

Two Deaths Too Many: Massachusetts Now Must Face the Legal Consequences of School Bullying

Where do we go from here?

The Commonwealth of Massachusetts known for its progressive public school systems is now facing the well-publicized deaths of two students as a consequence of systematic public school bullying. Both Carl Joseph Walker-Hoover an 11 year old African-American student at the New Leadership Charter School in Springfield, Massachusetts and Phoebe Prince age 15 an Irish immigrant at South Hadley High School in South Hadley, Massachusetts committed suicide as a result of the relentless bullying by fellow school students. Although these two children shared very different cultural and racial backgrounds, their respective cases maintain an unfortunate common thread; namely, the fact both of their deaths can be attributed, in whole or in part, to two different school administrations that chose to look the other way while these two children were repeatedly and systematically bullied both on and off school property despite having enough evidence to take swift and pervasive action in each case. In the case of Hoover, his fellow students punished him for believing he was gay. He was an athlete and a solid student. His mother found him hanging by an extension cord just minutes before she was going to a meeting to confront school authorities regarding his continued harassment and torture. In the Prince matter, there was far more at work than the usual cyber attacks through social networking sites. Prince was repeatedly taunted and sexually harassed in the presence of school staff and administration.

It took the deaths of both Hoover in April of 2009 and Prince in January of 2010 for the Massachusetts legislature, in March of 2010, to restart anti-bullying legislative action. The current Massachusetts Senate bill No. 2313 "An Act relative to bullying in schools," creates no criminal offense or civil liability and grants schools complete immunity for all that they do and fail to do in response to bullying. The Senate bill as well as the House version work to encourage schools to do nothing while one section obligates officials to investigate and then inform parents and outside agencies if they determine that bullying has occurred. Where bullying can only be established by showing "severe or pervasive" conduct, the proposed legislation allows local school administrators to sweep the matter under the carpet if they conclude the behavior was not severe or pervasive enough. The proposed legislation also does not allow those decisions to be challenged. There are no requirements either for teacher or administrative personnel training. The proposed legislation goes only in the direction of legislating prevention and intervention programs. On the other side of legislature, the current Massachusetts House version Bill No. 483 creates no new civil or criminal penalties. Like the Senate version, this bill only provides for a mechanism to create and enforce anti-bullying policies. The proposed legislation from both the Senate and the House fails to specifically mention certain enumerated categories, such as gay students, who are well known to become targets of sexual orientation. It is gay students who are statistically bullied well more than most and who are five times more likely to attempt suicide according to local research groups

In the last few weeks and concurrent with the present legislative debate the District Attorney for the Northwestern County District Attorney's Office, Elizabeth Scheibel, took the bold and unusual step by announcing that nine separate felony indictments have been issued against nine teenagers who attend South Hadley High School, all of whom were involved with the brutal bullying campaign against Prince. The indictments range from stalking to statutory rape. With no present statute specifically criminalizing bullying, the Northwestern District Attorney must rely on a series of laws rarely used in these cases-including those against stalking, civil rights violations, statutory rape and criminal harassment. In the case of Prince, the record as established by the Northwestern District Attorney thus far evidences a pattern of social and physical abuse and torture at school in the presence of both school teachers and administrators. Prince's parents repeatedly pleaded with school officials to intervene.

Children who are the target of pervasive bullying based on factors such as race, sexual orientation and gender are able to assert federal claims- both at the Department of Education's Office on Civil Rights or to consider litigation in federal court whenever a school fails to take "prompt and effective" steps to stop the behavior. On the federal level, schools have **no** immunity from federal claims. This means that local school officials cannot afford to turn a blind eye without facing a huge and expensive lawsuit.