

The Legal Status of Bullying: Districts have a Dual Responsibility

Part One of a Three Part Series

By Mary Jo McGrath, Attorney at Law

The connection between bullying and the extreme violence of students murdering students and faculty riveted the nation's attention after the dreadful Columbine massacre in 1999. Other school shootings have followed, the most recent being the horror that unfolded at Virginia Tech. In the vast majority of these cases, including Virginia Tech, it was discovered that classmates had bullied the student shooters. This bullying, often combining with preexisting emotional and mental illness, may have pushed the student shooters into their murderous rampages.

As occurred in the early 1990s, when sexual harassment came to the forefront with the Clarence Thomas/Anita Hill confrontation, legislatures and school districts are attempting to prevent bullying by passing laws and adopting policies. While measures to protect students from being harmed are admirable, they tend to place a burden on school districts that more properly should be borne by society at large. Bullying is ingrained in human behavior. To assert that we can, or even should, ask schools to transform human nature is highly questionable. Nonetheless, there is consensus that some measures must be taken to safeguard children from the harmful effects of bullying and harassment in schools.

In zealously trying to correct the ill effects of bullying, **some districts are adopting policies that establish a low threshold for district legal liability.** One concrete example of overexposing the school district involves loosely defining what constitutes "notice" to the district that harm is occurring. Districts should be careful that the policies they adopt are narrowly drawn in terms of who is authorized by the school district to receive notice of harm from bullying. A poorly drafted policy says that every employee is responsible for safeguarding students against bullying and a student may tell any employee if they are being bullied.

Though our hearts might tell us that making everyone accountable is the best way to police the activity, this is an ill-advised choice. How effectively can a custodian remedy observed bullying behavior? Do you wish to have your district's responsibility for correcting the observed behavior in the hands of employees who do not have the authority to address the problem? Attributing notice to the school district via every employee widens the field of district liability. Absent a district policy to the contrary, courts likely will borrow from Title IX law, which holds that liability does not attach to the school district unless an official with the authority to take corrective action received notice of the harm to students and failed to act upon that knowledge.

School districts are local governmental agencies. The criterion a school district adopts in its policies has the force and effect of law. Those policies will greatly influence the standard applied by the courts to lawsuits brought against the district. As you enact policies to provide optimal protection to students, do not lose sight of the issue of district liability. Your responsibility is two-fold: to protect against harm to students and liability to the school district. An effective anti-bullying policy will address the needs of both the student and the school.

Next Issue: 360 Degree Bullying Prevention Training - What To Look For

EXCLUSIVE for our McGrath Newsletter Subscribers: McGrath Model Bullying Policy

Be one of the first 100 subscribers to click on the link below and receive the McGrath Model Bullying Policy. Contents include:

- General Policy Statement
- Definition of Bullying
- Examples of Bullying
- Duty to Act
- Sanctions for Bullying
- Retaliation
- False Reporting

[McGrath Model Bullying Policy](#)

Additional McGrath Resources:

[School Bullying: Tools for Avoiding Harm and Liability](#)

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- Get the latest research on the "new" bullying - girls, cyberbullying, and more
- Learn the legal basis for bullying and lawsuits
- Tools for daily intervention and cultural transformation
- Step-by-Step investigation approach.

[Purchase the book](#) for additional tools and resources on Complaint Management including: Sample Complaint Intake Forms, Decision Trees outlining the Initial Processing of a Complaint and Determining Who Investigates.

McGrath Bullying and Harassment: Minimize the Risk Curriculum

- **Bullying and Harassment: Fundamentals of Detection, Identification, and Intervention** (for faculty and staff)
- **Bullying and Harassment Complaint Intake and Investigation** (for school administrators)
- **Bullying and Harassment - Proactive Awareness for Students and Parents** (K-12)
- **DVD/Video Education System & Training of Trainers Program**

Contact: info@mcgrathinc.com · 800-733-1638 · www.mcgrathinc.com

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info@mcgrathinc.com

800-733-1638

www.mcgrathinc.com

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