



Arizona's Bullying Laws: New Legislation for an Old Problem

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In recent years, the media has presented bullying as an emerging problem in public schools. Yet, bullying is not a new phenomenon. For years, bullying has been a common experience among both boys and girls during the school year. Although “bullies” have tormented students in schools, on buses and on playgrounds for decades, the legal system has rarely been involved in dealing with this issue, and with good reason. Traditionally, bullying has been addressed through student behavior codes. School officials have dealt with less serious bullying in-house, through collaboration with teachers, parents, and the students themselves. However, recent media attention has highlighted extreme cases where bullying produced severe and sometimes fatal consequences. These tragic incidents have sharpened national focus on the prevention of school bullying and prompted state legislatures across the country to enact “anti-bullying” legislation.

Arizona responded to the controversy by passing an anti-bullying law in 2005, which called for schools to put in place a policy to address bullying. Although most schools are aware of the 2005 requirements, many school officials do not realize that the Arizona legislature recently passed a new law designed to address gaps in that previous legislation. House Bill 2415, passed in the spring of 2011, requires schools to make several changes to their existing policy, but, more importantly, also calls for disciplinary action against school officials who fail to file reports about bullying.

Educators at all levels should be aware of what the law says about bullying and how courts will view causes of actions brought by the victims. Under the new legislation, school personnel now face increased liability for failure to identify bullying when it occurs and respond appropriately. This article will explore Arizona's recent updates to bullying laws, discuss the potential liability of school officials, and provide guidelines for creating an effective bullying policy.

Arizona's New Anti-Bullying Legislation (House Bill 2415)

In 2005, the Arizona legislature promulgated its first bullying law. The law requires schools to create general policies to prohibit students from harassing, intimidating, and bullying other students while on school grounds. The law also called for a formal investigation of bullying incidents and disciplinary procedures for those students who violated the policy.

In spring 2011, the Arizona legislature enacted a new bullying law designed to increase the accountability of school officials and impose stricter mandates on how schools address incidents of school-based bullying – both in person and online. Although the new law did not compel charter schools to make changes to their existing policies, doing so would serve as a good practice to avoid potential liability. Many of the 2011 revisions could help charter schools

mitigate the risk of lawsuits brought by parents whose children were victims of bullying. Additionally, instituting the changes may further help school officials prevent, identify, and respond to bullying. With the new changes, schools are now expected to:

- (1) Create clear definitions of “harassment,” “intimidation,” and “bullying.”
- (2) Provide forms for students, parents, and educators to report incidents of bullying and intimidation.
- (3) Report in writing suspected incidents of harassment, intimidation, or bullying, and provide a description of disciplinary procedures for employees who fail to report suspected incidents.
- (4) Provide students with a written copy of rights, protections, and support services available to anyone who is an alleged victim of bullying.
- (5) Maintain documentation of bullying incidents for at least 6 years.
- (6) Set forth procedures designed to protect the health and safety of students who are physically harmed as the result of incidents.
- (7) Prohibit cyber-bullying on school computers, networks, forums and mailing lists.

Identifying “Bullying”

Under the new legislation, schools will be called upon to define “bullying” (in addition to “harassment” and “intimidation”). In doing so, school personnel must be cautious to avoid prohibiting behavior that will lead to legal challenges. Creating a broad policy that disciplines conduct such as teasing or kidding may contravene students’ free speech rights. By contrast, creating a narrow policy may cause school officials to overlook statutory obligations, such as Title IX, Section 504 and other laws that prohibit discrimination on the basis of race, gender, and disability. Furthermore, schools may confuse or overlap the terms “bullying,” “harassment,” and “intimidation,” potentially causing inconsistent enforcement among school personnel.

When creating definitions, it is important to keep in mind that “bullying” is not a legal term and may be defined in many different ways. Not surprisingly, harassment also describes behavior bullies direct toward their victims. Yet, statutes prohibiting harassment may not apply in school-bullying cases. In seeking guidance on how to deal with these issues, schools should understand the court’s view on bullying and school officials’ responsibilities.

Court Decisions

In the last decade, legislative enactments have brought about a dramatic change in the legal landscape and caused a burgeoning of lawsuits. The result has been an increase in complaints alleging school officials’ liability for bullying-related incidents. The cases below will highlight the potential liability that teachers and administrators face in responding to school bullying and provide guidelines on how to properly address the issue based on legal precedent.

Courts have generally been reluctant to recognize bullying as a viable cause of action. In fact, a search for court cases containing the word “bullying” will yield few, if any, results. However, harassment is actionable and several courts have examined alleged student-on-student harassment and threatening behavior. Because many of these complaints detail inappropriate

behaviors that may constitute bullying, students and parents have attempted to redress harms suffered by peer bullies by bringing suits alleging harassment. As a result, these cases may provide important guidance in forming a comprehensive policy to address bullying.

Davis v. Monroe

LaShonda Davis was a fifth grade student at Hubbard Elementary School in Georgia. In December of the school year, one of Davis' classmates, G.F., began to harass Davis at school. G.F. attempted to inappropriately touch Davis on multiple occasions and made vulgar statements such as "I want to get in bed with you" and "I want to feel your boobs." The harassment continued for over a month and each time, Davis reported the incident to her mother and classroom teacher, Diane Fort. Her mother contacted Fort regarding each incident, and, in turn, Fort reassured her that the school principal was aware of each incident. However, no disciplinary action was taken. All the while, G.F.'s conduct continued until May when G.F. was charged with, and ultimately pleaded guilty to sexual battery.

Davis' mother initiated a lawsuit against the school for failure to take disciplinary action against G.F. in response to his behavior toward Davis. The complaint alleged that Davis "suffered during the months of harassment" and that G.F.'s conduct "interfered with her ability to attend school and perform school duties," causing her grades to decline. The U.S. Supreme Court, in *Davis v. Monroe City Board of Education*, (1999), found that "school officials may be liable where the harassment is so severe and pervasive that it limits the student's ability to learn; where school officials show an indifference to the matter; and where school officials fail to take steps to remedy the situation." The Supreme Court emphasized preventing or remedying harmful actions that limit the student's ability to learn. The practical effect is that school officials must immediately respond to incidents, whether it is harassment or something more serious, because the prohibited conduct denies students access to the benefits of an educational program.

Wayne v. Shadowen

A 2001 case also considered the effect of harassment. However, this time, the parent whose student was disciplined by the school filed the lawsuit. Nick Wayne had been subjected to increasingly escalated levels of disciplinary action following his pattern of classroom misbehavior that included preying on weaker students by verbal taunts and physical assaults. Although the court characterized the student's behavior as harassment, the court record makes clear that the behavior could also be characterized as bullying. After repeated offenses, Wayne was placed in a special classroom and isolated from other students.

Although the court, in *Wayne v. Shadowen*, 2001 WL 873747 (6th Cir. 2001), found for the school, the case provides important insight for school administrators whose school bullying policies may be challenged. The court emphasized the need for documenting the bullying student's behaviors. School personnel should also note any escalating disciplinary procedures, including references to the school code of conduct. Furthermore, school officials must observe students' due process rights and provide notice and opportunity for a hearing. Most importantly, students must continue to receive access to the benefits of the educational program.

Lessons Learned

Bullying in schools is an increasingly complex and important issue. If a charter school does not have a policy addressing bullying, it should develop one as soon as possible. Absent such a policy, charter school personnel will face increased liability. As a result, school officials must remain firm and consistent in their enforcement of school discipline procedures. Schools should define terms like “bullying,” create methods of reporting, generate disciplinary procedures, and train school personnel to understand and implement these new policies.

School officials should seek guidance from an attorney on how to promulgate anti-bullying policies. Additionally, schools should ask their attorney for assistance with specific disciplinary situations regarding bullying, harassment, or intimidation.

This article is intended to be a general discussion of Arizona bullying laws and is not intended to provide legal advice regarding any particular incident that may arise.

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