreseeable sexual abuse of students by that employee. Failure to report abuse, in accordance with RSA 169-C:29, can give rise to civil liability, provided the plaintiff can show that reporting would have prevented the subsequent abuse.

Individual employees with a supervisory relationship over students who have actual knowledge of abuse or are aware of facts which would lead a reasonable person to conclude a student is being abused, are subject to liability if their level of supervision is unreasonable and is a proximate cause of the student’s injury. Superintendents and principals owe a duty of supervision to each student; that duty is “not satisfied” by entrusting a student to the care of an employee who the superintendent or principal knows, or should know, poses a threat to a student.

Impact: RSA 193-F creates an affirmative duty to report violations of the school bullying policy. All employees who know, or should reasonably know, that the policy has been violated are subject to this duty. This duty is similar to the affirmative duty to report suspected incidents of child abuse (RSA 169-C). Thus, failure to report violations of the bullying policy may result in liability, at least for employees with a supervisory relationship over the students involved. Districts may also be liable for foreseeable incidents of bullying, in violation of their bullying policies. See also Schneider v. Plymouth State College, 144 N.H. 458 (1999) (“In the context of sexual harassment by faculty members, the relationship between a post-secondary institution and its students is a fiduciary one. Students are in a vulnerable situation because ‘the power differential between faculty and students . . . makes it difficult for [students] to refuse unwelcome advances and also provides the basis for negative sanctions against those who do refuse’”) (quotations omitted).

B. Peer-on-Peer Harassment

The United States Court of Appeals for the First Circuit recently decided a case involving peer-on-peer sexual harassment, Fitzgerald v. Barnstable School Committee, 504 F.3d 165 (1st Cir. 2007), cert. granted, 128 S.Ct. 2903 (U.S. June 9, 2008) (question presented: “Whether Title IX’s implied right of action

precludes Section 1983 constitutional claims to remedy sex discrimination by federally funded educational institutions”).

Facts: A kindergarten student informed her parents that when she wore a dress to school, a third-grade student on her school bus would bully her into lifting up her skirt. Parents immediately contacted the school principal to report the allegations, and the principal instructed the district’s “prevention specialist” (Title IX Coordinator) to investigate. The prevention specialist interviewed the third-grader, who denied the allegations, as well as the bus driver, and a majority of the students who rode on the bus. However, she was unable to corroborate the kindergartener’s version of the events.

Shortly thereafter, the parents informed the district that the kindergarten student had provided them with additional details about the incidents that had occurred on the bus. The district resumed its investigation, conducted another interview of the third-grader, and followed up on the interviews that had previously been conducted.

In the meantime, the police department had begun an investigation, ultimately finding that there was insufficient evidence to proceed criminally against the third-grade student. Relying on the results of the police investigation, and its own investigation, the district concluded that there was insufficient evidence to discipline the third-grade student. The district offered to place the kindergarten student on another bus, or to leave rows of empty seats between the kindergarten students and the older pupils on the bus. The parents rejected both of those suggestions, and requested that the district place a monitor on the bus or transfer the third-grader to another bus. The district declined both of those requests.

Parents sued the school district, alleging that the district violated Title IX and 42 USC 1983. The parties agreed that the district was subject to the Title IX requirements, that the allegations, if true, constituted harassment, and that the district was aware of the allegations. The district court dismissed the parents’ claims; with respect to the Title IX claim, the court held that the district “could not be found deliberately indifferent as long as the plaintiff was not subjected to any acts of severe, pervasive, and objectively offensive harassment *after* the defendant first acquired actual knowledge of the offending conduct.” *Id.* at 172 (citation omitted). Parents appealed.

Held: Affirmed, but on other grounds. The district’s response to the alleged harassment, when evaluated in light of the known circumstances, was not “so deficient as to be clearly unreasonable.”

Impact: Investigations and responses to allegations of peer-on-peer harassment will be judged on a reasonableness standard: was the district’s

“response, evaluated in light of the known circumstances, . . . so deficient as to be clearly unreasonable?”

1. Case Law from Other Jurisdictions

Davis v. Monroe Cty. Bd. Of Ed., 526 U.S. 629 (1999)

Facts: A student who was the victim of a prolonged pattern of sexual harassment by one of her fifth-grade classmates brought suit alleging violation of Title IX (gender discrimination). The student had reported each incident to her mother and her classroom teacher, and her mother reported them to other school officials who assured her that the principal was aware of the incidents. No disciplinary action was taken in response to the student’s reports.

Held: A district’s failure to respond to student-on-student harassment in its schools can give rise to a private suit for money damages if the district is deliberately indifferent to known acts of harassment. At a minimum, deliberate indifference must “cause students to undergo harassment or make them liable or vulnerable to it.” Liability is limited to circumstances where the district exercises substantial control over the harasser and the context in which the known harassment occurs, such as during school hours and on school grounds.

Impact: Deliberate indifference to bullying or hazing, occurring on school grounds and during school hours, may lead to liability for money damages.

S.S. v. Eastern Kentucky University, 50 IDELR 91, 532 F.3d 445 (6th Cir. 2008).

Facts: A student identified under Section 504 filed suit against his school district, alleging (in part) that the district discriminated against him in violation of the ADA, Section 504 and Section 1983 by failing to adequately respond to and stop peer-on-peer harassment. The student asserted that the district failed to respond to and investigate his complaints of disability discrimination and harassment, and that the peer-to-peer harassment he experienced created a hostile learning environment, which the district failed to adequately protect him from.

Held: There was no discrimination because the district was not deliberately indifferent to the student’s complaints. The district responded to all incidents involving the student, as soon as it learned about the incidents. It conducting individual and group interviews with the student’s classmates, instructed his classmates not to tease the student, arranged for outside speakers to talk to the students about name-calling, identified topics for discussions at school assemblies and in small groups, monitored the student, separated the student from other students involved in the altercations, conducted a mediation

with the complaining student and another student, disciplined students who were at fault, called the police, and called parents of students.

Impact: This case illustrates the intersection between Section 504 and harassment claims. Children with disabilities who are victims of bullying or harassment may have separate damage discrimination or retaliation claims under Section 504 or the ADA. In addition, the response to a bullying claim may give rise to a duty to convene a manifestation meeting, to determine whether the bullying behavior is a manifestation of the child's disability.

Seamons v. Snow, 206 F.3d 1021 (10th Cir. 2000)

Facts: Plaintiff, who was subject to hazing by members of his football team, reported the incident to school authorities. The football coach refused to remove any of the players from the team and refused to allow plaintiff to play in a game unless he apologized for reporting the incident to the members of the team. Plaintiff refused and was removed from the team. Immediately thereafter, the rest of the season was cancelled. Plaintiff brought suit against the district, the principal, and the coach, alleging, among other things, that his First Amendment right to free speech was violated when the coach dismissed him from the team.

Held: The plaintiff established genuine issues of fact and may proceed to trial with his claims against the coach. The plaintiff's claims against the district were also upheld based on the delegation of authority to the coach, who was the only individual authorized to make decisions regarding membership on the football team. The claims against the principal were dismissed as there was no indication that he was involved in plaintiff's dismissal from the team, or that he had any authority over team membership.

Impact: Students who report incidents of hazing should not be required, as a condition of participation in an activity or organization, to apologize for making the report.

Gendelman v Glenbrook N. High Sch., 2003 U.S. Dist. LEXIS 8508 (N.D. Ill. May 21, 2003)

Facts: Plaintiffs, members of the junior and senior classes at Glenbrook N. High School, met for the annual "powder puff" football game, on a Sunday afternoon, off school grounds. The "game" was videotaped, and subsequently, several participants were charged with violations of the school handbook rules prohibiting hazing and harassment. The students, who were brought before several administrators and given the opportunity to respond to the charges against them and were then suspended for 10 days, filed a complaint seeking an injunction ordering defendants to vacate their suspensions.

Held: Plaintiff's request for a temporary restraining order was denied. It was unlikely that plaintiff's would succeed on the merits of their claim.

Impact: There is a strong public interest in keeping school environments safe and free from persons and events that will impede the learning process. To accomplish this purpose, school districts must be allowed to discipline students when discipline is warranted. The public interest is served when district's are permitted to punish students participating in incidents involving "egregious conduct."

Scrugges v. Meriden Bd. of Ed., 2005 U.S. Dist. LEXIS 19296 (D. Ct. Aug. 26, 2005)

Facts: Plaintiff brought suit on behalf of her son, a student with a learning disability, claiming defendants violated his rights by, in part, failing to adequately supervise and protect her son from known harassment, bullying and assaults. Plaintiff alleged that her son was bullied, harassed and threatened because of his disability and that defendant's knew, or should have known of the problem.

Plaintiff sought, in part, to hold defendants liable under § 1983 for refusing to establish necessary procedures, adequately train school employees to deal appropriately with learning disabled children, and establish anti-bullying and harassment policies. Defendants moved to dismiss.

Held: For the plaintiff. The allegations that defendants' failure to address student's special education needs and the ongoing bullying situation support an inference that defendants' were deliberately indifferent to student's rights. Plaintiff sufficiently alleged deliberate indifference to the need for training and supervision by the defendants.

Impact: Failure to train employees, when "deliberately chos[ing] from among various alternatives not to provide adequate training" may amount to deliberate indifference, and thereby give rise to a violation of § 1983.

Shante D. v. City of New York, 190 A.D.2d 356, 598 N.Y.S.2d 475 (Sup. Ct. N.Y. App. Div. 1993), aff'd Shante D. v. City of New York, 83 N.Y.2d 948, 638 N.E.2d 962 (N.Y. 1994)

Facts: Plaintiff, in violation of school safety regulations requiring students to use classroom restrooms and prohibiting more than one student from leaving the classroom unattended, was sent out of the classroom to use the restroom at a time when at least one other student was wandering the school premises unattended. When she entered the restroom plaintiff was sexually assaulted by the other student. A restroom was available in the classroom, but the teacher did not allow the students to use it during class.

Held: For the plaintiff. It was not necessary for the plaintiff to show that the student had previously committed the same type of assault that occurred in the case. It is sufficient for the plaintiff to show that the student had previously exhibited violent tendencies which should have placed the school on notice that she would, given the opportunity, assault plaintiff in the future.

Impact: Parental complaints/reports of threats and bullying behaviors may give rise to liability for subsequent harm.

VII. Conclusion

As a general rule, when courts are confronted with allegations pertaining to peer-to-peer harassment, the district will be judged based on the reasonableness of its actions. Thus, to prevent harassment, and when responding to harassment, you should consider the following:

- Are the district's harassment policies reasonable?
- Once you (the district) have received a report that harassment has occurred, did you respond in an appropriate timeframe?
 - Were the steps that you took reasonably likely to prevent future harassment?

Asking these questions, and taking steps to ensure that students are protected from harassment and bullying, should assist in reducing exposure for the district.