

- ~~(f) Under Title IX, recipients of federal funds may be held liable if they are deliberately indifferent to known student-on-student sexual harassment.~~
- ~~(g) Liability attaches if district's response (or lack thereof) is "clearly unreasonable," and the harassment is so severe and pervasive that it deprives the student access to educational opportunities or benefits.~~

* E. Bullying

Department of Education, Dear Colleague Letter, Dated October 26, 2010

- (a) "Bullying fosters a climate of fear and disrespect that can seriously impair the physical and psychological health of its victims and create conditions that negatively affect learning, thereby undermining the ability of students to achieve their full potential."
- (b) "I am writing to remind you . . . that some student misconduct that falls under a school's anti-bullying policy also may trigger responsibilities under one or more of the federal antidiscrimination laws enforced by the Department's Office for Civil Rights (OCR)."
- (c) "Harassing conduct may take many forms, including verbal acts and name-calling; graphic and written statements, which may include use of cell phones or the Internet; or other conduct that may be physically threatening, harmful, or humiliating."
- (d) "A school is responsible for addressing harassment incidents about which it knows or reasonably should have known"
- * (e) Hypotheticals:
 - i. Race: Anonymous racial slurs on African-American lockers and notebooks. The District investigates and assigns detention to the perpetrators it can identify. Racial tensions continue to escalate and there are fights.

OCR Solution: Violation of Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin because it is a racially hostile environment. The ISD needed to do more than discipline students involved. It should have:

- 1) Reaffirm the school's policy against racial discrimination;
- 2) Publicizing the means to report allegations of racial harassment;
- 3) Training faculty on constructive responses to racial conflict;
- 4) Hosting class discussions about racial harassment and sensitivity to students of other races;

- 5) Conducting outreach to involve parents and students in an effort to identify problems and improve the school climate

ii. Religion/Ethnicity: Reports of anti-Semitic conduct at school during the year, including swastikas and graffiti. School cleans the graffiti and takes no further action. Two non-Jewish 7th grade students are accosted by two 9th graders, who say to them, "You Jews have all the Money. Give us some." The school suspends the 9th graders for one week. After the incident, younger Jewish student avoid the library and restroom areas because they are adjacent to 9th Grade Wing. At the same school, a group of 8th graders call another 8th grade student, "Drew the Jew." The principal discovers the matter and reprimands the 8th graders.

OCR Solution: Violation of Title VI because, although Title VI doesn't cover religion discrimination, it does cover perceived shared ancestry or ethnic identity such as Judaism. OCR's interpretation of Title VI would also cover Muslims and Sikhs. The ISD should have:

- 1) Counseled the perpetrators (in addition to punishing them) about the hurtful effects of their conduct;
- 2) Publicly labeling the incidents as ^{anti}anti-Semitic;
- 3) Reaffirming the school's policy against discrimination;
- 4) Publicizing the means by which students may report harassment;
- 5) Providing training to teachers to recognize and address anti-Semitic incidents;
- 6) Create and age-appropriate program to educate students about the history and dangers of anti-Semitism; and
- 7) Conducted outreach to involve parents and community groups in preventing future anti-Semitic harassment.

iii. Sexual Harassment: New high school student has a brief romance with another student. After the breakup, other students begin routinely calling her sexually charged names, spreading false rumors about her sexual behavior, and sending her threatening text messages and e-mails. A coach witnesses the conduct and punishes the perpetrators

as a hazing incident of a new student. The ISD notices a decline in the student's participation in class and in extracurricular programs, and encouraged her to work out the issue with those who were "hazing" her.

OCR Solution: Violation of Title IX because the school officials failed to recognize that the hazing incident was sexual harassment and investigate and remedy it as such. The ISD should have:

- 1) Trained its employees on the type of misconduct that constitutes sexual harassment;
- 2) Made clear to its employees that they could not require the student to confront her harassers;
- 3) Taken interim measures to separate the student from the accused harassers;
- 4) Trained its students and employees on the school's policies relating to harassment;
- 5) Instituted a new procedure by which employees should report allegations of harassment;
- 6) More widely distributed the contact information for the district's Title IX Coordinator; and
- 7) Offered the targeted student tutoring, other academic assistance, or counseling as necessary to remedy the effects of the harassment.

iv. Gender-based Harassment: During the year, a gay student was called names to his face and on social networking sites, physically assaulted, threatened, and ridiculed because he did not conform to stereotypical notions of how teenage boys are expected to act and appear. Consequently, the student drops out of drama club. The school responded to the incidents in accordance with its anti-bullying policies. The ISD's actions stopped the harassment by those students, but not by others.

OCR Solution: Although Title IX doesn't prohibit discrimination based on sexual orientation, it does protect all students, including LGBT students from sex discrimination. The school had an obligation to take immediate and effective action to eliminate the hostile environment and failed to do so thereby violating Title IX. The ISD should have:

- 1) Provided notice to the student's teachers to ensure that the student was not harassed;
- 2) Provided more aggressive monitoring by staff of the places where the harassment occurred;

- 3) Increased training on the scope of the harassment and discrimination policies;
- 4) Provided notice to the target and harassers of counseling services and resources;
- 5) Educated the entire school community on civil rights and expectations of tolerance, specifically, as they apply to gender stereotypes; and
- 6) Taken steps to more clearly communicate the message that the school does not tolerate harassment and will be responsive to any reports of such conduct.

v. **Disability:** Several classmates call a student with a learning disability “stupid”, “idiot”, and “retard” while at school and on the school bus. On one occasion, students tackle him, hit him with a binder, and throw his personal items into the garbage can. The student complains, and the school responds by offering him counseling services and a psychological evaluation. The other students are not punished. The disabled student refuses to return to school.

OCR Solution: The school failed to recognize the misconduct as disability discrimination under Section 504 and Title II. The ISD should have:

- 1) Provided discipline against the harassers;
- 2) Consulted with the school’s Section 504/Title II coordinator;
- 3) Provided special training for staff on recognizing and effectively responding to harassment; and
- 4) Monitored to ensure that the harassment did not resume.

~~_____~~

~~_____ Garcia v. Navasota ISD, 2013 WL 518750 (S.D. Tex. 2013)~~

- (a) ~~_____~~
- (b) ~~_____~~
- (c) ~~_____~~
- (d) ~~_____~~
- (e) ~~_____~~

[REDACTED]

III. TECHNOLOGY ISSUES

A. Student/Teacher Defamation

1. *Draker v. Schreiber*, 271 S.W.3d 318,(Tex. App.—San Antonio 2008)

- (a) Students at Clark High School created a false profile on a social networking website depicting a vice-principal. The profile contained:
 - i. The vice principal’s name;
 - ii. Her photo;
 - iii. Her place of employment; and
 - iv. Explicit and graphic sexual references.
- (b) The vice-principal sued the two students for defamation and libel, but ultimately her petition solely alleged intentional infliction of emotional distress.
- (c) The student defendants filed a motion for summary judgment with respect to the vice-principal’s claim.
- (d) The court dismissed the vice-principal’s claim and she lost the suit since the gravamen of her complaint was defamation.

2. What’s the Lesson?

- (a) The case illustrates how difficult it is for a teacher to prevail in a civil suit for libel and slander from student misconduct.
- (b) Be of good courage, however, There is some relief!

An individual commits a 3rd Degree Felony offense if he/she uses the name or persona of another person to create a web page or to post one or more messages on a commercial social network site, without the other person’s consent and with the intent to harm, defraud, intimidate or threaten another person. *See* Tex. Penal Code §33.07.

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