
BOND INFORMATION MEMO

School Districts

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New York Supreme Court Holds That Public School District May Be Liable For Alleged Bullying Of Private School Student

On May 14, 2014, in *J.G.S. v. Bellmore-Merrick Central High School District*, the New York State Supreme Court in Nassau County held that the parents of a minor student could proceed with their lawsuit against the school district alleging that their daughter, an eighth-grade student who attends a private school, was bullied by two of the District's middle school students. This case, which the court noted was a "case of first impression," is significant for two reasons. First, it is the first time a court has suggested that the Dignity for All Students Act (DASA) provides for a private right of action against school districts. Second, the decision addresses the scope of a school district's obligations under DASA to respond to harassment of students who do not attend public schools.

According to the complaint, two District students circulated a video depicting a young female engaged in a lewd act and falsely represented to other students that the female in the video was the minor plaintiff. The minor plaintiff had previously attended school in the District where, according to the complaint, she claimed to be the victim of bullying to the point where her life was threatened by another District student. As a result, she transferred to a different school within the District. At the time of the circulation of the lewd video, the minor plaintiff attended a nearby private school. The plaintiffs allege that the District was aware of the circulation of the lewd video six months before the parents first learned about it. They also allege that, even after they requested that the District take action to prevent future bullying, the two District students continued to spread rumors in school that the minor plaintiff was the individual in the lewd video and a third District student posted comments on YouTube about the minor plaintiff and the lewd video.

The school district sought dismissal of the case based on its argument that it did not owe a duty to the minor plaintiff under DASA because she was a private school student when the alleged bullying took place.



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Under DASA, which went into effect on July 1, 2012, school districts have an obligation to protect students from discrimination, harassment and bullying that occurs on school property or at school functions, based on, but not limited to, a student's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, or sex. The law also covers harassment and bullying which occurs off school property if such conduct creates or would foreseeably create a risk of substantial disruption within the school environment. DASA's obligations do not apply to private schools. The express language of the statute provides that its purpose "is to foster civility in public schools and to prevent and prohibit conduct which is inconsistent with a school's educational mission" and that "no student shall be subject to harassment or bullying."

In interpreting this language of DASA, the court held that the statute does not limit the regulation of students' harassment and bullying to only public school students. Rather, the court held that DASA applies even when the alleged harassment or bullying is targeted towards a private school student. Thus, the court ruled that, in this case, the school district had a duty to supervise its students despite the fact that the conduct at issue occurred off school grounds and was not directed towards another district student. The court opined that a contrary interpretation would "have the effect of an absurd result as the District would, in effect, turn a blind eye to any such incidents occurring on or off school property, regardless of any potential serial harmful acts allegedly conducted or perpetrated by its students."

The District also argued that it had met its obligations under DASA after the plaintiff's parents complained, by disciplining the students who circulated the video and holding an assembly on cyber-bullying. However, the court refused to dismiss the lawsuit without allowing the plaintiffs an opportunity to conduct discovery. Thus, the court did not decide whether the District's response to the parents' complaint was sufficient to avoid liability.

Notably, while DASA does not explicitly provide any right to commence a private cause of action to enforce its provisions, the court did not directly address this issue and implicitly held that the plaintiffs had the right to bring this lawsuit. While the court's ruling in the *Bellmore-Merrick* case is not binding on school districts in other parts of the state (i.e., outside of Nassau County), it provides school districts with a valuable reminder of the potential liability they may face in connection with incidents of harassment or bullying. In addition, school districts that learn of alleged bullying of non-public school students by students within their district should investigate those allegations and take appropriate action.

If you have any questions regarding your school district's obligations under DASA, please contact [Christa Cook](mailto:cookc@bsk.com) at (315) 218-8321 or cookc@bsk.com.