

Headlines from Outside Oregon

"Lawsuit claims coaches at Illinois high school ignored hazing on football team"

- Student's lawyer claims hazing goes back at least 20 years and remained hidden because of "Lord of Flies-type tactics" that kept participants and victims quiet.
- The lawsuit seeks anti-hazing training for district coaches, teachers and staff; educational assemblies for students; and the establishment of a database to track hazing and bullying complaints. It also seeks monetary damages.



Headlines from Outside Oregon

"Suit accusing Tennessee district of ignoring sexual assault on boys' basketball team includes allegations of a history of violent hazing dating back to the 1970s"

- According to the lawsuit, the coach told players after the assault, "[w]e're a family and what goes on in the family stays in the family."
- An investigation revealed the basketball team also had a history of violent hazing that subjected younger players to locker room beatings anywhere from one to three times a week.



Definitions



Bullying Defined

“Bullying is characterized by aggression used within a relationship where the aggressor(s) has more real or perceived power than the target, and the aggression is repeated, or has the potential to be repeated, over time.”

– OCR Dear Colleague Letter (August 20, 2013)



Bullying is Called Different Names

- Harassment
- Hazing
- Teasing
- “Just joking”
- Intimidation



Bullying Includes:

- Overt physical behavior.
- Verbal, emotional or social behavior:
 - Excluding someone from social activities.
 - Making threats.
 - Withdrawing attention.
 - Destroying someone's reputation.
- Blatant aggression.
- Subtle and covert behaviors.
- Bullying through electronic technology (“Cyberbullying”)

Imbalance of Power

- Not entirely an objective standard.
- Physical strength
- Physical appearance
- Social perceptions
- Access to embarrassing information
- Popularity



Legal Requirements



Review of Laws re: Bullying

State Law

- ORS 339.351 Harassment, Intimidation, Bullying.
 - Defines terms.
 - Expansive list of acts that constitute bullying.
 - Requires District policy.
 - Requires a school employee to report.
 - Procedure for investigation.
 - Consequences for bully.

Federal Law

- Disability Discrimination
 - Section 504
 - ADA Title II
- Title VI (Civil Rights Act)
 - Race
 - Color
 - National Origin
- Title IX
 - Sexual Harassment
 - Gender-based Harassment.

ORS 339.351:
Includes more than protected classes

Protected class:

- Distinguished or perceived by—
 - Race
 - Color
 - Religion
 - Sex
 - Sexual orientation
 - National origin
 - Marital status
 - Familial status
 - Source of income
 - Disability

Anyone else:

- "May be based on, but not limited to, the protected class status of a person."

Definitions of Bullying and Harassment

- **Harassment, intimidation or bullying** means any act that substantially interferes with a student's educational benefits, opportunities or performance.
- Cyberbullying is the use of any electronic device to harass, intimidate or bully.



Definitions of Bullying and Harassment

- That has the **effect** of:
- (1) physically harming student or damaging student's property,
 - (2) placing student in reasonable fear of the above, or
 - (3) creating a hostile educational environment.



Location

- “Takes place on or immediately adjacent to school grounds, at any school-sponsored activity, on school-provided transportation or at any official school bus stop.”



School Policy Requirements

- Prohibition of activities including harassment, intimidation, bullying, or cyberbullying
- Allow anonymous reports
- Uniform reporting procedure including **job titles** of school and district officials
- Procedure to request review by the school district of a school's report of response of an action
- Staff reporting requirement
- Annual notice of policy in handbook and “readily” available (website)

“Deliberate Indifference” Standard

School district may violate federal civil rights statutes when peer harassment based upon race, color, national origin, sex or disability is sufficiently serious that it creates a hostile environment and such harassment is encouraged, tolerated, not adequately addressed, or ignored by school employees.



Legal Obligation

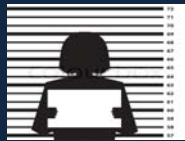
If an investigation reveals discriminatory harassment has occurred, a school must:

- Take prompt and effective steps calculated to end the harassment;
- Eliminate any hostile environment and its effects; and
- Prevent the harassment from recurring.



Criminal Laws Implicated

- **Hazing**
 - ORS 163.197
- **Harassment**
 - ORS 166.065
- **Assault**
 - ORS 163.160-163.185
- **Sex Offenses**
 - ORS 163.605-163.479



Horseplay

- Horseplay including physical contact is always risky.
 - Be aware of physical contact not only between coach and student, but student-on-student
 - It is almost impossible to observe if physical contact is truly welcome



Reporting Obligation

- District must provide employees and volunteers with its policies on harassment, child abuse and sexual conduct.
- Reporting in good faith is a protected activity.



Reporting Obligation

When to Make a Report?

- All District employees and volunteers **MUST** report any abuse or suspected sexual misconduct to proper authorities.
 - Remember: standard is “reasonable cause to believe...”, NOT absolute certainty.
 - Report even if no known sexual contact has occurred. Rumors count.
- Note Keywords: “inappropriate”, “boundary issues” “uncomfortable”, etc.



In the News

“Nobody acted because it was uncomfortable...
Not one player.
Not one coach.
Not one parent.”



Reporting Obligation

Who to Report to?

- First Report to Law Enforcement
 - Do not 'tip off' the perpetrator before police arrive
- Second Report to Superintendent
 - Do not begin an internal investigation until police give the 'green light'
 - Protect the confidentiality of the victim(s)



Checklist for Handling of Report

1. Take allegation seriously.
2. Immediate contact of law enforcement if physical harm/potential abuse.
3. Alert PACE pre-loss and/or District's attorney.
4. Review District harassment policy.



Checklist for Handling of Report

5. Determine coach's awareness of incident; implement discipline as appropriate.
6. Review supervision/line of sight procedures; consider revision.
7. Communication with students and parents: letter home, assembly, listening sessions ,etc.



Prevention



From the Top Down

Coaches set the stage:


- Clear expectations for atmosphere of respect, support and team unity.
- Will not tolerate bullying.
- Vigilance and consistency from all coaches.



Training Coaches

Centralize training for all coaching staff and keep detailed records

- Regular, periodic SafeSchools training
- OSAA training and certification
- Anger management training
- Other specific applicable training
- Document completed training in employee file



Training Coaches

What if a coach is hired mid-season?

- Ensure completion and documentation of all required training prior to student supervision
- OSAA training needs to be completed as soon as possible after a new coach is hired



Training Volunteer Coaches

- Imperative to treat volunteers as school employees for purposes of training and reporting.
 - Assistant or volunteer coaches and parent volunteers that are not also district employees need the same level of training as District staff
 - Access to OSAA training and Certification
 - Access to SafeSchools training, or equivalent
 - Document completion of training in volunteer file



Training: Volunteer Coaches

Former students who step into coaching positions require more, not less, training.

- Familiarity with team culture does not eliminate need for training.
- Additional training is usually essential to help transition successfully from "participant" to "supervisor" role.
- Best practice - wait 5 years from graduation before returning to coach.



Training: Volunteer Coaches

Ultimately, the AD (and the District) is responsible for the training, supervision, and conduct of assistants and volunteers hired and supervised by the coach.



Transportation

In the news:

Coaches suspended for student athlete conduct on school bus returning from sporting event.



Overnight Travel

- Prepare a 'room layout map' of lodging which notes which chaperones are responsible for which students.
- Ensure chaperones are interspersed equally with the students to ensure their ability to provide appropriate and thorough supervision.



Overnight Travel

- Student-on-student abuse is a risk at overnight events, and requires chaperones to be watchful to prevent horseplay and unsupervised situations.
- Chaperones and coaching staff must abstain from alcohol for the duration of the trip.



What Works?

1. Develop a school based program for prevention and intervention.
2. Most effective programs are comprehensive and continuous, not situational.
3. Assess students and staff for extent of concern and attitudes.
4. Representative team, coordinated efforts, include outside professionals.
5. Staff development and training for response and program development.



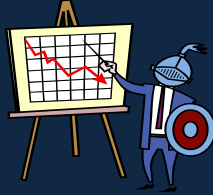
What Works?

6. Review policies, disciplinary code and develop consistent rules.
7. Intervene consistently and appropriately.
8. Classroom activities and discussion, incorporate themes in curriculum.
9. Increase adult supervision in "hot spots".
10. Involvement of parents in prevention and intervention activities.
11. Use/encourage staff to increase knowledge and motivation to end bullying.



Additional Elements to Address Bullying:

- Most important to decrease both bullying perpetration and victimization:
 - Parent training and meetings.
 - School assemblies.
 - Discipline that provides consequences to bullies.
 - Promoting cooperation among different professionals in working with bullies and victims.



Less Effective Strategies

- Zero tolerance policies.
- Conflict resolution/peer mediation.
- Group treatment of bullies.
- Simple, short-term solutions.
- Meetings between bully and victim.



Questions?

Rebekah R. Jacobson
Garrett Hemann Robertson PC
rjacobson@ghrlawyers.com
(503) 581-1501