Civil Rights Litigation and Enforcement for School Bullying Victims

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Introduction

- All 50 states have anti-bullying laws.

- Half our country’s school officials and teachers have no anti-bullying training.

- Eight out of every ten times a child gets bullied at school, no adult intervenes.
What is Bullying?

- “Bullying is unwanted, aggressive behavior among school aged children that involves a real or perceived power imbalance. The behavior is repeated, or has the potential to be repeated, over time.” (U.S. Dep’t. Health & Human Svcs.)

- Includes making threats—whether in person or online, spreading rumors, attacking someone physically or verbally, and excluding someone from a group on purpose.
Evaluating Potential Civil Rights Claims

Get information on:

- Nature of bullying—protected characteristic?
- Where bullying occurred
- History and severity of incidents
- Reported to school?
- Effects of bullying
Two General Categories of Bullying

- **Bias-Based Bullying**: based on characteristic of victim specifically protected under civil rights statutes or constitution.

- **Other Types of Bullying**: often based on student being perceived as different in some way.
Overview of Claims Under Federal Anti-Discrimination Statutes

- Title VI of the Civil Rights Act of 1964 – race, color, or national origin discrimination
- Title IX of Education Amendments of 1972 – sex discrimination
- Section 504 of the Rehabilitation Act of 1973 – disability discrimination
- Title II of the Americans with Disabilities Act of 1990 – disability discrimination
Title VI

Covers students of a particular faith when the bullying is based on actual or perceived race or national origin.

Title IX

Protects females and males, and prohibits all forms of sex discrimination:

- Sexual harassment
- Sexual violence
- Gender-based harassment involving sex stereotyping (often involved in LGBT bullying)

Bully and victim can be same or opposite sexes.
Overview of Claims Under U.S. Constitution

Two possible constitutional claims for bullying under 42 U.S.C. § 1983:

- Violation of right to equal treatment under the Fourteenth Amendment’s Equal Protection Clause

- Violation of right to substantive due process under the Fourteenth Amendment’s Due Process Clause
Comparison of Federal Claims

- Constitution prohibits religious discrimination.

- Constitution permits suit against school district and employees; federal anti-discrimination statutes limited to school district.

- Punitive damages available only for constitutional claims.

- Different liability standards.

- Constitutional claims face immunity hurdles.
Title IX & Title VI Claims: Four Critical Features

- Suit against school district only, not individual employees.
- Constructive knowledge insufficient to establish liability.
- No vicarious liability for bully’s conduct; suit based on district’s own misconduct.
- Liability where school district has substantial control over harasser and context in which harassment occurs.
Elements of Title IX & Title VI Claims

1) The school district had **actual knowledge** of the harassment;

2) The school district was **deliberately indifferent** to the harassment; and

3) The harassment was so **severe, pervasive and objectively offensive** that it could be said to deprive the plaintiff of access to educational opportunities or benefits provided by the school.

Actual Knowledge


- Superintendent
- Administrators with significant personnel functions
- School Principals
- Others with authority to impose discipline
Deliberate Indifference

A school district is deliberately indifferent when its response to peer harassment is “clearly unreasonable in light of the known circumstances.”

- Determined on case-by-case basis.
- School not required to take particular disciplinary action or stop the bullying.
- 2nd, 6th, and 11th Circuits: school must take remedial action reasonably calculated to end known harassment.
- Can’t continue to use methods known to be ineffective.
Severe, Pervasive, and Objectively Offensive Conduct

- Teasing and mere name-calling are not actionable
- Successful cases typically include physical abuse
- Victims must present concrete evidence that bullying had negative impact on their education, such as:
  - Lower grades
  - Withdrawal from school
  - Depression, anxiety disorder or other psychological impact
OCR Enforcement Standards

- School must address harassment “about which it knows or reasonably should have known.”

- Harassment must be “sufficiently severe, pervasive, or persistent” that it “limits or interferes with” a student’s educational opportunities.

- School “must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment, and prevent the harassment from recurring.”
Equal Protection Claims

- Liability standards for peer bullying not yet settled.

- Federal circuits agree that victim must show deliberate indifference.

- Most federal circuits also require victim to show that school district’s conduct was based on victim’s membership in identifiable class.
Substantive Due Process Claims

- No “special relationship” between school and students, so no constitutional duty to protect students from bullying.
- Schools not liable under “state-created danger” theory unless they affirmatively created or increased danger of peer bullying.
- No claim unless school’s response “shocks the conscience.”
Remedies

- **Compensatory damages**
  - Verdicts and settlements in 5-7 figure range
  - Highest reported settlement: $5.75 million
  - Highest judgment upheld on appeal: $1 million

- **Punitive damages** (constitutional claims)

- **Injunctive and declaratory relief** (statutory and constitutional claims)

- **Attorneys’ fees** recoverable (statutory and constitutional claims)
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