

Legal Claims Related to Bullying and Harassment

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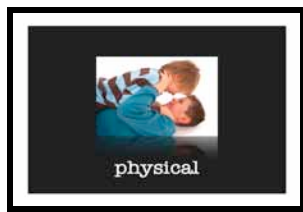
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Five Defining Characteristics of Bullying²

1. Power differential
2. Repeated over time
3. Intent to harm
4. Intimidation
5. Secretive

1. Power differential - Bullies demonstrate greater physical strength, higher cognitive abilities, or knowledge of particular psychological vulnerabilities.
2. Repeated - Acts of bullying are rarely isolated. Repetition distinguishes bullying and has a devastating impact. The anticipation and expectation of future abuse inflicts great harm on victims.
3. Intent to harm - Bullies act purposefully, seeking to injure their peers physically and/or psychologically.
4. Creation of anxiety, intimidation and fear - Bullying victims live with constant fear and a feeling of powerlessness.
5. Secretiveness - Bullies go to considerable lengths to keep their acts hidden from parents and teachers.

Common Forms of Bullying³



	Direct bullying	Indirect bullying
Verbal bullying	taunting teasing	spreading rumors

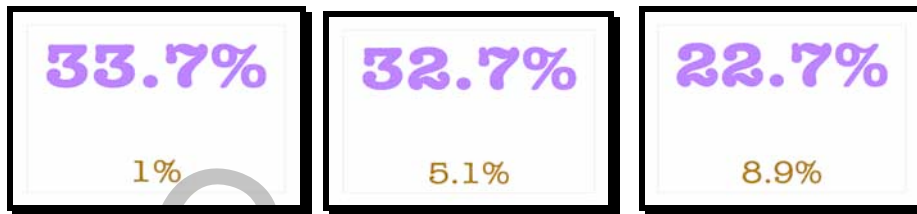
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² From Marini, Fairbairn & Zuber, Peer harassment in individuals with developmental disabilities: Towards the development of a multi-dimensional bullying identification model, *Developmental Disabilities Bulletin* 29, 170-195 (2001)

³ From American Medical Association, Educational Forum on Adolescent Health, Youth Bullying (May 3, 2002).

	name-calling	
Physical bullying	hitting kicking shoving destruction/theft of property	asking a friend to be attack someone for you
Non-verbal/ Non-physical bullying	threatening obscene gestures	excluding others manipulation of friendships threatening email cyberbullying

Staff & Student Perceptions of Bullying



Age	Percentage of students who reported frequent victimization	Staff perceptions
Elementary School	33.7%	Less than 1% of staff perceived bullying rates of 33.7%. Over 70% of staff believed that percentage of students bullied in the previous month was 10% or less.
Middle School	32.7%	5.1% of staff perceived bullying rates of 32.7%. 40% of staff believed that percentage of students bullied in the previous month was 10% or less.
High School	22.7%	8.9% of staff perceived bullying rates of 22.7%. 57% of staff believed that percentage of students bullied in the previous month was 10% or less.



Research has identified traits common to many, but not all, children who bully. According to the American Medical Association, children who admit to bullying their peers more than occasionally “tend to have impulsive, hot-headed, dominant personalities; are easily frustrated; have difficulty conforming to rules; and view violence in a positive light.” AMA Proceedings, *Educational Forum on Adolescent Health, Youth Bullying* (May 3, 2002) at 8.

Research has revealed that certain facts commonly accepted about bullies are actually myths. Although many people assume that children who bully are loners, research indicates that bullies are not socially isolated. One study found that 6th to 10th grade children who bullied reported an easier time making friends than their peers. Although bullies are average or below average in popularity, they usually have a small group of friends to support the bullying behavior.

Further, contrary to popularly held assumptions, most research indicates that children who bully do not suffer from low self-esteem. Rather, they enjoy average or above-average self-esteem. Children who bully are no more likely than peers to be anxious or uncertain.

Three Groups of Students



Bullies pick on students who do not have the intellectual, social and emotional resources to fight back.

Victims, for a variety of reasons feel powerless. Often victims lack physical and/or psychological strength, are socially isolated, lonely, insecure, and suffer from low self-esteem.

Bystanders make up, by far, the largest group in a bullying situation. Bystanders may be followers of the bully, disengaged onlookers, and/or defenders of the victim.



Year Author	Article	
1994 Sabornie	Social-affective characteristics in early adolescents identified as learning disabled and nondisabled, <i>Learning Disabilities Quarterly</i> 17, 268-279	Interviews of 38 students, grade 6 and 7, regarding assault, theft, and threats of these types of actions. Author found a correlation between victimization and lack of social competence and between peer harassment and integration.
1994 Whitney, Smith and Thompson	Bullying and children with special educational needs in <i>School Bullying</i> (New York: Routledge)	In a group of junior/middle school students, 67% subjected to antisocial behaviors (name calling, taunting, mimicking, kicking, punching, playing pranks, spitting), while 25% of typical peers subjected to same behaviors. In secondary school students, 59% of students with special needs and 16% of typical peers reported being bullied "sometimes or more frequently." 30% of students with disabilities and 11% of typical peers bullied once a week or more.
1996 Doren, Bullis and Benz,	Predictors of victimization experiences of adolescents with disabilities in transition, <i>Exceptional Children</i> 63, 7-18	Interview of 221 adolescents with disabilities in last year of high school. Over half (54%) had experienced peer harassment (teasing, bothering, theft, assault).
1998 Yude, Goodman, and McConachie	Peer problems of children with hemiplegia in mainstream primary school, <i>Journal of Child Psychology and Psychiatry</i> 39, 533-541	45% of children with hemiplegia reported being moderately or severely victimized by peers, as compared to 13% of matched neuro-typical peers.

- The following traits render children susceptible to bullying:
 - Social isolation
 - Social skills deficits
 - Low self-esteem
 - Motor skills deficits
 - Physical impairments
 - Lack of awareness development of potentially dangerous situations

- Emerging research suggests that children with the following disabilities are more likely to suffer bullying in school: cerebral palsy, stammering, muscular dystrophy, hemiplegia

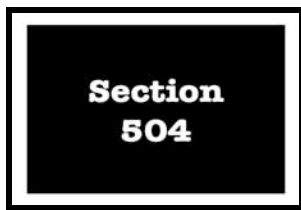


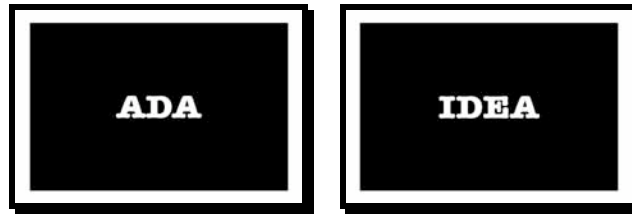
On July 25, 2000, the Office of Civil Rights (“OCR”) and the Office of Special Education and Rehabilitative Services (“OSERS”) in the Department of Education issued a letter (<http://www.ed.gov/about/offices/list/ocr/docs/disabharassltr.html>) “to develop greater awareness of this issue, to remind interested persons of the legal and educational responsibilities that institutions have to prevent and appropriately respond to disability harassment, and to suggest measures that school officials should take to address this very serious problem.”

This “Dear Colleague” letter states:

Through a variety of sources, both OCR and OSERS have become aware of concerns about disability harassment in elementary and secondary schools and colleges and universities. In a series of conference calls with OSERS staff, for example, parents, disabled persons, and advocates for students with disabilities raised disability harassment as an issue that was very important to them. OCR's complaint workload has reflected a steady pace of allegations regarding this issue, while the number of court cases involving allegations of disability harassment has risen. OCR and OSERS recently conducted a joint focus group where we heard about the often devastating effects on students of disability harassment that ranged from abusive jokes, crude name-calling, threats, and bullying, to sexual and physical assault by teachers and other students.

We take these concerns very seriously. Disability harassment can have a profound impact on students, raise safety concerns, and erode efforts to ensure that students with disabilities have equal access to the myriad benefits that an education offers. Indeed, harassment can seriously interfere with the ability of students with disabilities to receive the education critical to their advancement. We are committed to doing all that we can to help prevent and respond to disability harassment and lessen the harm of any harassing conduct that has occurred. We seek your support in a joint effort to address this critical issue and to promote such efforts among educators who deal with students daily.





Section 504 of the Rehabilitation Act of 1973 (“Section 504”) prohibits discrimination on the basis of disability in programs that receive federal funds. Specifically, Section 504, 29 U.S.C. § 794a, states:

- (a) No otherwise qualified individual with a disability in the United States, as defined in section 7(20), shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance
- (b) For the purposes of this section, the term "program or activity" means all of the operations of -
 - (2) (B) a local educational agency (as defined in section 14101 of the Elementary and Secondary Education Act of 1965), system of vocational education, or other school system

Title II of the Americans with Disabilities Act of 1990 (“ADA”) prohibits discrimination in the provision of public services. Title II applies to all state and local entities (including school districts), regardless of whether they receive federal funds. This prohibition is found at 42 U.S.C. § 12132:

no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

Section 504, Title II, and IDEA require that school districts make a free and appropriate public education (FAPE) available to eligible students with disabilities. Disability harassment, in addition to amounting to unlawful discrimination, can result in a denial of FAPE.



Title IX, 20 U.S.C. § 1681(a), prohibits discrimination based on gender in federally funded programs, providing:

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.”

Title IX is associated, in most people’s minds, with assuring equal access of women

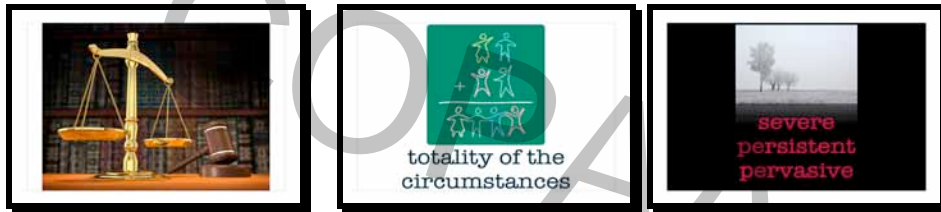
and girls to athletics in educational institutions. However, Title IX is actually a general prohibition of discrimination on the basis of sex, just as Section 504 is a general prohibition on disability discrimination. The following cases, interpreting Title IX, are relevant to disability-related claims arising under Section 504 and the ADA:

Franklin v. Gwinnett County Pub. Sch., 503 U.S. 60, 76 (1992): Title IX authorizes private suits for damages.

Gebser v. Lago Vista Ind. Sch. Dist., 524 U.S. 274 (1994): Students subjected to sexual harassment by teachers may have a claim for damages under Title IX.

Davis v. Monroe County Bd. of Educ., 526 U.S. 629 (1999): Students subjected to sexual harassment by peers may have a claim for damages under Title IX.

Title IX and Section 504 are modeled upon Title VI of the Civil Rights Act of 1964, which prohibits race discrimination in programs receiving federal funding. These statutes “operate in the same manner conditioning an offer of federal funding on a promise by the recipient not to discriminate, in what amounts essentially to a contract between the Government and the recipient of the funds.” *Gebser*, 524 U.S. at 286. Therefore, cases decided under Title IX and Title VI provide guidance for Section 504 cases alleging harassment related to disability.



Disability harassment violates the law when it is **severe, persistent or pervasive** and it adversely affects a student’s ability to participate in the educational program. If there is no interference with educational progress, then there is no cause of action. *Hawkins v. Sarasota County Sch. Bd.*, 322 F.3d 1279 (11th Cir. 2003) (in gender harassment case, no cause of action where none of the plaintiffs suffered a decline in grades and none of their teachers observed any change in their demeanor or classroom participation). When considering cases of disability harassment, courts look to cases arising under Title IX (alleging sexual harassment) and Title VI (alleging racial harassment) for guidance.

Whether discriminatory conduct “rises to the level of actionable ‘harassment’ . . . ‘depends on a constellation of surrounding circumstances, expectations, and relationships,’ *Oncale v. Sundowner Offshore Serv., Inc.*, 523 U.S. 75, 82 (1998), including, but not limited to, the ages of the harasser and the victim and the number of individuals involved.” *Davis*, 526 U.S. at 652. Courts must take into account the fact that schoolchildren are still learning how to interact appropriately:

[I]n the school setting, students often engage in insults, banter, teasing, shoving, pushing, and gender-specific conduct that is upsetting to the students subjected to it. Damages are not available for simple acts of teasing and name-calling among school children, however, even when these comments target differences in gender. Rather, in the

context of student-on-student harassment, damages are available only where the behavior is so severe, pervasive, and objectively offensive that it denies its victims the equal access to education that Title IX is designed to protect. *Davis*, 526 U.S. at 652.

In *Patterson v. Hudson Area Sch.*, No. 05-74439, 2007 U.S. Dist. Lexis 87309 (E.D. Mich. Nov. 28, 2007), the following facts established severe, pervasive, or objectively offensive conduct based on gender:

Dane Patterson was being called “gay,” “queer” and “fag” in seventh grade (and perhaps as early as in sixth grade) on a repetitive basis (at least 200 times during his seventh grade school year, according to Dane). . . Students taunted Dane with comments such as “man boobs,” “big boobs” and other similar terms. In addition, [a teacher] made fun of Dane in class in front of his peers by stating something to the effect of “How does it feel to be hit by a girl.”

While Plaintiffs say little about . . . eighth grade, Plaintiffs allege that the harassing conduct resumed . . . in the ninth grade. Students again called Dane “gay,” fag,” “faggot” and “queer . . . Dane’s planner was defaced by sexually explicit terms and drawings . . . In addition, his clothes were urinated on and his shoes thrown into the toilet, his gym locker had sexual epithets written in shaving cream, the exterior of his hallway locker was adorned with words such as “gay,” “fag” and “queer,” Finally, at the end of the year, Dane was assaulted by Lance in a manner that clearly was an offensive, sexual touching.

The above acts establish a lengthy and prolonged history of harassment, at least some of which was sexual in nature. Based on the alleged frequency and duration of the harassment (two full school years in a three-year period), it also should be considered severe, pervasive and objectionably offensive. Moreover, the fact that Dane physically stopped attending Hudson Area Schools before his sophomore year constitutes sufficient evidence to create . . . a genuine issue of material fact as to whether his access to educational opportunities and benefits provided by the school was adversely impaired and/or denied.

2007 U.S. Dist. Lexis 87309, at * 18.

Age is a relevant consideration in examining the totality of the circumstances. “[V]erbal harassment of a young child by fellow students that is tolerated or condoned in any way by adult authority figures is likely to have a far greater impact than similar behavior would on an adult.” *Monteiro v. Tempe Union High Sch. Dist.*, 158 F.3d 1022, 1034 (9th Cir. 1998).

In *Chancellor v. Pottsgrove Sch. Dist.*, 501 F. Supp.2d 693 (E.D. Pa. 2007), the court relied upon the difference in ages to reject the argument that a minor could consent to sexual relations with her teacher:

The Court therefore holds that a high school student who is assigned to a teacher's class does not have the capacity to welcome that teacher's physical sexual conduct. Under these circumstances, the teacher's conduct is deemed unwelcomed. Unwelcome sexual conduct constitutes a sexually hostile educational environment, a form of sexual harassment. And sexual harassment constitutes discrimination on the basis of sex. Thus, a teacher who has sex with a high school student who is assigned to his class discriminates against the student on the basis of sex in violation of Title IX.

Chancellor, 501 F. Supp.2d at 707.

A single incident, if sufficiently egregious, can amount to actionable harassment when one examines the "totality of the circumstances." In *Williams v. Board of Regents*, 477 F.3d 1282 (11th Cir. 2007), a female student, after being gang raped by other students, withdrew from the University of Georgia. The University argued that the single incident could not meet the "severe, pervasive, or persistent" standard for liability. The court disagreed, finding that the incident was "sufficient to meet the requirements of severity and objective offensiveness." 477 F.3d at 1297.

In the July 2000 "Dear Colleague" letter, DOE identified the following examples of harassment that could create a hostile environment:

- Several students continually remark out loud to other students during class that a student with dyslexia is "retarded" or "deaf and dumb" and does not belong in the class; as a result, the harassed student has difficulty doing work in class and her grades decline.
- A student repeatedly places classroom furniture or other objects in the path of classmates who use wheelchairs, impeding the classmates' ability to enter the classroom.
- A teacher subjects a student to inappropriate physical restraint because of conduct related to his disability, with the result that the student tries to avoid school through increased absences.
- A school administrator repeatedly denies a student with a disability access to lunch, field trips, assemblies, and extracurricular activities as punishment for taking time off from school for required related to the student's disability.
- A professor repeatedly belittles and criticizes a student with a disability for using accommodations in class, with the result that the student is so discouraged that she has great difficulty performing in class and learning.
- Students continually taunt or belittle a student with mental retardation by mocking and intimidating him so he does not participate in class.



A school district can be liable for damages for violations of Section 504 or the ADA only if an **appropriate person** had **actual notice** of the offending conduct and responded with **deliberate indifference**.

Because Congress enacted Title IX pursuant the Spending Clause of the Constitution, the funding recipient must have actual notice for liability to attach:

When Congress acts pursuant to its spending power, it generates legislation "much in the nature of a contract: in return for federal funds, the States agree to comply with federally imposed conditions." *Pennhurst State School and Hospital v. Halderman*, 451 U.S. 1, 17, 67 L. Ed. 2d 694, 101 S. Ct. 1531 (1981). In interpreting language in spending legislation, we thus "insist that Congress speak with a clear voice," recognizing that "there can, of course, be no knowing acceptance [of the terms of the putative contract] if a State is unaware of the conditions [imposed by the legislation] or is unable to ascertain what is expected of it." *Ibid.*; see also 451 U.S. at 24-25.

Davis, 526 U.S. at 640.

"Presumably, a central purpose of requiring notice of the violation 'to the appropriate person' and an opportunity for voluntary compliance before administrative enforcement proceedings can commence is to avoid diverting education funding from beneficial uses where a recipient was unaware of discrimination in its programs and is willing to institute prompt corrective measures." *Gebser*, 524 U.S. at 288. In *Gebser*, the principal had notice of inappropriate comments made to other students, in the past, but no notice that the same teacher was involved in a sexual relationship with the complaining student. Absent such actual notice, the student was not entitled to monetary relief.

In this type of lawsuit, therefore, the plaintiff must prove (1) that an appropriate person had actual notice of the conduct and (2) that person exhibited "deliberate indifference" by engaging in a clearly unreasonable response. *Chancellor*, 501 F. Supp.2d at 709.

In *Chancellor*, there was evidence from which a jury could infer that the principal was aware of the possibility of a sexual relationship between the plaintiff and her teacher. Additionally, the principal did not speak with the student or her parents about the allegations, did not report the allegations to the Superintendent or Assistant Superintendent, and, in fact, appeared to take no actions to investigate the alleged sexual relationship.

According to the *Gebser* court, the administrative enforcement scheme presupposes that an official on notice of a violation refuses to take action to force compliance:

That framework finds a rough parallel in the standard of deliberate indifference. Under a lower standard, there would be a risk that the recipient would be liable in damages not for its own official decision but instead for its employees' independent actions. Comparable considerations led to our adoption of a deliberate indifference standard for claims under § 1983 alleging that a municipality's actions in failing to prevent a deprivation of federal rights was the cause of the violation. *Gebser*, 524 U.S. at 290-291.

Ordinarily, notice of harassing conduct to a school principal will suffice to impose liability on a school district. However, when the school principal is also the harasser, then a plaintiff must inform someone other than the principal. This is true despite the fact that the principal might be an “appropriate person” when someone else’s conduct is at issue. *Rubio v. Turner Unified Sch. Dist.*, 475 F. Supp.2d 1092, 1099 n.7 (D. Kan. 2007).

But wait - is “actual notice” always required?



In *Simpson v. University of Colorado*, 500 F.3d 1170 (10th Cir. 2007), the Court of Appeals for the Tenth Circuit questioned whether “actual notice” is always required when the funding recipient’s actions, in part, create the dangerous situation. In *Simpson*, the plaintiffs, two female undergraduates, asserted that they were sexually assaulted by Colorado University football players and recruits during a recruiting weekend where the players were supposed to show the recruits “a good time.”

Referring to the portion of *Gebser* quoted above, the Court stated:

Relevant to the claims before us are two remarks by the Court that suggest that the *Gebser* standards do not apply to some Title IX harassment claims and indicate what the standard should be for those claim. First, The Court noted a limitations when setting forth the requirements to “cases like this one that do not involve official policy of the [school district] . . . Second, it suggested that courts can find guidance in civil rights cases alleging municipal liability under 42 U.S.C. § 1983.

Sullivan recognized that in all of these cases, there are two components. First, what was the nature and extent of the harassment and the resulting injury to the student? Second, what is the role and responsibility of the funding recipient when the organization does not engage directly in harassment? 500 F.3d at 1176.

In both *Gebser* and *Davis*, “there was no element of encouragement of the misconduct by the school district.” 500 F.3d at 1177. By contrast, in *Sullivan*, the evidence on summary judgment was sufficient to support “findings (1) that CU had an official policy of showing high-school football recruits a “good time” on their visits to the CU campus, (2) that the alleged sexual assaults were caused by CU’s failure to provide adequate supervision and guidance to player-hosts chosen to show the football recruits a “good time,” and (3) that the likelihood of such misconduct was so obvious that CU’s failure was the result of deliberate indifference. 500 F.3d at 1173.

Because of this distinction, the court found that the “actual notice” component in *Gebser* and *Davis* did not translate to the facts in *Sullivan*:

To be sure, in [*Gebser* and *Davis*], the school district could anticipate that the very operation of a school

would be accompanied by sexual harassment, but that is simply because, unfortunately, some flawed humans will engage in such misconduct when they are in the company of others. Here, however, the gist of the complaint is that CU sanctioned, supported, even funded, a program (showing recruits a “good time”) that, without proper control, would encourage young men to engage in opprobrious acts. *We do not think that the notice standards established for sexual-harassment claims in Gebser and Davis necessarily apply in this circumstance.*” 500 F.3d at 1178

The court concluded that a funding recipient could be liable under Title IX “when the violation is caused by official policy, *which may be a policy of deliberate indifference to providing adequate training or guidance that is obviously necessary for implementation of a specific program or policy of the recipient.*” 500 F.3d at 1178.

Finally, a need for training can be “obvious” for reasons other than knowledge or previous incidents. A single violation of federal rights that is a “highly predictable consequence” of failure to train agents to handle recurring situations can trigger liability for the “funding recipient. *See Allen v. Muskogee, Okla.*, 119 F.3d 837, 843, 845 (10th Cir. 1997) (where city trained officers to approach armed, suicidal, emotionally persons, without cover, to try to disarm them, claim fell within “narrow range of circumstances . . . under which a single violation of federal rights may be a highly predictable consequence of failure to train officers to handle recurring situations with an obvious potential for such a violation”).



In *Rost v. Steamboat Springs RE-2 Sch. Dist.*, however, the court of appeals declined to apply the reasoning in *Simpson* to a situation where a high school student with learning disabilities was repeatedly sexually assaulted. It was undisputed that the student, K.C., provided notice to school officials that boys were “bothering” her. However, she did not provide specific notice of the assaults until January, 2003. At that point, the court reasoned, the school district responded appropriately:

[O]nce K.C. disclosed the sexual harassment to Ms. Boler, Ms. Boler immediately contacted Officer Patrick, the school resource officer, who questioned K.C. about the harassment. Principal Schmidt determined that because he believed none of the incidents occurred on school grounds and the incidents occurred before any of the students were enrolled at the high school, Officer Patrick should investigate the sexual assaults. Officer Patrick continually interacted with the school to arrange for the interviews of the students. Principal Schmidt had approximately fifty conversations with Officer Patrick regarding the investigation and received a

copy of Officer Patrick's report. Though Officer Patrick testified that he might have been initially vague with the school district and not kept it totally involved because he viewed his investigation as separate, he also testified to his interaction with the district. We do not think that the district can be faulted for letting Officer Patrick take the lead in this very serious situation. Officer Patrick and the school reasonably believed that the harassment occurred away from school, and criminal charges were a possibility. The district's response was not clearly unreasonable as school officials immediately contacted law enforcement officials, cooperated fully in the investigation, and kept informed of the investigation. The district reasonably could believe it did not have responsibility or control over the incidents, and merely because the principal thought that the school could discipline students for conduct occurring outside the school grounds says nothing about whether it was appropriate given what occurred here. At *6.

The dissent in *Rost* disagreed with the conclusion that the district's actions were reasonable:

The school district's inaction after receiving the report, however, was "clearly unreasonable in light of the known circumstances." [Davis, 526 U.S. at 648](#). At this point, the school principal no longer had any doubt that the harassment had occurred and that it was predicated, at least in part, on sex, and therefore within the ambit of Title IX. Having read Officer Patrick's report, the principal knew of its frequency and severity. The principal knew the names of the boys involved. One of the malefactors had committed acts of sexual harassment at school before. Yet the school district did absolutely nothing. No discipline. No counseling. No communications with the boys' parents. The principal did not even call the perpetrators into his office for an admonitory chat. This cannot be a reasonable response. See [Escue v. N. Okla. College, 450 F.3d 1146, 1155 \(10th Cir.2006\)](#) ("[A] minimalist response is not within the contemplation of a reasonable response." (internal quotation marks omitted)).

It is a bit unclear why the majority concludes that this total inaction was reasonable under the circumstances. The majority first embraces the defendants' argument that "discipline was not appropriate in this case since most of the incidents did not occur on school grounds, and the district reasonably could believe it did not have responsibility or control over the incidents." Maj. Op. 16. Either the majority has set the bar for legal

responsibility on the part of the school district too high as a matter of law or it has failed to view the evidence in the light most favorable to the plaintiff.

The dissent went on to note that the district's unreasonable response excluded K.C. from school. Under these circumstances, the dissent concluded, the district should be liable under Title IX.



IDEA, 20 U.S.C. § 1400 et seq., “confers upon disabled students an enforceable right to public education in participating States.” *Honig v. Doe*, 484 U.S. 305 (1988). If bullying and harassment prevent a student from accessing her educational program, this could result in a denial of FAPE. There is no “actual notice” requirement for an IDEA claim.

In *Shore Reg'l High School Bd. of Educ. v. P.S.*, 381 F.3d 194 (3d Cir. 2004), a student and his parents argued that the IDEA-eligible child could not receive a free and appropriate public education at the regional high school because he had been bullied in elementary and middle school. The Administrative Law Judge agreed, and the school district had to fund a private placement. In that case, P.S. lived through “relentless physical and verbal harassment as well as social isolation by his classmates.” 381 F.3d at 195. The environment began to cripple P.S., who had a disastrous experience at Maple Place Middle School, his home school in the Oceanport School District.

For high school, the parents investigated placements other than Shore Regional High School, the public high school serving Oceanport. They decided to pursue placement at Red Bank High School, in a neighboring district. The Oceanport Child Study Team concurred with the parents' belief that if P.S. attended Shore Regional, the harassment P.S. experienced at Maple Place would continue. Because the Shore Regional High School Child Study Team proposed an Individualized Education Program with placement at Shore, P.S.'s parents unilaterally placed him at Red Bank and sought reimbursement.

The New Jersey Administrative Law Judge (“ALJ”) sided with the parents, concluding that Shore could not provide P.S. with the FAPE required by IDEA, “because of the legitimate and real fear that the same harassers who had followed P.S. through elementary and middle school would continue” to bully him. The court of appeals found no basis for overturning the ALJ's determination, based upon the following evidence: Fairly read, [the] testimony was that Shore would not have been able to remedy the problem because, among other things, the same bullies would be present at Shore; bullies generally do not stop on their own; even ‘intensive interventions’ are often not effective when they are not begun until after a course of harassment has continued for some time; the presence at Shore of students who had not attended Maple Shade would not have shielded P.S.; the bullies would have had a ripe opportunity to harass P.S. on the bus; and, in short, no matter what program Shore implemented, P.S. would not have been adequately protected.



- Bullying and harassment is far more pervasive than we think
- Schools have a duty to protect children in their care from harassment by other students *that they know about*
- Parents must report troublesome incidents of peer harassment in writing to the Special Education Director, the Principal, the teacher, and the Superintendent

COPAA