10-Step Plan To Ensure Bullying Doesn't Cost You

Insights
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For the first time, a court used a civil rights law to hold a school district financially accountable in a case of student bullying. In the recent case of *Cohen v. Philadelphia School District*, the court awarded $500,000 to a transgender student because the school district failed to stop her from being bullied. What can you learn from this development?

Court Punishes School District For Not Doing More
In the *Cohen* case, a student endured severe and persistent taunting, teasing, bullying, and harassment from fellow students based on her gender presentation, including both name-calling and physical abuse. Despite continual complaints to the school district by the student's mother, and even moving the student to different schools within the district, the administrators did not take any steps to remedy the situation except to suspend the student who physically assaulted the student. Unsurprisingly, the harassment continued, and the student's family felt it had no choice but to bring a lawsuit.

In its decision, the court noted that the school did not have a procedure in place to address the discrimination and bullying suffered by the student. The court also noted that the school staff responsible for overseeing students were not even aware of the policies that were supposed to be in place or procedures to implement them. The court concluded that the school district failed to take steps to prevent further harassment resulting in multiple incidents of bullying, entering an award in the student's favor.

Courts Have Options Available To Hold Schools Accountable
This case is indicative of a trend by courts to find schools liable for bullying, looking for ways to punish schools that fail to protect students regardless of the strength of state anti-bullying laws. Under President Obama's anti-bullying initiative, the Department of Education (DOE) listed 16 different components of state anti-bullying laws. However, the DOE was silent on whether state anti-bullying laws should require private schools to develop anti-bullying laws. Although all 50 states and the District of Columbia have enacted some type of anti-bullying law, only six states prohibit bullying in private schools as well as public schools.

However, instead of relying on an anti-bullying law, the court based its decision holding the school district liable under the Pennsylvania Human Relations Act (PHRA), which prohibits discrimination based on sex. This is the first time a state court in Pennsylvania has recognized a cause of action

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under the PHRA for student-on-student bullying.

The PHRA covers public and private schools and prohibits discrimination against someone based on race, color, sex, religious creed, national origin, ancestry, handicap, disability, or their use, handling, or training of support or guide animals for disability. Many states have similar laws. Therefore, even though anti-bullying laws may not create legal liability for private schools, anti-discrimination laws —particularly when applied as in *Cohen*—could very well do so. Applying anti-discrimination laws to incidents of bullying is just one way that courts can hold schools liable for bullying; there have also been examples where claims of negligence against schools have been upheld in similar circumstances.

10-Step Compliance Plan

Since courts are beginning to find novel ways to punish schools for failing to stop bullying, even where the anti-bullying laws in those states may be weak, it is more important than ever for schools to respond quickly and effectively when bullying issues occur. When a student or parent brings a complaint of bullying to the school's attention, or your school has reason to suspect a problem, you must take action.

In addition to investigating and addressing specific complaints of bullying, schools can take more global measures to reduce the risk and opportunity for bullying. Here are 10 steps your school can take to reduce bullying and resulting liability:

1. Develop an anti-bullying policy, including cyber-bullying.
2. Publicize your school's zero-tolerance policy toward bullying.
3. Make it clear in your school's policy that you will share details and cooperate with law enforcement so that information can be disclosed when necessary.
4. Establish a clear procedure to investigate reports of bullying. Be careful to preserve confidentiality as much as possible and work with counsel to determine what information can be disclosed during and after the investigation.
5. Provide an anonymous reporting process so that students can report issues even if they are afraid to do so directly. The process can be as simple as a box that students can use for notes to alert the administration to issues they see or are experiencing.
6. Maintain reports in a way that will reveal emerging problems and patterns over time so that you can be aware of developments.
7. Keep reports confidential and private. Staff and students should be encouraged to report violations without fear of retaliation
8. Assess times and locations when students may be unsupervised or have more limited supervision, and work to eliminate those instances.
9. Provide training to faculty and staff so they can recognize the signs of bullying and step in to address any incidents and prevent further occurrences.

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10. Include provisions in enrollment contracts allowing you to discipline students for bullying, up to and including expulsion.

Conclusion

Bullying has an obvious negative impact on students both in terms of their emotional well-being and their ability to learn. In addition, a culture where harassment is tolerated will prevent students (including victims, aggressors, and witnesses) from developing to their full potential. Since courts have recognized the harmful impact of bullying and are more apt to punish schools that do not take reasonable steps to prevent it, you should review your policies and procedures to make sure that they are both effective and would stand up in a court if questioned.

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