

*Torts, Sexual Harassment,
and Bullying: Pitfalls
everyone should avoid!*



5th Annual UL Lafayette Louisiana
K-12 Law Conference
May 8, 2019

The Set Up

- Schedule
- Facilities
- Lunch – record attendance – Coffee mug celebrating 5 years
- Not Legal Advice - Framework for Legal Decisions – things to consider and share with others to prevent or mitigate litigation
- Comment form at the end

Why do we care?

- \$\$\$\$
- Respect rights of others; protect those who cannot protect themselves
- *Avoid trouble to be your best*
- *Framework for Decision-making - Not legal advice!*

Describe Students

- Age?
 - Gender?
 - Race?
 - Ethnicity?
 - Disabilities?
 - Financial status?
-
- Vulnerable population –Institutional Research Board



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Topics

- Sexual Harassment & criminal actions
- Bullying
- Torts



Title IX

- Protects persons from discrimination based on sex in education programs & activities that receive Federal \$
- Athletics, course offerings, textbooks
- Facilities
- Pregnancy
- Sexual harassment is a form of sex discrimination
- It is unwanted & unwelcome behavior of sexual nature and interferes with right to receive equal education
- Quid Pro Quo

Liability

- Gender oriented conduct that is “severe, pervasive and objectively offensive”.
- Denies a student equal educational opportunities or benefits
- Knowledge of the harassment
- District is deliberately indifferent to sexual harassment
- Indifference caused damages

Harassment

1. Student to Student

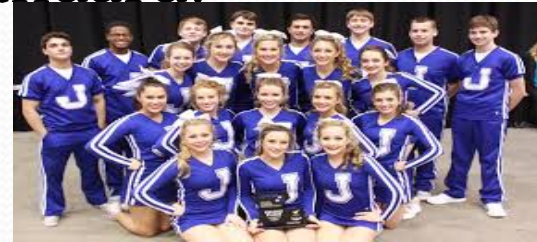
2. Adult to Student

3. Adult to Adult

Student to Student

M.D. v. Bowling Green Indep. Sch. District 709 Fed.App'x 775 (6th Cir. 2017)

- Cheerleader groped on bus trip by other cheerleader
- R.M. sent to alternative school, twice recommended to return but not allowed until 3rd recommendation
- No contact with M.D. (ate lunch in classroom, stopped being sports photographer)(only saw when picking up food and crossing between 6th period)
- Court said not deliberately indifferent, not 2nd guessing disciplinary decisions of administrators, expulsion is not only remedy to meet standard.
- Sexual misconduct was not ongoing.



Who wants to pay a Million Dollar Judgment?

1. Adult to Student Harassment
 - A. What does it look like?
 - B. Unequal power or position
 - C. Consequences
3. News Headlines (Ben-Gals, ect)
4. You are the adult, they are not capable of consent
5. Revised Statute 14:81.4 for teachers – just a note.



Substitute Teacher Arrested for Sex with students

- A teacher was arrested in January following an investigation into a claim that she had inappropriate sexual relations with two male students.
- At the time of the alleged crime the two students, ages were 15 and 16, attended a local high school where she worked as a substitute teacher. The incidents, according to law enforcement, did not occur on school property.
- Now, she faces two counts of carnal knowledge of a juvenile.

Teacher Arrested

- A former high school teacher has been arrested and is accused of molesting, choking and making sexual comments to two students.
- A warrant issued says two students both 16 years of age informed authorities of several instances where he allegedly touched, 'bear hugged from behind and made lewd comments about future sexual intercourse with the students.
- The students also claim there was an incident where they were choked him. There were other students who confirmed this occurred with officials.

Potential Signs of Problems

- Physical displays of affection
- Frequent personal communications
- Sexually suggestive conversations
- Obstructing view of room
- Drinking with students
- Language



Adult to Adult

- Hostile work environment
- Words, pictures, rumors or jokes
- Affairs or romances
- Does it affect ability or work performance
- What does this look like?

Bullying

- Victims react with violence
- Victims take their own life
- Now involves cyber activities
- LBGT students and new students most vulnerable
- Leads to anxiety, psychosomatic symptoms – aggressive impulses and eating disorders
- Depression & suicide
- Truancy, absenteeism and discipline issues
- If based on sex or gender and severe it could be Title IX



Bullying Prevention

- Well written and accessible school policy communicated to all. Statement that district will not tolerate bullying behaviors and define them. Include responsibilities and rights of students and staff.
- ACTION OVER WORDS
- Educational environment that allows students to feel safe and secure is necessary for students to learn.
- 1. Policy
- 2. Train – consider pre and post test – strategies to stop
- 3. Follow-up

Torts

- You hurt – You pay
- How does a tort occur and how does it turn into a lawsuit? What is involved in a lawsuit? What are possible damages?
- The 2 Ps
- What does that mean for you and the future? Did you act Reasonably under the circumstances?



Preparation

- What can you do now to prepare to avoid litigation?
- Training
- Professional Development
- Focus Groups to discuss best practices
- Follow-up
- Consistent discipline
- Who is in charge of event or situation?

Presence

- Limit or avoid meeting alone – how are meetings/sessions set up and organized? Where are they located, how are they monitored?
- Do not meet off campus or outside of work unless at approved function
- How might parents claim you hurt their child through your interaction with the child?
- Where should you be, how many folks should be there, qualifications or training of folks there.

Confidentiality

- Vegas rules as it applies to students at school
- What is personally identifiable information?
 - Test scores (parent volunteer example)
 - Financial aid eligibility (Free or reduce lunch)
 - Special education or disability
 - Information that allows a student to be identified?
 - Examples (small town, stories, descriptions)



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