



School Law Matters

Latest legal developments and practical guidance for school officials & administrators October 2005

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Ferrara, Fiorenza, Larrison, Barrett & Reitz, P.C. provides comprehensive legal representation to school districts/BOCES throughout Upstate New York in all aspects of education law, employment law and labor relations.

Student-To-Student Disability Harassment Claim Upheld By Federal Court in New York

A federal court in New York recently held that a student can sue his/her school district for "peer harassment" based on the student's disability under Section 504 of the Rehabilitation Act and the Americans with Disabilities Act (ADA). *K.M. v. Hyde Park Central School District*, 381 F.Supp.2d 343 (S.D.N.Y. 2005). In this case, a 13-year-old eighth-grader ("D.G.") with dyslexia and other disabilities was allegedly called "stupid," "idiot," "retard," etc., and subjected to acts of violence by other students while in school and on the school bus. This abuse reportedly occurred frequently over a two-year period and included egregious acts, such as:

- being "thrown to the ground," "body slammed" and taunted by several students during lunch;
- being physically beaten by two boys--held down and hit on the head and back with his own binder--between classes in his special education teacher's resource room; and
- having his school books thrown into the garbage in the cafeteria on eight

separate occasions, resulting in his special education teacher's offering to eat lunch with the student in a separate room for the remainder of the school year.

Ultimately, after two students repeatedly taunted and hit the student on an afternoon bus ride, D.G. returned home upset, locked himself in the bathroom, cried, and yelled "I can't stand this anymore," and then bolted from the house. Thereafter, he refused to return to school and was eventually placed in another school.

According to the lawsuit filed by D.G.'s mother (K.M.) against the District and the officials involved, each inci-

dent was promptly reported--by D.G. himself and/or by his mother--to school officials, but no action was taken to protect D.G. from further harassment. K.M. claimed that she expressed her concerns for D.G.'s physical and emotional safety at a meeting of the Committee on Special Education ("CSE") during this time. At the CSE's suggestion, K.M. met with the school principal, and advised him of D.G.'s abuse, but claimed that the District took little or no action to alleviate the hostile environment or protect D.G. from further incidents. She then spoke with the school psychologist, and reported the

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Firm Cocktail Party at the NYSSBA Convention in Rochester on October 28

In conjunction with this year's N.Y.S. School Boards Association Convention, Ferrara, Fiorenza, Larrison, Barrett & Reitz, P.C. will host its annual cocktail reception in the Grand Ballroom B&C at the Hyatt Regency Rochester on Friday, October 28, 2005 from 5:30 until 8:00 p.m. You are cordially invited to join us for conversation, cocktails, hors d'oeuvres, and to enjoy the

music of a highly regarded jazz ensemble.

We hope that all our clients and friends will be able to join us this year at the reception. If so, please contact Charlene Grazul at 315-437-7600 to inform her of the number of expected attendees.

We look forward to visiting with you in Rochester.

Student-To-Student Disability Harassment Claim Upheld By Federal Court in New York (continued)

hostile environment and incidents of physical and emotional abuse. She claimed that the school psychologist told her D.G. should handle these incidents by himself.

The District and officials who were sued in this case made a motion to have it dismissed on the grounds K.M. failed to show that there are any genuine issues of material fact regarding disability discrimination. The Court disagreed.

The Court ruled that Section 504 or ADA claim against the school district arising out of peer-to-peer harassment could be sustained with proof that:

- the victim was harassed on the basis of his/her disability;
- the alleged harassment was so severe, pervasive and objectively offensive that it altered the condition of his/her education and created an abusive educational environment;
- the school district had actual notice about the disability-related harassment; and
- the school district was deliberately indifferent to the harassment.

Applying this rule to the facts pre-

sented in this case, the Court refused to dismiss D.G.'s lawsuit, noting that:

A reasonable juror, looking at the evidence discussed above, could conclude that D.G. was subjected to severe and perva-

The bottom line is ...

When peer harassment is based on a student's membership in a legally-protected category (such as gender, race, disability, etc.), the District must take action to stop the conduct immediately, investigate it thoroughly and take appropriate measures to ensure that the student's education is not compromised.

sive peer abuse, that this abuse was known to teachers and administrators in the District, and that it so altered the conditions of D.G.'s school experience that he felt he could not attend school for the better part of a year.

The Court went on to clarify, however, that this decision does not stand for the proposition that any student who is teased by classmates has a viable claim

against the student's teachers and school district. The court explained that:

children in school often act inappropriately, and that a child who refuses to go to school because a bully calls him a "scaredy cat" at recess will not have a claim under Section 504 or the ADA. Damages are not available for simple acts of teasing and name-calling ..., even where these comments target differences in gender. Rather, the conduct must be serious enough to have the systemic effect of denying the victim equal access to an educational program or activity.

Nevertheless, this case should serve as a lesson for school districts that when peer harassment is based on a student's membership in a legally-protected category (such as gender, race, national origin, ethnicity, disability, sexual orientation, etc.), the District must take action to stop the conduct immediately, investigate it thoroughly and take appropriate measures to ensure that the student's education is not compromised.

School Board Alert: Fiscal Accountability Law Training Available

As you know, the Governor signed into law a measure designed to enhance the fiscal accountability of school districts by strengthening the claims audit function within each school district and ensuring that such auditors report directly to the board members or trustees of a school district. *The new law also requires new Board members (elected or appointed for a term beginning on or after July 1, 2005) to receive at*

least six hours of training, during their first year in office, on financial oversight, accountability and fiduciary responsibilities. Any such training curriculum has to be approved by the Commissioner of Education, in consultation with the State Comptroller.

Recently, the Central New York School Boards Association (CNYSBA) received approval from the State Educa-

tion Department to provide such a six-hour training course. *Firm Chairman, Benjamin J. Ferrara*, will be joining CPA's, representatives of insurance reciprocals and school officials in presenting this CNYSBA-sponsored program at three separate locations. The first will be presented on November 19, 2005 at the OCM BOCES in Syracuse, from 8:30 AM to 3:30 PM. The second will be pre-

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School Board Alert: Fiscal Accountability Law Training Available (cont'd)

sented in two parts at TST BOCES in Ithaca on November 21 and November 30, from 6:15 PM to 9:30 PM. The third will also be held in two parts at Oswego BOCES in Mexico, New York on December 1 and December 7, from 6:15 PM to 9:30 PM.

If you are interested in participating in one of these programs (*at a cost of \$40 per person to cover CNYSBA's expenses*) or if you need further infor-

mation, please contact Larry Cummings at CNYSBA at 315-463-1904.

Other Requirements of the New Law

In addition to this training requirement, each school district and BOCES must have an annual audit performed by an independent accountant, and must use an Request For Proposals (RFP) process to select the accountant. It must open up the selection of the accountant

to the RFP process at least once every five years. By July 1, 2006, the law requires each Board to establish an internal audit function, to be in effect by December 31, 2006. By January 1, 2006, each Board must also establish an audit committee to oversee the audit function and report to the Board as a whole. There will be additional regulations drafted to implement this Act. We will keep you informed of any such developments.

Religious Exemptions From Immunizations Now Easier to Obtain

The Regulations of the Commissioner of Education were amended on September 29, 2005 to make it easier for pupils and their parents to obtain a religious exemption from mandatory student immunizations.

In the past, the Commissioner has held that a superintendent of schools or other school official should meet with the parents or guardians of the child to make a good faith effort to assess the credibility and sincerity of the parent or guardian's religious beliefs that their children are entitled to

the religious exemption from immunization. Under new Section 136.3 of the Commissioner's Regulations, a written and signed statement from the student or the student's parents/guardians that they hold genuine and sincere religious beliefs that conflict with immunization will now be deemed to be sufficient proof to qualify for an exemption from immunization.

Given this new Regulation, it is our view that if the written and signed statement is submitted to the district,

the district may not compel the student, parent or guardian to meet with the superintendent or other district official to discuss the sincerity of their religious beliefs in order to qualify for the exemption.

Please note that the Regulation requires that the written and signed statement be submitted to the principal or the principal's designee rather than to the superintendent of schools. If you have questions concerning the new regulation, please feel free to contact us.

Critical Emergency Preparedness and Safety Reminders

Schools Must Provide Building Plans to Local Fire and Police Officials

New York State Education Law Section 408-b (effective March 19, 2001) requires every public and nonpublic school to provide copies of school building plans and specifications to local fire and law enforcement offi-

cial. The goal of this law is to ensure that fire and law enforcement agencies have quick and easy access throughout a school building during an emergency.

Plans and specifications in the law do not mean construction documents; rather they mean schematics and/or blueprints. The following items should

be highlighted in these documents:

- Locations of all exits
- Barriers, gates, or other impediments that may affect exiting or access
- Chemical storage, flammable storage, maintenance areas, and chemistry labs
- Confined spaces

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Critical Emergency Preparedness and Safety Reminders (cont'd)

- Utility shut-off for electric, gas, etc.
- Remote shut-offs for labs, kitchens, etc.
- Fire alarm panel and any annunciator panels
- Location of the fire department connections for standpipe and/or sprinkler systems
- Any installed fire protection systems and their locations - such as hood suppression systems, computer room systems, auditorium/stage sprinklers, etc.
- Fire hydrant locations
- Underground gas pipelines, underground storage tanks, etc.

Local fire and law enforcement agencies may provide schools with additional guidance. In addition, schools should meet with the local fire and law enforcement agencies to discuss how best to share this information – such as electronic or hard copy. Remember, the best time to meet the fire chief and/or police chief for the first time is before the emergency, not during.

For further information on Education Law Section 408-b, contact your local fire and law enforcement agencies or the State Education Department at 518-474-3906.

Post-Fire-Inspection Meetings Must Take Place

The State Education Department recently reported that there are many instances where post-fire-inspection meetings are not being held between fire inspectors and the school boards as required by law.

New York's Education Law and the Commissioner of Education's Regulations require that all buildings which are owned, operated or leased by a public school district or BOCES must be inspected for fire safety at least once annually. Any violation of the State Uniform Fire Prevention and Building Code or the Commissioner's Regulations (otherwise known as a "nonconformance") has to be corrected immediately, if practicable. If not, it must be corrected within a period of time approved by the Commissioner. If the fire inspector finds a nonconformance, Education Law Section 807-a(5)(e) requires that the inspector meet with the Board of the district or BOCES to address the nonconformances and a plan for remediation. This meeting must be held even if minor nonconformances were corrected immediately.

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