

School Climate

Understanding the New School Student Bullying Investigation and Response Obligations

Melinda B. Kaufmann & Stephen M. Sedor

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The Results of Bullying Can be Tragic!

Parents of teen bullied at school file wrongful death lawsuit against Chandler Unified

“The mother and a father of an East Valley teen who took his own life after he was bullied at school for months, are voicing their concerns about the actions of administrators at [Hamilton High School](#). Jordan and Kassidy Harstad claim they repeatedly asked school officials for help, but very little was done to protect their son, Andrew Harstad. They’ve now filed a wrongful death lawsuit against the [Chandler Unified School District](#).”

<https://www.azfamily.com/2024/03/09/parents-teen-bullied-school-files-wrongful-death-lawsuit-against-chandler-unified/>

The Results of Bullying Can be Tragic!

Family of bullied New Jersey teen who died by suicide suing school district, others...

“BERKELEY TOWNSHIP, N.J. -- Thursday will mark one year since a New Jersey teenager died by suicide after her family says she was bullied in school and online. On Monday, her family announced a lawsuit against the Central Regional School District in New Jersey's Ocean County.”

<https://www.cbsnews.com/newyork/news/family-of-new-jersey-teenager-who-committed-suicide-after-she-was-said-to-bullied-now-suing-school-district-others/>

What We'll Cover Today

- The school climate legal landscape and current statutory obligations for school districts.
- Changes per Public Act 23-167 that define the new school climate obligations being placed on Connecticut schools.
- The New Connecticut School Climate Policy and Challenging Behavior Form.
- Practical tips for conducting bullying investigations.
- Recent court decisions.

Existing School Climate Obligations

The Legal Landscape

- Student bullying and student harassment are *interrelated* and often complex legal topics that can implicate numerous state and federal laws and enforcement agencies.
- Different laws can come into play depending on the exact circumstances at issue.



- Connecticut's School Climate Law, Conn. Gen. Stat. § 10-222d, *et seq.*s;
- Connecticut's Student Discipline Laws, Conn. Gen. Stat. § 10-233a, *et seq.*;
- ***Board policy and the tort “negligence” standard;***
- Title IX of the Education Amendments Act of 1972 (“Title IX”);
- Title VI of the Civil Rights Act of 1964 (“Title VI”);
- The Family Educational Rights and Privacy Act (“FERPA”)
- The Fourth Amendment to the U.S. Constitution;
- The First Amendment to the U.S. Constitution.

- Connecticut's School Climate Law, Conn. Gen. Stat. § 10-222d, *et seq.*
 - Connecticut General Statutes § 10-222d -- defines **bullying** and **teen dating violence** and requires school districts to create and implement a **Safe School Climate Plan**;
 - Connecticut General Statutes § 10-222g -- requires school districts to have and implement a **prevention and intervention strategy** to address matters of bullying and teen dating violence;
 - Connecticut General Statutes § 10-222k -- requires the appointment of a district-wide **safe school climate coordinator** who is responsible for implementing the safe school climate plan as well as **safe school climate specialists** and **safe school climate committees** at the individual school level;



- Connecticut General Statutes § 10-222l -- **establishes legal immunity for school employees**, students, parents and boards of education that make **good faith efforts** to report, investigate and respond to bullying **in accordance with school climate plan**.
 - *Note – Public Act 23-167 significantly amends Connecticut's safe school climate laws as will be discussed.*

Recent Case Law – Emerging Themes

- No separate private cause of action based upon the anti-bullying law, Conn. Gen. Stat. § 10-222d.
- Lower courts have relied on anti-bullying statute and district policies to find ***negligence by school officials***.
- ***“Deliberate indifference”*** by school officials standard for protected class based civil rights claims under Title IX, Title VI, ADA, etc.
- NOTE: The immunity provided by Conn. Gen. Stat. Connecticut’s Student Discipline Laws, Conn. Gen. Stat. § 10-222I does not apply to actions or omissions constituting gross, reckless, wilful or wanton misconduct.

Negligent Response to Bullying?

- Key question: Did school officials fail to perform a mandatory **“ministerial”** act or **discretionary act** in connection with alleged bullying?
 - School officials are generally immune for liability for **discretionary acts** that they take in performance of their duties.
 - **Supervision of students is generally considered a discretionary act.** *Lewis v. Newtown*, 191 Conn. App. 213, 231 (2019). As such, schools are generally immune from harm stemming from alleged negligent supervision of students.
 - Exception to discretionary act immunity where circumstances make it clear that school official's **action or failure to act will subject identifiable person to imminent harm.**

Negligent Response to Bullying?

- School district may be liable for failure to perform ***“ministerial” acts*** in connection with school bullying/climate.
 - A ministerial duty is one which is to be performed ***in a prescribed manner without the exercise of judgment.***
 - A ministerial duty may be found on the basis of ***statutes, policies, regulations or other directives that compel specific action.***
- Connecticut courts have repeatedly found that specific elements of school climate statutes impose a ministerial duty on the part of school officials.
 - ***Translation – Failure to follow mandatory requirements of school climate law may subject district to liability.***

Current Statutory Obligations

Current Statutory Obligations

- The focus on Connecticut's **current** bullying statutes is to require schools to identify, prevent and address acts of “bullying” and “teen violence,” as those terms are **currently** defined, through the requirement of a “Safe School Climate Plan.” See Conn. Gen. Stat. § 10-222d.



The Definition of “Bullying” -- Current Law

- “**Bullying**” is defined as an **act** that is direct or indirect and **severe persistent or pervasive**, which:
 - A. Causes physical or emotional **harm** to an individual;
 - B. Places an individual in **reasonable fear of physical or emotional harm**;
 - OR --
 - C. Infringes on the rights or opportunities of an individual **at school**.

The Definition of “Bullying” -- Current Law

- “*Bullying*” includes but is not limited to:
 - A written, oral or electronic communication, or a physical act or gesture
 - Based on any actual or perceived differentiating characteristic, such as:
 - Race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity or expression;
 - Socioeconomic status;
 - Academic status;
 - Physical appearance;
 - Mental, physical, developmental or sensory disability, or;
 - By association with an individual or group who has or is perceived to have one or more of such characteristics

Other Important Current Definitions

- Cyberbullying:

“[a]ny act of bullying through the use of the internet, interactive or digital technologies, cellular mobile telephone or other mobile electronic devices or any electronic communications.”

- Teen Dating Violence:

“[a]ny act of physical, emotional or sexual abuse, including stalking, harassing and threatening, that occurs between two students **who are currently in or who have recently been in a dating relationship.**”

- Hostile Environment:

“[a] situation in which bullying among students is sufficiently severe or pervasive to **alter the conditions of the school climate.**”

Other Important Current Definitions

▪ School Climate:

“[t]he *quality and character of school life* based on patterns of students, parents’ and guardians’ and school employees’ experiences of school life, including but not limited to norms goals, values, interpersonal relationships, teaching and learning practices and organizational structures.”

▪ School Employee:

“[m]eans (A) a teacher, substitute teacher, school administrator, school superintendent, guidance counselor, school counselor, psychologist, social worker, nurse, physician, school paraprofessional or coach employed by a local or regional board of education or working in a public elementary, middle or high school; or (B) *any other individual* who, in the performance of his or her duties, *has regular contact with students and who provides services to or on behalf of students* enrolled in a public elementary, middle or high school, pursuant to a contract with the local or regional board of education.” (Ex: Bus drivers, etc....)

Bullying is Prohibited...

- **On school grounds** or at a school sponsored activity;
- **Off school grounds if** the bullying activity:
 - Creates a **hostile environment** at school for the student against whom such bullying was directed; or
 - **Infringes on the rights of the student** against whom such bullying was directed **at school**; or
 - **Substantially disrupts** the educational process or the orderly operation of a school.

Connecticut's School Climate Law - Current Obligations

- Connecticut General Statutes § 10-222d:
 - **Requires** district to create and implement a **Safe School Climate Plan** to address the existence of **bullying** and **teen dating violence**. Among other things, **the Safe School Climate Plan** must (1) enable the anonymous reporting of bullying; (2) enable parents to file written reports of bullying; (3) require prompt investigations of any written bullying reports by the **Safe School Climate Specialist** to conduct or supervise a prompt investigation; (4) provide prompt notification of the investigation and results to the victim and aggressor; and (5) develop a case-by-case intervention strategy and a written safety plan.
 - **Requires** the district to appoint a district-wide **Safe School Climate Coordinator**, who is responsible for implementing the safe school climate plan. (Must meet with each **Safe School Climate Specialist** at least twice per year).

Connecticut's School Climate Law - Current Obligations

- Connecticut General Statutes § 10-222d:
 - Requires that a **Safe School Climate Specialist** (usually the Principal or designee) to act as the primary school official who is responsible for preventing, identifying and responding to reports of **bullying** in their school.
 - Requires school districts to develop and implement a **prevention and intervention strategy** to address matters of bullying and teen dating violence;

Current Roles and Responsibilities for School Climate

- Conn. Gen. Stat. 10-222k mandates that districts/schools designate the following:
 - **Safe School Climate Coordinators** – district-level;
 - Implement plan, collaborate with specialists, report to CSDE;
 - **Safe School Climate Specialists** – building-level;
 - Investigate or supervise investigation into bullying/teen dating violence complaints, maintain records
 - **Safe School Climate Committees** – building-level;
 - Review completed investigations, consider school climate information and make recommendations.

- ***Boards of education must develop and implement safe school climate plans*** to address bullying and teen violence.
 - Typically found at board policy/regulations # 5131.911
- **Plans must provide for:**
 - Anonymous student reporting;
 - Annual notice of plan to students/parents & staff (+ website, handbooks)
 - Process for written reports from parents and guardians;
 - Mandated reporting to safe school climate specialists by school employees;
 - Prompt investigation of bullying reports;
 - Bullying prevention and intervention strategies;
 - Student support plans;
 - Parent notification and meeting procedures;
 - Documentation and reporting procedures for verified acts of bullying;
 - Annual training for all school employees.

- **School employees** who:
 - Witness acts of bullying, or;
 - Receive reports of bullying;
 - **MUST**
 - Make **oral report to school climate specialist** (or another administrator if specialist is unavailable) within one school day, and
 - File **written report to school climate specialist within two school days after making written report.**
 - **NOTE: DCF Abuse/neglect reporting obligations still apply.**

Public Act 23- 167 – New School Climate Requirements

- **Public Act 23-167** (secs. 47-55, 71 and 74) mandates adoption of new school climate policies by **2025-26** with substantial new requirements:
 - **Expanded definitions** to cover wider scope of conduct including “**challenging behaviors**;”
 - Required adoption of “**school climate improvement plans**” for each school rather than district-wide that must reflect school climate surveys;
 - Amended roles for climate coordinators, specialists and committees;
 - **Mandated adoption of new “challenging behavior” complaint form.**
- Districts **may** adopt policy in compliance with new requirements prior to 2025-26.

New Definition of “Bullying”

“[u]nwanted and aggressive behavior among children in grades kindergarten to twelve, inclusive, that involves a real or perceived **power imbalance.**”

■ *What are a few of the big differences?*

(1) The prior requirement that conduct must be “severe, persistent and pervasive” has been eliminated.

(2) The change in the definition may, in a practical sense, be somewhat overshadowed by the fact that schools will be required to address **“challenging behavior.”**

Challenging Behavior

“[b]ehavior that negatively impacts school climate or interferes, or is at risk of interfering, with the learning or safety of a student or the safety of a school employee.”

School Climate Improvement Plan

This will apparently replace the former **Safe School Climate Plan** and it is defined as:

“[a] building specific plan developed by the school climate committee, in collaboration with the school climate specialist, using **school climate survey** data and any other relevant information, through a process that engages all members of the **school community** and involves such members in a series of overlapping, systemic improvements, school-wide instructional practices and relational practices that prevent, identify and respond to **challenging behavior**, including but not limited to alleged bullying and harassment in the school environment.”

School Community

“[a]ny individuals, groups, business, public institutions and nonprofit organizations that are invested in the welfare and vitality of a public school system and the community in which it is located, including but not limited to students and their families, members of the local or regional board of education, volunteers at a school and school employees.”

School Climate Survey

“[a] researched based, validated and developmentally appropriate survey administered to students, **school employees** and families of students, in the predominant languages of the members of the **school community**, that measures and identifies school climate needs and tracks progress through a **school climate improvement plan**.”

What Definitions/Terms No Longer Exist?

- Hostile environment.
- Outside of the school setting.
- Positive school climate.

What Definitions are the Same?

- Cyberbullying.
- Teen dating violence. (Although the term is used infrequently).
- Mobile electronic device.
- Electronic communication.
- School employee.

So, What Does PA -23-267 Require Districts to Do? And Who Must Do It?

1. Administer a **School Climate Survey**:

- For the school year starting July 1, 2025, the **school climate committee** for each school must administer the school climate survey to students, school employees and families of students. [Parents shall be given the opportunity to have their student(s) opt out of the survey.]

So, What Does PA -23-267 Require Districts to Do? And Who Must Do It?

2. Develop/Implement a **School Climate Improvement Plan**:

- Starting July 1, 2025, each **school climate specialist** must collaborate with the **school climate coordinator** to develop and update the **school climate improvement plan**. This Plan must be based on the results of the school climate survey and recommendations from the **school climate committee**.
- The **School Climate Improvement Plans** must be submitted to the **School Climate Coordinator** for review and approval on or before December 31st of each year.
- Once approved, a written or electronic copy must be made available to the school community and be used in the prevention, identification and response to **challenging behavior**.

3. Provide Training Starting **July 1, 2024**

- For the school year commencing **July 1, 2024** and each year thereafter, schools must provide regarding social and emotional learning, school climate and culture and evidence and research-based interventions ... to **school employees**.
- The **School Climate Coordinator** shall select and approve the individuals or organizations that will provide this training.

4. Adopt a Restorative Practices Response Policy

Starting July 1, 2025, schools must implement a policy for handling incidents of challenging behavior or student conflict that is nonviolent and does not constitute a crime. The policy shall **not include** the involvement of a school resource officer or other law enforcement, unless the challenging behavior escalates to violence or constitutes a crime.

School Climate Improvement Plans -- Required Protocols and Supports

- Required protocols and supports (continued):
 - Ways to address challenging behavior, enhance resiliency, increase the use of de-escalation strategies and improve social and emotional skills;
 - Safeguards to ensure that any supports, services or interventions provided to any student who receives special education or accommodations for a disability comply with IDEA and 504 requirements;
 - ***Tiered responses, based on level of impact or frequency of occurrences, to challenging behavior that:***
 - Require temporarily clearing a classroom to reduce likelihood of injury;
 - Indicate credible intention to cause harm to self or others; or
 - Result in an injury that requires medical attention beyond first aid or less severe injuries caused by the same person on more than one occasion, verified by the school nurse or other medical professional.

School Climate Improvement Plans -- Required Protocols and Supports

- Tiered responses shall include, but not be limited to:
 - **For a single incident**, the school principal shall notify the parents of each student involved in such incident (in a manner that complies with FERPA);
 - **For a subsequent incident**, the school shall invite the parents or guardians of each student involved in such incident to a meeting, either in person or virtually, to discuss the specific supports or interventions that are applicable; and
 - **For multiple subsequent incidents or a single incident that causes severe harm**, the school principal shall provide notice to the parents or guardians of each student involved of other resources for supports and interventions.

- Additional required protocols and supports:
 - Requirement that the ***superintendent submit, at least annually, to the board of education a report*** concerning the number of incidents that occurred during the prior year, the grade level of each student involved in such incidents and the supports, services or interventions provided in response to such incidents to address the needs of students and school employees;
 - Prohibition on discrimination or retaliation against any person who reports or assists in the investigation of an incident of challenging behavior; and

School Climate Improvement Plans -- Required Protocols and Supports

- Additional required protocols and supports:
 - For incidents of challenging behavior:
 - ***A requirement for a meeting between an administrator and the school employee who witnesses such incident, not later than two days after the date of such incident***, to determine the supports and interventions required to address the needs of students and employees (interventions for a student receiving special education services shall be done through the child's IEP); and
 - A process by which a teacher may request a behavior intervention meeting.
- CT School Climate Advisory Committee to create a uniform bullying complaint form that must be included in/on:
 - CSDE website;
 - Board of education websites;
 - Student handbooks.

Does PA 23-167 Define Each Person’s Responsibilities?

YES

The School Climate Coordinator

Effective July 1, 2025, the Superintendent or their designated administrator shall be the **School Climate Coordinator**, who must:

- (1) Provide district-level leadership for the implementation of the School Climate Improvement Plan.
- (2) Work with each **Safe School Climate Specialist** to develop strategies to prevent, identify and respond to **challenging behavior**, including but not limited to **bullying** and harassment.
- (3) Publicize the district's prevention strategies to the **school community**.
- (4) Collect and maintain data regarding **school climate improvement**.
- (5) Meet with each **school climate specialist** at least twice per year to identify strategies to improve school climate, **challenging behavior** and to assist in the completion of the School Climate Improvement Plan.

Effective July 1, 2025, either the Principal or a school employee who (1) holds a professional certification; and (2) is trained in school climate improvement and who is appointed by the Principal, may serve as the **School Climate Specialist**.

Primary Responsibilities:

- (1) Lead in the prevention, identification and response to **challenging behavior**, including but not limited to **bullying** and harassment.
- (2) Implementing interventions, including **restorative practices**.
- (3) Appoint the members of and lead the **school climate committee**.
- (4) Lead the implementation of the **School Climate Improvement Plan**.

RESOURCES AND ASSISTANCE

*New Connecticut School Climate Policy
and Challenging Behavior Form*

- Public Act 23-167 required the development of a new state-wide “**Connecticut school climate policy**” by the Social Emotional Learning and School Climate Collaborative.
- The policy is now available via CAFE website: [CPS5131.911.pdf \(cabe.org\)](https://www.cabe.org/CPS5131.911.pdf)

Connecticut School Climate Policy

- Section 49 of Public Act 23-147 states that for 2023-24 and 2024-25 school years boards of education ***may adopt and implement the Connecticut school climate policy***” in lieu of implementing “current” school climate obligations.
- Section 49 of Public Act 23-147 further states that ***effective July 1, 2025*** and each school year thereafter ***each board of education “shall adopt and implement the Connecticut school climate policy . . .”***

- The new policy closely tracks the language of Public Act 23-167.
- The preface notes that the policy “**does not modify or eliminate** any rights or obligations under state and federal laws . . . or any other applicable policies and procedures or collective bargaining agreements.”
 - Deference to conflicting legal requirements (i.e. Title IX timelines)?

- The Connecticut school climate policy includes a model “Challenging Behavior Reporting Form,” a model “Investigation Form” and “Response Process(es) Notification Form.”
- Public Act 23-167 requires the CSDE to include a “uniform bullying complaint form” on its website and requires boards of education to also to maintain such form on district websites and publish in student handbooks.
 - Form does not appear to be posted on CSDE website yet.
 - Unclear if model “Challenging Behavior Reporting Form” suffices as “uniform bullying complaint form” per PA 23-167.

- **Challenging Behavior Form:**
 - For uniform use by students, parents and staff;
 - Used to report challenging behavior as well as bullying;
 - May be completed with assistance of administrators;
 - Requires that confirmation of receipt be sent to individual who submitted form within three school business days.

5131.911
Form 1

Challenging Behavior Reporting Form

This form is not required by law or policy but serves as a model challenging behavior reporting form that local and regional boards of education may adapt and adopt.

Instructions

This form is for **students, parents or guardians of students enrolled in the school, and school employees** to report any alleged challenging behavioral incidents. Challenging behavior is behavior that negatively impacts school climate or interferes, or is at risk with interfering, with the learning or safety of a student or the safety of a school employee. This form should also be used to report alleged bullying incidents, meaning: unwanted and aggressive behavior among children in grades kindergarten to twelve, inclusive, that involves a real or perceived power imbalance.

Complete this form electronically, or in writing, or go to your school climate specialist (principal, vice principal, or other certified administrator) who will assist you with completing this form. All completed reports require a response from the school climate specialist, and every student, parent or guardian, and school employee **who completed this form will receive a copy of the "Response Process(es) Notification Form"** describing the action

- **Investigation Form:**

- Designated as FERPA-exempt;
- Requires designation of response measures taken (including dates) by school climate specialists.

- **Response Process(es) Notification Form:**

- To be sent to person who made report of challenging behavior;
- Requires identification of steps being taken to address and prevent future challenging behavior.

Practical Tips for Bullying Investigations

Investigation and Notification Requirements



- School climate specialists must:
 - Investigate, or supervise the investigation, of all reports of bullying and ensure that each investigation is completed ***“promptly.”***
 - Ensure that parents/guardians of alleged victim and alleged perpetrator receive ***“prompt”*** notice of commencement of investigation.

Investigation and Notification Requirements

- Once investigation is complete and finds verified act of bullying schools must:
 - Notify parents/guardians of **results of investigations that find verified acts** of bullying with **48 hours** of completion.
 - **Notification must:**
 - Be verbal, and;
 - Via email with “plain language explanation of rights and remedies.”
 - Include description of response of school employees and consequences for further acts of bullying.
 - Invite parents/guardians of student-victim and student-perpetrator to meet with school officials in separate and distinct meetings to discuss steps to stop future occurrences.

Conducting Bullying Investigations – Initial Steps

- The key is to get as much **detailed** information as possible regarding a complaint. This should include dates, times, locations, a description of the act(s) and witnesses to the event(s).
 - If a verbal report is made by alleged student-victim **consider asking** student to submit written statement/use bullying reporting form.
 - A verbal report is sufficient to impose an obligation to complete a written report.
 - However, anonymous reports cannot form basis of discipline.
- Provide **prompt** notice to the parents of both students of the investigation.
- Develop an informal plan for your investigation (who needs to be interviewed, documents to be collected/reviewed, etc.)

Conducting Bullying Investigations

- Witness Interviews

- During the interview of the student ***against whom the acts of bullying occurred***, do the following:
 - Get as much detail as possible – do not leave the interview with questions still in your mind.
 - Ask the student if he or she has any video or audio recordings, photographs, social media postings, etc... (ie get all of his or her evidence).
 - Ask for the entire history between the alleged victim and the alleged bully.
 - Ask for all witnesses.
 - Take detailed notes. (Your notes should not be subject to an FOIA request if they are your personal notes, and they are not shared with any person).

Conducting Bullying Investigations

- Witness Interviews



- During the interview of the student *who allegedly committed the acts of bullying*, do the following:
 - Give him or her a *full and complete* opportunity to present his or her side.
 - Ask for video or audio recordings, photographs, social media recordings, etc...
 - Ask for witnesses.
 - Ask specific questions, including whether each specific allegation is true. (For example: Did you shove Student A into the wall yesterday in the lunchroom? If so, why?).
 - Warn against retaliation.
 - Take detailed notes.

Conducting Bullying Investigations

- Miscellaneous

- Interview all relevant witnesses.
- Ask for all information that you believe is necessary to making a determination – do not issue your decision/report with questions still pending.
- Maintain confidentiality to the extent possible, but you cannot guarantee it in all circumstances.
- Be clear that retaliation against any witness is prohibited.
- Make a reasoned and thorough judgment as to whether the alleged conduct rises to the level of bullying in light of the school climate plan definition.

Conducting Bullying Investigations – The Report

- Provide specific details that support a finding of bullying or that support a finding that bullying did not occur.
- Protect the privacy of the students involved and the witnesses. (Refer to the student witnesses as Student A, Student B, etc....)
- Consider issuing two reports, one for the alleged victim and one for the alleged bully.
- If a student can reasonably be identified in a report, even with a characterization as Student A, Student B, etc..., FERPA is still implicated.

- Do the facts of a particular case warrant a report to DCF or to the police?
- If yes, the district may have to defer to the investigations that DCF or the police may have to conduct.
- See e.g. Connecticut General Statutes Section 17a-101a *et seq.*

- FERPA prohibits the disclosure of personally identifiable information from a student’s education record without prior consent except in limited circumstances:
 - **“Personally identifiable information”** – includes:
 - “Information that, alone or in combination, is linked or linkable to a specific student that ***would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.***”
 - ***“Information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.”***
 - **“Education records”** – records directly relating to a student that are maintained by the educational institution.
 - Records kept in sole possession of the maker and not disclosed or accessible to others are not education records.

Who is Entitled to Investigation Records?

- Parents?
 - ***Smith v. Superintendent, Middletown Public Schools***, #FIC 2013-333 (January 30, 2014): District’s refusal to produce bullying investigation report to alleged victim’s parent upheld where parent knew the identities of students who were alleged bullies.
 - Disclosure of report – even in redacted form – would result in disclosure of personally identifiable information regarding alleged bullies.
 - District provided summary of report to parent who made request.
- Staff members?
 - General right to investigation records in connection with disciplinary proceedings.
- The “public”?
 - FOIA controls.

Responding to Acts of Bullying

- If the investigation reveals an act(s) of bullying, both parents must be notified of the finding **within 48 hours** of the investigation.
- The notification must include a description of the school's response to the acts of bullying.
- ***Maintain the confidentiality of both students*** – the specific discipline (if any) given to the perpetrator and information about any student other than the student of the parent or guardian being discussed should not be disclosed.
- The parents of both student should be invited to a meeting with the school climate specialist to discuss the measures being taken to ensure the safety of the victim and to prevent further acts of bullying.

Student Safety Plans

- In cases of verified bullying, the school climate specialist or designee shall develop a student safety plan for any student against whom an act of bullying was directed.
- A specific written intervention plan must be developed if there are repeated incidents of bullying against a single individual or by the same individual. This plan may include counseling, discipline or other appropriate remedial actions.



Other Considerations and Obligations

- Report to law enforcement.
- Discipline.
- Violations of and/or requirements of other laws and policies. (For example, violations of Title IX, Title VI, etc....)
- Report to DCF.
- Increased supervision.
- Counseling.
- Peer mediation.
- Maintain a list of verified acts of bullying.

Possible Interventions for Bullied Students –

Possible interventions for bullied students include the following:

- Counseling.
- Increase supervision and monitoring of a student.
- Encouragement of the student to seek help when victimized.
- Peer mediation when appropriate.
- Student Safety Support Plan.
- Restorative interventions.

RECENT CASE LAW

Doe 1 et al v. Board of Education the Town of Westport

Overview – case involved complaints by two separate sets of parents that the school district and certain administrators were negligent in responding to reports of bullying against their children and by retaliating against their children for making bullying complaints

FACTS

- Students, both middle school students, alleged they were bullied over a 4-year period including
 - Being called names by other students
 - Being ridiculed about their athletic abilities
 - Being subjected to racial epithets,
 - Being subjected to physical assaults, threats, mental abuse, and
 - Repeated and numerous comments about their sexual orientation.
 - On one specific occasion, both boys alleged they were physically attacked by other students during gym class when a substitute teacher was present
- Both families filed numerous bullying complaints

FACTS CONTINUED

- Other students also filed bullying complaints against the two plaintiffs
- These complaints were investigated and substantiated and both boys received two day in-school suspensions
- Both students alleged that they were again bullied after this and were denied requests to speak with the guidance counselor and/or call their parents
- Both sets of parents filed law suits in court alleging, among other things that the district and specific administrators failed to comply with the district's bullying policy and also retaliated against the boys for filing bullying complaints
- The District moved from summary judgment (i.e. asked the court to dismiss the complaint before a trial was held)

Statutory Immunity

- Pursuant to C.G.S. § 10-222d as it currently stands, employees have immunity regarding bullying investigations if
 - They have reported, investigated and responded to bullying;
 - In accordance with the provisions of the District’s plan;
 - **In good faith**, and
 - In the discharge of their duties or within the scope of their employment
- Pursuant to C.G.S. § 10-222d as it currently stands, the Board has immunity regarding bullying investigations if
 - It implemented a safe school climate plan;
 - Reported, investigated or responded to bullying;
 - In good faith
 - In the discharge of its duties.

Doe 1 et al v. Board of Education the Town of Westport

■ Bad Faith

- “the opposition of good faith, generally implying a design to mislead or to deceive another, or a neglect or refusal to fulfill some duty ... not prompted by an honest mistake as to one’s rights or duties ... Bad faith is not simply bad judgment or negligence, but rather it implies the conscious doing of a wrong because of dishonest purpose or moral obliquity ...”

■ Recklessness

- “requires conscious choice of a course of action either with knowledge of serious danger to others involved in it or with knowledge of facts which would disclose this danger to any reasonable man, and the actor must recognize that his conduct involves risk substantially greater ... than that which is necessary to make his conduct negligent.”
- It “must be more than any mere mistake resulting from inexperience, excitement, or confusion, and more than mere thoughtlessness or inadvertence, or simply inattention ... or even an intentional omission to perform a statutory duty...”

Doe 1 et al v. Board of Education the Town of Westport

- The basic complaint from the parents was that the administrators failed, in numerous ways, to follow the dictates of school board policy
- The court, however, found that the undisputed facts showed that the administrators took various actions with respect to the reported bullying, including conducting interviews, communicating with parents, holding meetings with students and parents, taking measure to avoid further instances of bullying and issuing punishments to those involved.
- As such, the Court found no evidence of conduct that could be characterized as an “extreme departure from ordinary care” and granted summary judgment finding the defendants had acted in good faith and thus had immunity from claims under the statute.

Overview

- Parents of a fifteen year old boy who committed suicide following alleged bullying at school filed a complaint against the District. The District moved for summary judgment claiming statutory immunity.

Doe 1 et al v. Board of Education the Town of Westport

FACTS

- Parents claimed that their son had been subject to unremitting bullying over several years
- Their son committed suicide on the first day of his sophomore year of high school
- Parents claimed that the school was aware of the bullying through reports made by the parents, the student's sister and a friend of the student
- There was evidence that in response to this information, staff directed the student and parents to report any further concerns to the guidance counselor rather than advising them on the bullying procedures
- The Parents conceded that at least two of the incidents were investigated and no bullying was determined to have occurred

FACTS CONTINUED

- Unfortunately for the school, the records regarding most of the other alleged incidents were either lost or destroyed and the court found a lack of clarity as to what occurred in those instances
- There was evidence that the school took steps to provide the student with support including counseling
- **STATUTORY IMMUNITY**
- Here, the Court found that there were genuine disputes of fact regarding whether the employees acted in good faith that prevented a decision on statutory immunity from being made prior to trial

GOVERNMENTAL IMMUNITY

- The Court found that there were certain ministerial duties in the Board's bullying policy that required certain actions to take place and that did not provide for discretion
- The Court pointed to provisions such as required notification to school administrators, investigation, documentation, and forms of intervention to remedy complaints of bullying.
- The Court found that there was a lack of evidence that the staff followed the mandatory requirements of the bullying policy in response to numerous complaints of bullying
- The Court thus denied summary judgment

*WHAT CAN BE LEARNED FROM
THESE TWO CASES?*



QUESTIONS?

- Diversity and Inclusion in Employment Training
- Sexual Harassment Prevention and Anti-Discrimination Training in Employment
- Title IX Sexual Harassment Prevention Training
- Leave Issues: ADA, FMLA, Workers' Compensation, Paid Sick Leave
- The ADA/Connecticut Fair Employment Practices Act Interactive Process
- Employee Discipline and Teacher Non-Renewal and Termination
- "Dos and Don'ts" of Hiring, Including Background Checks, Public Act 16-67 and "Fair Chance" Legislation
- Social Media and the Workplace
- Workplace Investigations
- FERPA and Other Student Privacy Issues
- Special Education and Section 504
- Student Misconduct Investigations
- Anti-Bullying
- DCF Mandated Reporter Training
- Freedom of Information Act
- School Board Member Role and Responsibilities

If You Want More



- Complete summary of 2024 legislation affecting Connecticut schools:
 - <https://www.pullcom.com/new-sroom-publications-Developments-2024-Session-Connecticut-General-Assembly>

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Contact Information



Melinda B. Kaufmann
Pullman & Comley, LLC
90 State House Square
Hartford, CT 06103-3702
Tel: 860.424.4390
Fax: 860.424.4370

Email: mkaufmann@pullcom.com



Stephen M. Sedor
Pullman & Comley, LLC
850 Main Street
Bridgeport, CT 06601-7006
Tel: 203.330.2137
Fax: 203.576.8888

Email: ssedor@pullcom.com

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