



Peer-to-Peer Bullying and Harassment in Schools: School Responsibilities and Liability Exposure

Today's Presenters

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About this presentation

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- Introduction to Peer-to-Peer Harassment and Bullying
- Special education implications
- Notifying parents: requirements, restrictions and guidance
- Notifying law enforcement
- Peer-to-peer sexual harassment and assault
 - Massachusetts precedents
 - How to respond

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Introduction

Introduction

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- Key legal regimes:
 - Massachusetts bullying statute
 - Federal IDEA and Section 504
 - Federal Title II of the ADA
 - Massachusetts student records regulations
 - Federal Title IX

Introduction: Key Definitions

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“Bullying” means “the repeated use by one or more students. . . of a written, verbal, or electronic expression or a physical act or gesture or any combination thereof, directed at a victim that (i) causes physical or emotional harm to the victim or damage to the victim’s property; (ii) places the victim in reasonable fear of harm to himself or of damage to his property; (iii) creates a hostile environment at school for the victim; (iv) infringes on the rights of the victim at school; or (v) materially and substantially disrupts the education process or the orderly operation of a school. For purposes of this section, bullying shall include cyberbullying.”

Massachusetts General Laws, c. 71, s. 37O

Introduction: Key Definitions

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“Cyber-bullying” means bullying through the use of technology or any electronic communication, which shall include, but shall not be limited to, any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo electronic or photo optical system, including, but not limited to, electronic mail, internet communications, instant messages or facsimile communications. Cyber-bullying shall also include (i) the creation of a web page or blog in which the creator assumes the identity of another person as the author of posted content or messages, if the creation or impersonation creates any of the conditions enumerated in clauses (i) to (v), inclusive, of the definition of bullying. Cyber-bullying shall also include the distribution by electronic means of a communication to more than one person or the posting of material on an electronic medium that may be accessed by one or more persons, if the distribution or posting creates any of the conditions enumerated in clauses (i) to (v) inclusive, of the definition of bullying.

Massachusetts General Laws, c. 71, s. 370

Introduction: Key Definitions

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“Gender-based harassment” is “unwelcome conduct based on a student’s sex, harassing conduct based on a student’s failure to conform to sex stereotypes.”

“Sexual harassment” is unwelcome conduct of a sexual nature. It includes unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual violence is a form of sexual harassment prohibited by Title IX.

U.S. D.O.E. Office of Civil Rights website 9/25/2019.

Introduction: Key Definitions

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“Sexual violence” is “a form of sexual harassment. Sexual violence, as OCR uses the term, refers to physical sexual acts perpetrated against a person’s will or where a person is incapable of giving consent. A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, sexual abuse, and sexual coercion.”

U.S. D.O.E. Office of Civil Rights (OCR) website
9/25/2019.

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Special Education Implications

Special Education Implications

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- Target and Aggressor
 - Are either eligible for special education services?
 - Review the IEP
- Address IEP skills and proficiencies, if:
 - The disability impacts social skills development
 - The disability results in vulnerability to bullying, harassment and teasing
 - The student is on the autism spectrum

Special Education Implications

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- IEP team meetings
 - Identify any bullying incidents
 - DESE recommends considering:
 - Student's feelings of safety
 - Awareness of bullying: school, parents, student, student's friends
 - Vulnerability due to student behaviors
 - Bullying by the student
 - Student's ability to access bullying curriculum
 - Student's skills and need for skill development
 - Student's social status
 - Student's safe person
 - Availability of an aide to assist
 - Vulnerable time periods
 - Behavioral intervention plan

Special Education Implications

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- Review assessments
 - Should these be redone?
 - Are additional assessments necessary?
- Legal requirements
 - Massachusetts special education regulations – assessment of student's relations with group, peers and adults
 - IDEA – assess social and emotional status, as needed

Special Education Implications

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- Consider modifications and changes in services
 - Supplementary aides during vulnerable time periods
 - Inform school staff
 - Home base, safe adult
 - Safety plan
 - Counseling and skill building
 - Functional Behavioral Assessment and Behavioral Intervention Plan

Special Education Implications

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- Discriminatory harassment
 - Violation of Title II of the ADA and Section 504
 - If hostile environment
 - The harassment is encouraged, tolerated, not adequately addressed, or ignored by school employees
 - Compliance with the bullying policy is insufficient
 - Recourse to OCR
 - Investigate promptly, respond appropriately
- FAPE – Recourse to OCR, BSEA

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Notifying Parents

Requirements, Restrictions and Guidance

Notifying Parents: Requirements

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- If the principal determines that bullying or retaliation has occurred, notify parents/guardians
 - Of the perpetrator – notice of incident
 - Of the target
 - Notice of incident
 - Notice of efforts taken to prevent bullying and retaliation (to the extent consistent with law)
 - In the primary language of the home

Notifying Parents

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- Restrictions
 - Students over the age of 18
 - Prohibition against sharing one student's record with the parents of another
 - Access by noncustodial parents
- Guidance – LGBT students

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Notifying Law Enforcement

Notifying Law Enforcement

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- First day of each school year
- If criminal charges may be brought
 - Reasonable basis
 - In connection with a health or safety emergency
 - But not if bullying and retaliation may be handled within the school
- Notice to DESE of all “significant matters” within two business days, including “all communications made or received by or on behalf of the school with any...investigative or law enforcement agency.” 603 CMR 1.08(10).

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Peer-to-Peer Sexual Harassment

Massachusetts court cases

Peer-to-Peer Sexual Harassment

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Harrington v. City of Attleboro (2016)

- Background
 - Four years of bullying
 - Sexually derogatory language, references to physical characteristics
 - Initially, one aggressor, then a friend, then friends of friend
 - Suicidal thoughts
 - Withdrawal from school

Peer-to-Peer Sexual Harassment

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Harrington v. City of Attleboro (2016) (cont.)

- Title IX claim permitted
- Case settled
- Key takeaway: In considering appropriate measures, schools must consider:
 - The length of time a student has been bullied
 - Persistence of the same aggressor(s)

Peer-to-Peer Sexual Harassment

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Thomas v. Town of Chelmsford (2017)

- Background
 - Student on an IEP
 - Bullying
 - Rape
 - Continued bullying in person and through social media
 - Harassment from teachers
 - 24 complaints from parents and student
 - Student transferred and repeated grade
 - Case settled

Peer-to-Peer Sexual Harassment

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Thomas v. Town of Chelmsford (2017) (cont.)

- Key takeaways
 - Protect against repeat assault
 - Instruct teachers to respond appropriately
 - Develop protocols for addressing incidents
 - Respond to every complaint
 - Keep an eye on unwritten school policies and customs
 - Stronger claim if student leaves school
 - Keep an eye on school culture

Peer-to-Peer Sexual Harassment

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Lopez v. City of Somerville (2018)

- Background
 - Rape
 - School took many steps
 - 51A report, notice to state police
 - City trauma response team network
 - Code of conduct revised
 - School assembly
 - Check-ins of student, escort between classes offered (and declined)
 - Student was bullied for remainder of high school
 - Coaches responded and reported to Athletics Director
 - Athletics Director did not respond

Peer-to-Peer Sexual Harassment

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Lopez v. City of Somerville (2018) (cont.)

- Case on appeal
- Key takeaways - train both teachers and administrators

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Peer-to-Peer Sexual Harassment

How to Respond

Responding to Harassment Allegations

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- Immediate assistance to ensure safety
 - Crisis services
 - Health care options
 - Contact law enforcement (+ DESE)

Responding to Harassment Allegations

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- Investigate
 - Prompt
 - Title IX Coordinator
 - Interviews
 - Witness statements
 - Surveillance footage
- Remind all witnesses, victim and perpetrator not to retaliate

Responding to Harassment Allegations

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- Interim measures
 - Counseling
 - Extensions of time or other course related adjustments
 - Modifications of work or class schedules
 - Escorts
 - Restrictions on contact between parties
 - Leaves of absence
 - Increased security and monitoring during certain periods

Responding to Harassment Allegations

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- Ongoing Measures
 - Counseling
 - Academic accommodations
 - Continued interim measures

Responding to Harassment Allegations

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- Disciplinary hearing
 - Investigator and adjudicator should be different
 - Each party must have the same meaningful access to information
 - Witness statements
 - Surveillance footage
 - Each party has an opportunity to respond

Responding to Harassment Allegations

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- Standard of review
 - Either:
 - Preponderance of the evidence, or
 - Clear and convincing evidence
 - Apply a uniform standard for each allegation
 - Apply a uniform standard for all disciplinary procedures
- Discipline – review K&B webinars on student discipline
- Prevention

Action Items

- IEP-related checklist
- Bullying checklist
- Response checklist

Action Items

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To protect the school, its students, and employees, we recommend that schools create or review the following:

- An IEP checklist for all students with IEPs who are involved in a bullying incident
- A bullying protocol or checklist
- A checklist for responding to peer-to-peer sexual harassment and assault

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Questions & Answers

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Thank you!

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