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Commentary

A Model for Clamping Down On Harassment in Schools

N.J.'s Supreme Court sends a message to education officials about student-on-student harassment.

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Teasing and bullying have been tolerated as an unfortunate part of school children's lives for many years. But times appear to be changing.

We remember being teased as children — especially those of us who were bookworms and wore big, thick glasses to boot. But having feelings hurt because someone called us “four eyes” (or worse) on a few isolated occasions does not rise to the level of what some children are facing in New Jersey schools. There are serious consequences to bullying and harassment, including anxiety and depression, loss of self-esteem, increased school avoidance,

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poor general health and decreased academic performance.

L.W. v. Toms River Regional Schools Board of Education, A-111-05, presented such a case. In *L.W.*, a fourth-grader had been teased by years by other students with homosexual epithets and subjected to harassment that escalated to physical aggression and molestation. His mother sued under New Jersey's Law Against Discrimination on his behalf.

In a well-reasoned opinion, the Supreme Court ruled on Feb. 21 that the LAD permits a cause of action against a school district for student-on-student harassment based on the student's perceived sexual orientation if the school district's failure to reasonably address the harassment has the effect of denying that student any of the school's “accommodations, advantages, facilities or privileges.”

What does this mean for school districts and children? It means a better chance at an environment free from severe and pervasive harassment. It also means that New Jersey children will be further protected from harassment based on gender, gender orientation or disability. The Supreme Court has provided a clear statement to schools that they must take an active role to curb this type of harassment.

What type of actions should school

districts take? They should take steps to prevent all types of bullying and harassment in the first place — by teaching children why it is wrong. They should help teachers and other educators how to appropriately and effectively intervene when it is reported. They should provide protection and support for targets of harassment. These measures will reinforce the principle that student-on-student harassment is unacceptable. And when it does occur, they should take prompt and effective remedial action.

The Supreme Court's decision shows the severity of the implications if specific types of harassment are ignored, and in this sense, New Jersey should serve as a model for other states. The consequences include being found liable under New Jersey's LAD for student-on-student sexual orientation harassment that creates a hostile educational environment when the school district *knew or should have known* of the harassment, but failed to take action reasonably calculated to end the harassment. This standard imposes a greater duty than many federal laws prohibiting harassment. For example, Title IX, which prohibits harassment based on gender, requires “actual notice” of the offending activity for imposition of liability.

What type of response by a school district is reasonable? The Court has made it clear that that is a question for the jury, and this is dependent on the facts of each case. In assessing the reasonableness of a school district's response to a hostile educational envi-

ronment, one must consider "the totality of circumstances." This includes, but is not limited to, the "students' ages, developmental and maturity levels; school culture and atmosphere; rareness or frequency of the conduct; duration of harassment; extent and severity of the conduct; whether violence was involved; history of harassment within the school district, the school, and number of individual participants; effectiveness of the school district's response; whether the

school district considered alternative responses; and swiftness of the school district's reaction."

School district officials must consult Department of Education regulations, model policies and other guidance the agency provides. The Supreme Court admitted that expert opinion might even be necessary to assist a jury to assess the reasonableness of a school district's response, including educa-

tional theories and principles, standards, policies and procedures employed by similarly situated educators.

When a parent drops off a child at school or places her on a school bus, the child should be free from serious and pervasive harassment. The Supreme Court, interpreting the LAD, has made that even more clear. We see this as a positive step toward protecting our children. ■