

Bullying and the Law: Issues for Administrators

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Agenda

Overview of Bullying and the Law

Standards for Action

Recent Focus

Definitions

Davis v. Monroe

Other cases

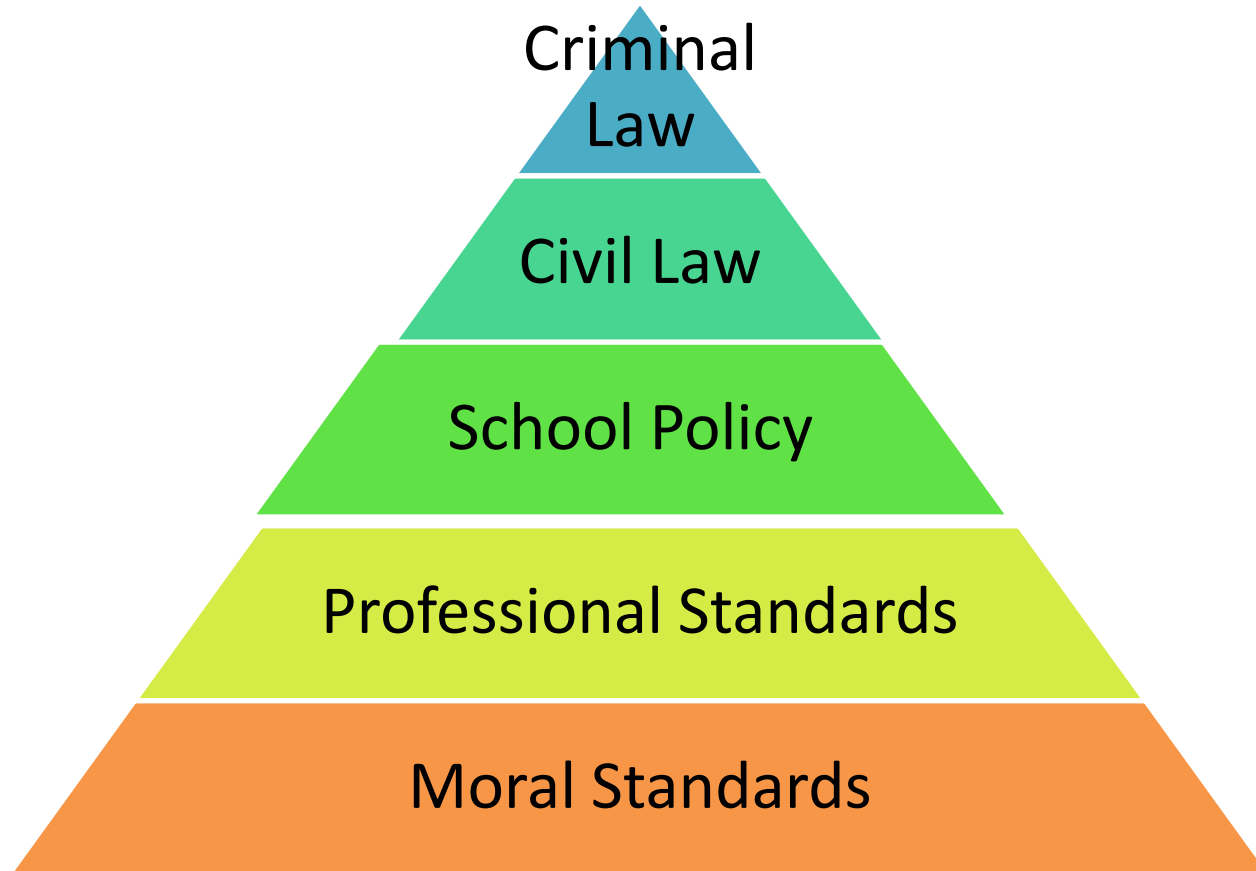
Where the law is headed...

- **The quick and dirty is that the law doesn't really protect against general bullying. It does offer protection if the bullying is based on a protected category (i.e. race (Title VI), sex (Title IX), disability (504 and the ADA)). Those types of cases are considered "hostile environment" cases. In short, if a school knows or should have known that a hostile environment existed (i.e. that a student was being bullied/harassed/subjected to a hostile environment because of his/her race, sex, or disability), it has an obligation to take action that is reasonably calculated to stop the harassment**

Big Ideas

- Legal standards of action are the minimum standard of action.
- Some bullying issues have civil or criminal implications
- The *Davis v. Monroe (1999)* case is illustrative of the concept of deliberate indifference and the potential for victims to obtain legal recourse
- The school has a duty to act in cases of suspected bullying

Bullying Activities May Violate:



Standards for Action

- When dealing with an issue of bullying, remember there are different levels of response...
- Moral
- Professional
- Legal
- Just because you are doing enough under the law doesn't mean you have done enough!

Moral Reasoning

Deontological Reasoning

What is right is determined by a higher law or standard

- “Bullying interferes with a basic human right”
- Do unto others...

Utilitarian Reasoning

What is right is based upon relative benefit

- “Most students learn better when they feel safe”
- The greater good...

Professional Standards

- Educators have a duty to maintain safe classrooms and schools
- Climate standards include anti-bullying language
- Students cannot learn if they are afraid of being abused

School Policies

"Bullying" shall mean an intentional electronic, written, verbal or physical act, or a series of acts:

- 1) Directed at another student or students;
- 2) Which occurs in a school setting;
- 3) That is severe, persistent or pervasive; and
- 4) That has the effect of doing any of the following:
 - i. Substantially interfering with a student's education;
 - ii. Creating a threatening environment; or
 - iii. Substantially disrupting the orderly operation of the school; and "school setting" shall mean in the school, on school grounds, in school vehicles, at a designated bus stop or at any activity sponsored, supervise or sanctioned by the school.

Off-campus Acts of Bullying

A school entity may define bullying in such a way as to encompass acts that occur outside a school setting if those acts are:

- directed at another student or students;
- are severe, persistent and pervasive; or
- have the effect of:
 - substantially interfering with a student's education;
 - creating a threatening environment; or
 - substantially disrupting the orderly operation of the school.

Acceptable Use Policy for Digital Devices

- Students are required to follow their school policies

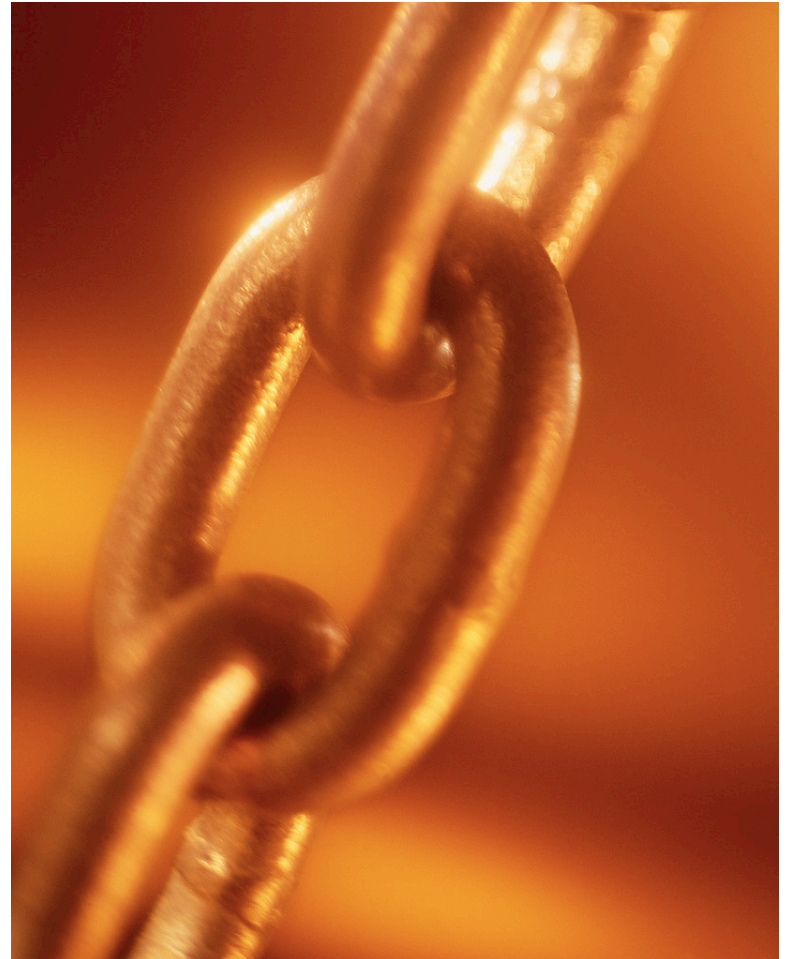


What is a Nexus?

Nex·us [nek-suhs] noun:

1. a means of connection; tie; link.
2. a connected series or group.

(www.dictionary.com)



Case Study

- Pervasive pattern of bullying behavior...fits definition
- Teasing, physical aggression, threats, social exclusion and cyber elements
- Who is the student who is being victimized?
- Who is the bully?
- Does the school know (or should it have known)?
- What is the school's response?
- What is the school required by law to do?
- Are there avenues of action for the victimized student?

Law Violations

Civil



Criminal

Legal Overview

Criminal

- Although there are no specific anti-bullying crimes listed in the Juvenile Act or the Crimes Code of PA, behavior which might be called bullying in schools can be prosecuted as anything from disturbing the peace to assault (or worse).

Civil

- Most of this session will focus on civil law since that is the area of law schools and educators are most likely to find themselves involved in when there is an intersection between bullying and the law.

PA Crimes Code Offenses

- Harassment , Harassment by Communication or Address, Stalking
- Possession of Child Pornography
- Distribution of Child Pornography
- Sexual Abuse of Children
- Sexual Exploitation of Children
- Unlawful Contact/Communication with a Minor
- Ethnic Intimidation (Hate Crime)

18 Pa. C.S. §	OFFENSE TITLE	STATUTORY CLASS
2709(a)	Harassment	M3
2709.1(c)(1)	Stalking	M1 or F3
2710	Ethnic Intimidation	Enhancement
6312(b)	Sexual Abuse of Children (photographing, etc.)	F2
6312(c)	Sexual Abuse of Children (dissemination, etc.)	F3 or F2
6312(d)	Possession of Child Pornography	F3 or F2
6320	Sexual exploitation of children	F2
7624(1)	Internet service provider (child pornography violation)	M3, M2 or F3

Sentencing Guidelines

Grading

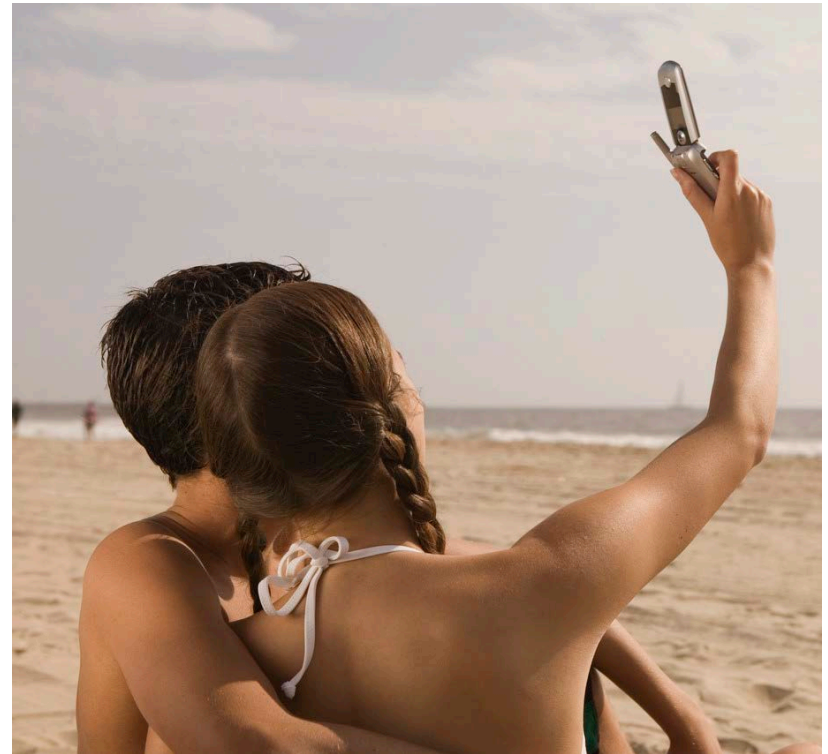
Maximum Fines

Maximum Sentences

Murder 1	\$50,000	Death or Life In Prison
Murder 2	\$50,000	Life Imprisonment
Murder 3	\$50,000	Not More Than 40 Years
Felony 1	\$25,000	Not More Than 20 Years
Felony 2	\$25,000	Not More Than 10 Years
Felony 3	\$15,000	Not More Than 7 Years
Misdemeanor 1	\$10,000	Not More Than 5 Years
Misdemeanor 2	\$ 5,000	Not More Than 2 Years
Misdemeanor 3	\$ 2,500	Not More Than 1 Year
Summary	\$ 300	Not More Than 90 Days

What is Sexting?

Sexting: sending of sexually explicit photos or text through one's cell phone.



Sexting – State and Federal Offence?

Title 18 of the Pennsylvania Crimes Code :

- Sexual Abuse of Children
- Possession of Child Pornography
- Unlawful Contact or Communication with a Minor
- Sexual Exploitation of Childr

Child pornography is defined as any visual depiction, including any photograph:

- of a minor engaging in sexually explicit conduct;
- the production of such visual depiction; or
- such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct.

Civil Law

- Slander
- Libel
- Defamation of Character
- Harassment/Sexual Harassment
- Discrimination

Discrimination in the Law

PA Human Relations Act:

Prohibiting certain practices of discrimination because of race, color, religious creed, ancestry, age or national origin by employers, employment agencies, labor organizations and others...

Enforcement Agency: PA Human Relations Commission (PHRC)

Federal Civil Rights Laws:

Title VI of the Civil Rights Act of 1964

Title IX of the Education Amendments of 1972

Section 504 of the Rehabilitation Act of 1973

Americans with Disabilities Act of 1990

Enforcement Agency: DOE Office of Civil Rights (OCR)

Protected Classes

- Race
- Color
- Religion
- National Origin
- Ancestry
- Age (40 and over)
- Gender
- Handicap or Disability
- Use of a Guide or Service Animal
- G.E.D. versus High School Diploma
- Being Known to be Related to a Handicapped or Disabled Person
- Being Retaliated Against

Recent Focus on Bullying

On October 22, 2010, President Obama spoke about the importance of bullying prevention and safe school climate. Here is the link to our President's message

<http://www.youtube.com/watch?v=IYOeQsLszvU>

More from Department of Education

- Secretary of Education Arne Duncan: "Bullying is a problem that shouldn't exist. No one should ever feel harassed or unsafe in a school simply because they act or think or dress differently than others. To every student who feels threatened or harassed—for whatever reason—please know that you are not alone. Please know that there are people who love you. And please know that we will protect you."
- "Students cannot learn if they feel threatened or harassed," said Assistant Secretary for Civil Rights, Russlynn Ali. "We want to keep students safe and learning."

Recent Focus on Bullying

**U.S. Department of
Education
Office for Civil Rights
Dear Colleague Letter
Harassment and Bullying
(October 26, 2010)
Background, Summary,
and Fast Facts**

What does the Dear Colleague letter (DCL) do?

- Clarifies the relationship between bullying and discriminatory harassment under the civil rights laws enforced by the Department of Education's (ED) Office for Civil Rights (OCR).
- Explains how student misconduct that falls under an anti-bullying policy also may trigger responsibilities under one or more of the anti-discrimination statutes enforced by OCR.
- Reminds schools that failure to recognize discriminatory harassment when addressing student misconduct may lead to inadequate or inappropriate responses that fail to remedy violations of students' civil rights. Colleges and universities have the same obligations under the anti-discrimination statutes as elementary and secondary schools.
- Discusses racial and national origin harassment, sexual harassment, gender-based harassment, and disability harassment and illustrates how a school should respond in each case

What are a school's obligations under these anti-discrimination statutes?

Once a school knows or reasonably should know of possible student-on-student harassment, it must take immediate and appropriate action to investigate or otherwise determine what occurred.

- If harassment has occurred, a school must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment, and prevent its recurrence. These duties are a school's responsibility even if the misconduct also is covered by an anti-bullying policy and regardless of whether the student makes a complaint, asks the school to take action, or identifies the harassment as a form of discrimination.

- OCR offers technical assistance to help schools achieve voluntary compliance with the civil rights laws it enforces and works with schools to develop creative approaches to preventing and addressing discrimination. A school should contact the OCR enforcement office serving its jurisdiction for technical assistance. For contact information, please visit ED's website at <http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm>.
- A complaint of discrimination can be filed by anyone who believes that a school that receives Federal financial assistance has discriminated against someone on the basis of race, color, national origin, sex, disability, or age. The person or organization filing the complaint need not be a victim of the alleged discrimination, but may complain on behalf of another person or group. Information about how to file a complaint with OCR is at <http://www2.ed.gov/about/offices/list/ocr/complaintintro.html> or by contacting OCR's Customer Service Team at 1-800-421-3481.

Davis v. Monroe County School Board (1999)

- LaShonda Davis was a fifth-grade student at Hubbard Elementary School in Monroe County, Georgia. In 1994, LaShonda's mother filed a lawsuit in U.S. District Court alleging that LaShonda had been the victim of a prolonged pattern of abuse perpetrated by a male classmate, "G.F." LaShonda reported the following incidents of sexual harassment:
 - December 1992. G.F. attempted to touch LaShonda's breasts and genital areas while making vulgar statements. LaShonda reported the incident to her teacher. No action was initiated to prevent future occurrences of the behavior.

More incidents

- January 4 and January 20, 1993. G.F. committed similar offensive actions against LaShonda on two occasions. LaShonda reported both incidents to her teacher and to her mother. Mrs. Davis called LaShonda's teacher and was told that the principal had been informed of the incident. No disciplinary action was taken against G.F.
- February 10 and February 16, 1993. In physical education class, G.F. again acted in a sexually suggestive manner toward LaShonda. She reported the incident to her physical education teacher. A week later, G.F. engaged in similar behavior. Another classroom teacher, Mrs. Pippin, observed this action. No disciplinary action was taken.

Still more...

- March 1993. G.F. again harassed LaShonda in physical education. The incident was reported to the physical education teacher and to Mrs. Pippin. Although the principal was told of the incident, no disciplinary action was taken.
- April 1993. G.F. rubbed his body against LaShonda in a sexually suggestive manner. LaShonda reported the incident to her classroom teacher. No disciplinary sanctions were taken against G.F.

Can you believe this?

- During the time that G.F. was harassing LaShonda, he was also harassing other female classmates. A number of the girls, including LaShonda, asked to speak to the principal about G.F.'s conduct; however, their teacher denied the request, saying that the principal would call them if he needed to. LaShonda and her mother complained to the teacher. Again, no action was taken against G.F. When Mrs. Davis talked to the principal about the continuing incidents, the principal told her, "I guess I'll just have to threaten him a little harder." The principal also told Mrs. Davis that LaShonda was the only student complaining about G.F.'s behavior.
- In May 1993, the local police charged G.F. with sexual battery for the repeated incidents of misconduct against LaShonda. The boy pleaded guilty. Although the incidents stopped, LaShonda's grades plummeted. She said she was no longer able to concentrate on her studies. Her father found a suicide note that LaShonda had written to a friend. Because the principal had taken no disciplinary actions against G.F., LaShonda's mother feared that the sexual harassment would continue.

Making a federal case out of it...

- On May 4, 1994, Mrs. Davis filed a civil suit in U.S. District Court. The suit alleged that the school board had violated Title IX by not taking action to stop the student-on-student sexual harassment. Specifically, the suit alleged that the school district's deliberate indifference created an intimidating, hostile, offensive, and abusive school environment in violation of the law. The complaint sought compensatory and punitive damages, attorney's fees, and injunctive relief.

Arguments from Court

Davis

- The school district is not responsible because the harassment occurred. They are responsible because they were deliberately indifferent to the complaints of sexual harassment.

Monroe

- The federal government should not be involved in running schools in such a micro-managed approach. This is a matter that each state needs to consider

More arguments

Davis

- This harassment was persistent in its occurrence and persistent in its being reported to administrators, who refused to punish G.F. in any way whatsoever.

Monroe

- It is impossible for a school to remove all forms of sexual harassment. Kids always have and always will tease each other. Schools will be unable to differentiate between extremely serious/pervasive and minor incidents.

More arguments

Davis

- The school district receives federal funding. As a result, they must adhere to the rules of Title IX, which prohibits discrimination.

Monroe

- The Davis family has no grounds to sue the school district for harassment committed by a student. They should be seeking monetary damages from his family, not the school. The school would only be responsible for monetary damages if an agent of the school were committing the sexual harassment.

And a couple of more...

Davis

- When these incidents had occurred, the Equal Employment Opportunity Commission and the Department of Education's Office of Civil Rights had released guidelines instructing schools that they could be held responsible for peer sexual harassment under Title IX.

Monroe

- If Title IX provides a cause of action for peer harassment it will be necessary to expel every "student accused of misconduct involving sexual overtones."

A PA CASE

MICHAEL DOE, by and through his parents and natural guardians, RACHEL and MICHAEL DOE, Plaintiff, v. The SOUTHEASTERN GREENE SCHOOL DISTRICT; RICHARD HAUGER, individually and in his capacity as Principal of Mapletown Junior High School; PHILIP SAVINI, individually and in his capacity as Superintendent of Southeastern Greene School District, Defendants.

Civil Action No. 03-717

UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF
PENNSYLVANIA

2006 U.S. Dist. LEXIS 12790

March 24, 2006, Filed

- It is also undisputed that Michael told a friend that he was gay and that friend repeated that information so that other students could hear it. It is also undisputed that Michael was called names like "faggot" and was teased by something called the "gay dance." Brandon and Craig, in particular, asked Michael for "blow jobs" or pretended to masturbate in front of him. Those two boys masturbated in front of him, exposed themselves to him, and sexually touched him. Brandon [*22] jabbed Michael in the buttocks with a pencil as well as putting his hand down his own pants and rubbing his hand in Michael's face. Michael also alleged that other students called him names and confronted him for "wanting ass instead of pussy." Michael was admitted to a hospital for depression and suicidal ideations. On these facts, the court concludes that Michael adduced enough evidence that a jury could find that his harassment was "so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits provided by the school." *Davis*, 526 U.S. at 650.

PA is one of 42 states with bullying laws...

Act 61, signed into law by Governor Edward Rendell on July 9, 2008, contains the school bullying laws in Pennsylvania.

Bully Police USA, a private watchdog group, gives the law a grade of B+ based on a 12-point grading system, and finds the law acceptable.

The law requires individual schools to develop and implement anti-bullying policies that facilitate reporting bullying and taking disciplinary action. The law includes cyber-bullying in its definition of the act.

- **Mandatory Bullying Policy**
- Every Pennsylvania school is required to have an anti-bullying policy incorporated into their Code of Student Conduct. The policy must identify disciplinary actions for bullying and designate a school staff person to receive complaints of bullying. The policy must be available on the school's website. Every school must provide a copy of its anti-bullying policy to the Office for Safe Schools every year, and shall review their policy every three years.

What About Cyberbullying?

- Free Speech Issues...
- Law School 101
- It is listed in the PA law...
- BUT???

Supreme Court Cases Directly Addressing Student Speech

***Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969):**

Background: Mary Beth Tinker and group of other students wore black armbands to school in protest of the Vietnam War. Upon learning of the planned protest, the School issued a rule prohibiting students from wearing such armbands. Tinker and four of her friends still wore the armbands and were suspended.

Holding: School could punish student expression only if the speech would “materially and substantially interfere with the requirements of appropriate discipline in the operation of the school.” School could not base suspension on “undifferentiated fear or apprehension of disturbance.” School either had to show either past disruption or forecast that disruption was highly likely to occur.

***Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675 (1986):**

Factual Background: School suspended student who gave a speech during a school assembly in front of 600 other students. During the course of nominating another student, Fraser gave a speech replete with strong sexual innuendo, which elicited yelling, mimicry, and other reactions from other students.

Holding: Schools may prohibit the manner of speech, for instance speech that is sexually explicit, vulgar, and lewd. **Court explained:** “Surely it is a highly appropriate function of public school education to prohibit the use of vulgar and offensive terms in public discourse.”

Concurrence: Justice Brennan concurred in the decision, noting that the school could not have punished the student had the student given the same speech outside of the school.

***Hazelwood Sch. Dist. v. Kuhlmeier*, 484 US 260 (1988):**

Factual Background: A high school principal deleted two pages of the high school newspaper containing stories about teen pregnancy and parental divorce. Principal explained that story about pregnant students might lead to students being identified and thus violate these students' anonymity. The school banned the second article because parent was not provided with opportunity to respond to comments in the article.

Distinguished *Tinker*: *Tinker* applied to the school's tolerance of student speech, while the issue in Hazelwood pertained to the school's affirmative promotion of student speech in a publication distributed as part of the school's curriculum.

Holding:

Schools, may “exercis[e] editorial control over the style and content of student speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical concerns.” Schools, for instance, limit speech that is “ungrammatical, poorly written, inadequately researched, biased or prejudiced, vulgar or profane, or unsuitable for immature audiences.”

The Court identified the issue as whether members of the public might reasonably concluded that school-sponsored publications, theatrical productions, and other expressive activities bear the imprimatur of the

***Morse et al., v. Frederick*, 2007 WL 1804317 (June 25, 2007)
("Bong Hits For Jesus"):**

Background: On January 24, 2002, the Olympic torch passed through Juneau, Alaska on its way to the Winter Olympics in Salt Lake City, Utah. Douglass High School allowed its students to observe the relay as it passed and sanctioned the event as a class trip or social event. As the torch passed, a student – Joseph Frederick – held up a 14-foot banner with the message, "BONG HITS 4 JESUS." The principal crossed the street and demanded that the sign be taken down; Frederick refused, and the principal grabbed the sign and crumpled it. Later, the principal suspended Frederick for ten days, citing a variety of infractions of school rules.

The Ninth Circuit found a violation of Frederick's First Amendment rights, and found that the law was so clear on this issue in January 2002 that the principal was not entitled to legal immunity to money damages.

Holding: First, the Court held that the activity took place at a school-sponsored event. It reviewed its previous decisions involving students' First Amendment rights and distilled two basic rules:

- 1) students in public schools do not have the same constitutional rights as adults and**
- 2) *Tinker* is not the exclusive framework for analyzing student's first amendment rights.**

Then, the Court interpreted that one reasonable interpretation of the message on the banner is that it promoted drug use (either by encouraging viewers of the banners to smoke marijuana or celebrating drug use in general). The Court concluded by stating: "Because schools may take steps to safeguard those entrusted to their care from speech that can be reasonably regarded as encouraging illegal drug use, the school officials in this case did not violate the First Amendment by confiscating the pro-drug banner and suspending Frederick." Thus, the Court carved out "an illegal drug use" exception to student free-speech right.

Alito Concurrence: Justice Alito, joined by Justice Kennedy, concurred to explain that the majority opinion should not be read to limit students' rights to comment on political or social issues, including debates about the merits of the drug laws.

J.S. v. Bethlehem Area School District, PA Supreme Court, 2002

Background: Eighth-grade student published a web site titled “Teacher Sux” on his own personal computer containing vulgar language about his algebra teacher and principal. A separate section of the site contained a picture of the teacher with her head cut off and blood dripping from it and included solicitation for \$20 from each viewer so that the student can hire a hit man to kill her.

Reaction by School: After the teacher received an e-mail from an anonymous person about the website, the school contacted local law enforcement officials. Upon learning the identity of the student, the school suspended him ultimately for ten days.

Holding: Supreme Court of Pennsylvania applied *Tinker* and held that the Web site “materially disrupted the learning environment” and interfered with the right of others, including the teacher, the principal, and other students. The Court took into account the anonymous nature of the original postings, the serious and threatening tone of these postings, and the serious effect it had on the teacher, who had to take a one-year medical leave as a result of the postings.

Other Issues: Both the principal and teacher sued student in 1998 and 1999, respectively. A jury awarded the teacher \$500,000 for invasion of privacy and

Third Circuit Confusion

- In the decisions on these two cases, released on the same day last year by two separate three judge panels of the 3rd Circuit, the court reached opposite conclusions on whether a school violated students' First Amendment rights by disciplining students who created websites targeting their respective administrators.

In both cases...

- Students used off-campus computers to create fake profiles of a school principal
- The profile created a reaction on campus and from the principal
- The principal reacted by suspending the student
- The student sued, claiming 1st Ad protection
- Decisions vacated, *en banc* hearing June 2010

Recent Legislative Action

- In light of the recent bullying incidents in the news in Pennsylvania, there have been widespread calls for an “Anti-Bullying Bill of Rights” in Pennsylvania. This act would strengthen the definition of bullying and require increased intervention and prevention actions on the part of Pennsylvania schools. It also specifically addresses the problem of hazing in schools and institutions of higher learning, which has not been specifically addressed by the Pennsylvania state legislature to date.

Anti-Bullying Bill of Rights

- The Anti-Bullying Bill of Rights would amend Title 22 of the Pennsylvania Code to include gender identity as a protected category in primary school education, requiring school districts to list harassment, intimidation, and bullying as grounds for suspension or expulsion, adding “sexual orientation” and “gender identity or expression” as protected categories in terms of higher education.
- It would require those who work in public or private schools, as part of their certification, to undergo suicide prevention training and bullying prevention training, adding gender identity as a category that is protected from discrimination by professional educators.

More on the Idea...

- Additionally, the proposed act would add a new section which provides a comprehensive definition of bullying, provisions and duties for district anti-bullying coordinators, school safety teams, and anti-bullying specialists, higher standards for anti-bullying policies for schools, provisions for an anti-bullying fund, providing for grading of school districts and private schools, campus climate surveys, and provisions for higher education anti-bullying policies. It also calls for the creation of a “Week Of Respect” and would amend Title 24 of the Purdon Statutes to bar those convicted of harassment or ethnic intimidation from working in schools. The Anti-Bullying Bill of Rights would strike current anti-bullying provisions in favor of a new chapter in Title 22 of the Pennsylvania Code and amend anti-hazing laws to require institutions of higher learning to have mandatory minimum sanctions for hazing.
- This proposed legislation is based on similar legislative proposals in New Jersey to address school bullying. It is gaining support through social media campaigns and has become increasingly popular since November 2010. <http://www.baristanet.com/2010/11/garden-states-bully-ban-law/>

For more information:

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OLWEUS BULLYING PREVENTION PROGRAM

Take-Home Message

- It *is* possible to reduce bullying.
- It requires a *team* effort.
- It requires a long-term commitment.



One final note--Yes, there is an app for it...more than one

There is information available in other technologies as well...

In August of 2010, the Obama administration hosted the first ever National Bullying Summit and launched both the *Stop Bullying Now Campaign* and www.bullyinginfo.org, a national database of effective anti-bullying programs.

- <http://mashable.com/2010/10/04/mtv-over-the-line-bullying-app/>
- [Over the Line](#) [iTunes link] is built on the existing [web and Facebook app](#) of the same name. Each teen user is invited to share a story about being bullied, harassed or otherwise disrespected by peers, and other users can vote whether their peers were over the line, under it, or hanging around right on it — that is, whether it was bullying and harassment, acceptable behavior or just pushing the limits. Hopefully it will encourage young people to think critically about what they're doing to their friends.
- <http://davidmhall.com/applications/bullyshield/> BullyShield provides research-based solutions that will reduce the chance your kid is bullied and give you concrete steps to take if your child is being bullied.