Bullying

In the wake of Columbine and other high-profile school shootings, educators and the public at large have become increasingly aware of the danger and damage that bullying can cause. For example, a study by the U.S. Secret Service suggests that bullying was a contributing factor in two-thirds of 37 school shooting episodes.1 Other recent research reveals a significant relationship between weapons and not only bullies but targets of bullying, noting that many bullies started as victims.2

Given such findings, it is not at all surprising that researchers recommend that schools make anti-bullying part of their mission.3 Going further, approximately a dozen states, led by Colorado, have adopted legislation requiring public schools to adopt anti-bullying policies.4

Bullying-related litigation is also on the rise. The theories of liability range from state common law claims, such as negligence, to federal civil rights claims, such as racial harassment. Moreover, in some cases, the perpetrator and/or the victim may be a student with a disability.

The accompanying case and question-and-answer discussion illustrate recent trends with regard to outcomes of these varying claims for liability.

The Case

In 1996, after 24 years of experience as an educator, Karen Siris became principal of W. S. Boardman Elementary School in the Oceanside Union Free School District, which is on Long Island, New York. Author of a doctoral dissertation entitled “Using Teacher Action Research to Alleviate Bullying and Victimization in Schools,” she instituted an “anti-bullying” philosophy at Boardman that included classroom presentations at the start of each school year, written materials to the teachers, and a motivational film for the entire school, with follow-up teacher activities.

In September 1997, Edward Y., a third grader of Chinese ancestry, re-enrolled at Boardman after spending second grade at a parochial school. The following year, when he was in the fourth grade, some students started bullying him. They cursed him, hit him, and made fun of his ancestry. No one brought this behavior to the attention of the principal until near the end of the school year, when his mother informed her that Edward was the repeated victim of racial harassment and abuse. Siris immediately interviewed Edward and the alleged perpetrators, who claimed that Edward had provoked the incidents. When one of them admitted making a racial remark, the principal met with his father, informing him that such conduct was unacceptable and asking for his assistance in preventing its recurrence.

However, the bullying recommenced a few days later, and Edward complained to the principal at about the time that the school year ended. The incidents continued the next year, when Edward was in the fifth grade. Some of his classmates made faces at him, pulling their eyelids outward to approximate the stereotype of Asian faces. In October, when one of the bullies pushed him to the floor and hit him, his mother again came to school to meet with the principal. In response, Siris met with the accused students, explained that their conduct was unacceptable, suspended them from recess, and called their parents. A few days later, the boy who purportedly pushed Edward came to his house and apologized in person.

In December, after one or more students pushed Edward from behind down the school stairs, he and his mother again complained to the principal. Since Edward was not able to identify the individuals, Siris decided to use the incident as a learning tool. She brought him to classrooms approximating his grade level, where she emphasized the unacceptability of name-calling and bullying and asked the children for their comments and suggestions. In response to the visits, Edward received sympathetic letters from several students.

However, a few weeks later, a group of bullies ganged up on him, shoving and kicking him while engaged in racial taunting. He identified the attackers to the principal, who immediately summoned them to her office. They denied his allegations, claiming that Edward had initiated the confrontation. After discussing the matter with their parents, who sided with their children, Siris suspended the accused boys from recess and from riding the school bus for five days.

The next month, after another student “stomped” on Edward’s back, his mother complained that the harassment was getting out of control, that Edward was developing emotional problems, and that he did not want to return to school. Siris convinced Edward to return and gathered the entire fifth grade in the cafeteria to discuss with them the danger of racial name-calling, stereotyping, and other forms of intolerance. A month or two later, Edward reported to the principal that a female lunchroom monitor had called him a “Chinese liar,” characterized his family as “crazy,” and advised him to “go back where you came from...if you’re still alive.” Siris interviewed the monitor, who denied making any racial or life-threatening remarks. After conferring with the superintendent, Siris sent the monitor a written warning.

Edward’s family then met with the superintendent and, after not obtaining satisfaction, enrolled Edward in a private school. They then filed suit in federal court against the principal, the superintendent, the lunchroom monitor, and the district, charging violation of civil rights under the Fourteenth Amendment’s equal protection and substantive due process clauses. The defendants filed a motion for summary judgment, requesting a decision in their favor without proceeding to a trial.

Principal ■ March/April 2005 www.naesp.org
Questions and Answers

How do you think the court ruled on the defendants’ motion for summary judgment?

In a recent decision, the federal district court granted the motion in the defendants’ favor. For the equal protection claim, which was premised on racial discrimination, the court explained that the key criterion was whether the defendants had engaged in deliberate indifference. The court acknowledged that “[i]f all of Edward’s allegations are believed, these experiences involved a significant amount of racial name-calling and physical abuse.” Nevertheless, the court observed that the principal had taken a series of steps that, although “regrettably...insufficient to completely end the abuse,” clearly were not so inadequate as to constitute deliberate indifference. The substantive due process claim fell short of what may be an even higher standard—an action “so ‘brutal’ and ‘offensive to human dignity’ that it shocks the conscience.” The court pointed out that neither the plaintiff-parents nor its own research had revealed any precedent “wherein the alleged failure of a school to adequately discipline its students met this substantive due process standard.” Even for the lunchroom monitor, the court concluded that even if all the statements attributable to her were correct, the single incident, although entirely inappropriate and unacceptable, did not meet the requisite conscience-shocking standard. Finally, the court declined to exercise its discretionary supplemental jurisdiction for the plaintiffs under state common law.

If the victim had been a student with a disability, would his federal claims have succeeded?

To the extent that he relied on equal protection or substantive due process, the standards—and the outcome—would have been the same. However, if the claim was based on Section 504 and/or the Americans with Disabilities Act, the plaintiffs would have the added possibility of filing a complaint with the Office for Civil Rights, which has a less strict standard but which can only order corrective action, not money damages.8

If the bully was a student with disabilities, or at least suspected of having disabilities, would the plaintiff’s civil rights claim be futile?

No, contrary to belief in some circles, students suspected of having or identified with disabilities are not immune from discipline. Therefore, school officials must avoid charges of deliberate indifference and inadequate action to halt conscience-shocking activity while conforming to the requirements of the IDEA and Section 504/ADA. For students protected by these statutes, school officials must, for example, implement a review before taking disciplinary action that would amount to a change in placement. Nevertheless, such a change in placement is allowed only where the parents consent, where the misconduct is not a manifestation of the disability, where the child uses a weapon, or, based on a hearing officer’s or court’s determination, the perpetrator’s current placement is likely to result in injury to self or others, and the district provides an appropriate interim alternative placement.10

Conclusion

In contrast with the professional literature concerning bullying in school, the published case law is far from victim-friendly. One of the main reasons schools have been successful in defending the bulk of such cases is that principals like Karen Siris have taken affirmative steps to reduce and respond to bullying incidents that threaten student safety.

However, for principals, “the real reason...to take a strong stance against bullying is not to avoid legal liability...but because bullying is bad—bad for the victims, bad for the perpetrators, and bad for a civil society. As part of their basic mission as purveyors of values, public schools must teach and enforce rights over wrongs.”11

Notes

2. See, e.g., Darcia Harris Bowman, “Survey of Students Documents the Extent of Bullying,” Education Week, May 2, 2001, p. 11.
5. Inasmuch as this case was at the threshold stage of summary judgment, the “facts” described here are merely allegations interpreted in the light most favorable to the plaintiffs.

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