

Doe v. Board of Education of Prince George’s County 2015 WL 1529852 (4th Cir. 2015 – Maryland)

April 7, 2015

Background

In 2000, the Board of Education of Prince George’s County, Maryland, had drafted and implemented administrative procedures for student and employee complaints of discrimination, harassment, bias or extremism. However, beginning in 2008 and continuing through 2009, a student became the subject of increased bullying and teasing by other students eventually leading to sexual harassment and culminating in several instances of sexual assault. During the course of these events, school personnel took increasingly significant steps to prevent the bullying and harassment including ensuring the student was seated away from the tormentors, the student was chaperoned by other students, suspending the main culprit and ensuring the plaintiff was never alone with the main culprit. Ultimately, however, the parents removed the plaintiff from school and enrolled him in private school.

The student’s parents then filed a three-count complaint against the school board alleging the board had discriminated against the student under Title IX and negligently failed to follow its own internal procedures. The trial court determined that the board did not violate Title IX as a matter of law and properly handle the escalating bullying and harassment. As a consequence, the court entered judgment in favor of the school board. The parents appealed the ruling to the federal court of appeals.

Holding

Under Title IX of the Civil Rights Act, “no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.” To establish liability under this provision, a claimant must prove four elements: 1) a student was enrolled in an educational institution receiving federal funds; 2) the student was subject to harassment based on sex; 3) the harassment created a hostile environment in the educational program; and 4) there is a basis for imputing the harasser’s liability to the institution.

The appellate court agreed that the student sufficiently established the first three elements: the student, at a public school (“an educational institution receiving federal funds”) was harassed based on sex that created a hostile environment in the school. The central question, therefore, came down to whether the school board had any liability for not preventing the instances of

sexual harassment. To establish this final element (imputing the liability to the school), the student was required to establish that 1) the school board had actual knowledge of the sexual harassment and 2) the school board was deliberately indifferent to that harassment. However, a school does not have a constitutional duty to protect students from peer harassment or otherwise remedy the harassment. Instead, a school will be held liable if its response to the known harassment is “clearly unreasonable.” The appellate court defined “clearly unreasonable” conduct as responses that were not calculated to be effective or the responses were in fact not effective based on repeated instances of harassment.

Applying these rules to the actions taken by the school board, the appellate court concluded that the school board’s response was not “clearly unreasonable.” At the beginning of the alleged harassment, the school took steps to manage the harassment, such as separating the student from his harasser in the classroom. As the harassment continued, the school’s response contemporaneously intensified by requiring the student to be escorted and suspending the harasser for five days. The appellate court found that the school’s conduct demonstrated that the school took the clearly reasonable approach of gradually escalating its response as soon as new allegations of harassment arose and did not exhibit “deliberate indifference” to the student’s claims.

The plaintiffs also alleged that the school negligently failed to follow its own sexual harassment policies. However, the school was able to demonstrate that it properly followed the procedures because of its documentation. The school was able to produce documented witness statements, written statements from the plaintiff and interviewers notes and question accordance with the policy. Consequently, the appellate court found the school properly managed the student’s claims within the term of the procedures it drafted in 2000.

Learning Point:

This case demonstrates that schools must properly address and document students’ claims of bullying and harassment. In this case, the appellate court easily found school’s management of the student’s claims was proper and reasonable because the school clearly documented the incidents. SLRMA’s *Bullying and Harassment: Identification, Investigation and Remediation Self-Audit Checklist and Best Practices for School Districts* will enable your school to either draft an appropriate policy and procedures or strengthen existing protocols to avoid similar Title IX and negligence claims.

Schools are also reminded that most states have their own bullying statutes that impose requirements on how school should respond and prevent bullying. Thus, in addition to utilizing SLRMA’s checklist, schools should review their own state’s laws regarding bullying.