



# **Bullying Can Cost Your School – And Your Students, And Their Parents**

Insights

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School bullying is one of the most pressing social, health, and educational concerns facing public and private schools alike. Long-term bullying, left unaddressed by schools or parents, can cause lasting physical and emotional harm to students. Bullying has been linked both to deadly school violence, such as the infamous 1999 Columbine High School massacre, and to suicide in a number of tragic incidents throughout the community.

The case of Tyler Clementi, a student at Rutgers University who jumped to his death from the George Washington Bridge after his roommate secretly recorded him kissing another man and published the incident via Twitter, is a widely publicized example of the harmful effects of school-related bullying. Clementi's roommate was later convicted for a criminal invasion of his privacy.

Propelled by the notoriety of these events, the tragic effects of bullying are now manifested beyond the individual victims and their families. Lawmakers and judges throughout the country are stepping up to punish the bullies and protect their victims. This means that schools, their faculties, and now parents and students must respect the anti-bullying laws or pay the price.

## **The Legislative Response**

Following the Columbine shootings, states around the country began passing school anti-bullying laws. By 2003, 15 states had done so. By 2011, when the U.S. Department of Education issued its Analysis of State Bullying Laws and Policies, 46 states had adopted such laws. By March 2014, every state but Montana had such laws.

New Jersey has been a bellwether in this area, as it historically has been with respect to civil rights legislation. In 2002, it became one of the first states to pass an anti-bullying law. In 2011, in the wake of the Tyler Clementi tragedy, the New Jersey legislature unanimously passed the state's Anti-Bullying Bill of Rights Act, which amended and expanded existing anti-bullying legislation. Although this law technically applies only to public schools, independent schools likely are going to be held to similar standards of conduct. This comprehensive statute, similar to what other states have or may soon be expected to adopt, provides, among other things, that:

- every public school district must adopt a policy prohibiting and responding to harassment, intimidation, or bullying, including cyber-bullying, whether it occurs on or off school property;

- every investigation of reported bullying within the public school system must be completed within 10 days, and parents of students who are parties to the investigation must be apprised of the progress of the investigation;
- every school and school district must establish a bullying prevention program that must involve school staff, students, volunteers, parents, law enforcement, and other community members;
- every school must have a school safety team “to develop, foster, and maintain a positive school climate” and “to address school climate issues such as harassment, intimidation, or bullying;”
- every school principal must appoint a school anti-bullying specialist to chair the school safety team, lead the investigation of reported bullying incidents, and act as the school’s primary anti-bullying official; and
- all candidates for teacher, administrative, and supervisory certification must complete a training program on harassment, intimidation, and bullying prevention, and teachers must receive periodic refresher courses.

### **The Lengthening Tentacles Of Liability**

A number of states recognize a private right of action by students and their parents against schools and school districts for violations of the state’s anti-bullying laws. A March 12, 2014 New Jersey court decision in *V.B. v. Flemington-Raritan Regional Board of Education* suggests liability does not stop there.

In that case, which is ongoing, a student identified as V.B. and his mother sued several schools and school districts under the Anti-Bullying Bill of Rights Act and the New Jersey Law Against Discrimination for the bullying V.B. had been subjected to from the 4th through 11th grades. According to V.B.’s allegations, the bullying began with verbal taunts about his weight – other students called him “fat,” “chubby,” “lardo,” and the like.

By 6th grade, the attacks began to be physical as well. For example, V.B. was “pantsed” twice by other students (his pants were pulled down and his underwear exposed); a student threw pasta with gravy on V.B.’s shirt; on several occasions a student jabbed V.B. in the stomach; and kickballs were thrown at V.B.’s genitals. As time went on, other students began “accusing” V.B. of being homosexual, aiming at him derogatory, antigay slurs such as “fag” and “homo.” Some of these incidents were witnessed by teachers.

V.B. and his mother repeatedly complained to school officials, to no effect. V.B.’s mother went to the local police department and was told it was a school matter. The school principal recommended V.B. go back to the police department to speak with an officer who specialized in school matters. When she did so, the officer asked her if V.B. was gay and told her that “V.B.’s civil rights were not violated unless he was gay.” V.B.’s mother approached the parents of some of the students harassing V.B. They claimed they could not control their children. In short, nothing was done.

By 8th grade, V.B. became anorexic and suffered a debilitating weight loss. In 9th grade cyber-bullying began. Near the end of 10th grade, V.B. was hospitalized for anorexia. In 11th grade, the bullying continued, and although the school had been informed that V.B. needed appropriate accommodation for his anorexia, he was required to study weight issues in health class – which emphasized “the importance of being thin” – and to participate in gym class, where he was compelled to engage in strenuous activities, such as rock-climbing.

After V.B. finally sued the schools and school districts involved, the schools in turn filed a third-party complaint against 13 of the students and parents of students who had bullied V.B., seeking contribution towards any damages they would ultimately be required to pay. The students and parents moved to dismiss the third-party claims, arguing that the anti-bullying laws did not apply to them, but only to schools and school districts.

The court agreed that the anti-bullying laws did not apply, but refused to dismiss the claims on the basis that the parents and students could be held liable under tort law on the basis that if V.B.’s allegations are proven true, both the schools and the parents were negligent. The schools failed to address and prevent the bullying and the parents failed to supervise their bullying children. The children could be held liable for their own offending actions. Thus, all parents and children presently remain in the case.

### **What You Should Do**

The *V.B.* case shows that not just the school, but the entire community, is now subject to potential liability if bullying is not effectively prevented or, when reported, ended. Anti-bullying training should therefore include the whole community – school staff, students, and parents. All must be taught to recognize bullying, to avoid engaging in it, and to take steps to promptly stop it whenever it happens. Schools must also be vigilant in ensuring their anti-bullying policies are adhered to. As the *V.B.* case shows, the existence of state-mandated policies will not prevent bullying or the resulting liability if the officials charged with enforcing those policies don’t take the bullying seriously.

Finally, private schools, which generally have much more flexibility than public schools, should make it known that school employees will be disciplined – or even fired – for failing to prevent or address bullying; such provisions can be included in the employment contracts of those school officials who are not employees-at-will. Similarly, student enrollment contracts should include provisions allowing for the discipline – up to and including expulsion – of student bullies.

The legal landscape is ever changing when it comes to dealing with the problem of bullying. Recent case law and legislation make clear that the prevention of bullying is of paramount importance. Schools, administrators, parents and the bullies themselves may end up embroiled in litigation for failing to take the issue of bullying seriously. When it comes to bullying, an ounce of prevention is worth a pound of cure and is a whole lot better than a hefty lawsuit.

*For more information or guidance in creating and enforcing your school's bullying policies, contact your Fisher Phillips attorney or the authors at [KCaminiti@fisherphillips.com](mailto:KCaminiti@fisherphillips.com) or [DTreibman@fisherphillips.com](mailto:DTreibman@fisherphillips.com), or phone either at 908.516.1050.*

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