

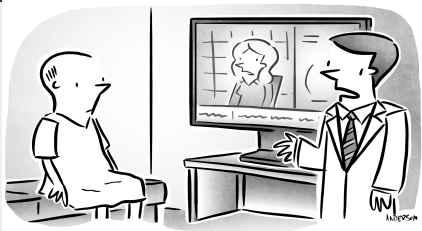


Nebraska School Psychologists Association:
**Mental Health and
Special Education Update**

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**School Violence, Bullying,
and Mental Illness**



"This is a new stress test; we just put on the news."

2018 Tragedies

- Marjory Stoneman Douglas High School, Parkland, Fla.
 - 17 dead, 17 wounded
 - Student accused of the shooting verified as a student entitled to receive special education services
 - 103 notices of pending legal claims against the school district

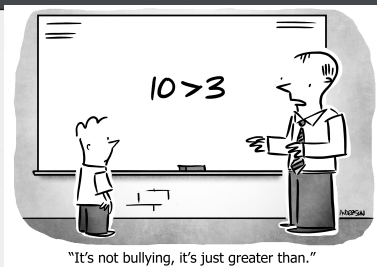
2018 Tragedies

- Santa Fe High School
 - 10 dead
 - Student accused of the shooting fascinated with Columbine, dressed like shooters, posted pictures on social media wearing T-shirt bearing "BORN TO KILL"
 - 6 lawsuits filed to date

Federal Commission on School Safety

- Report Issued on December 18, 2018
 - Reviews history of school violence in U.S. since 1979
 - Emphasized need for identification and treatment of mental health issues under the IDEA
 - Emphasized connection between bullying/cyberbullying and school violence
- <https://www.specialconnection.com/LrpSecStoryTool/servlet/GetStory?docid=22721360>.

Bullying, Harassment, and Related Risks



Bullying at a "tipping point"

- All 50 states have anti-bullying laws
- Heavy emphasis by OCR and USDOE
- Increase in bullying/harassment litigation nationwide:
 - Holben, Diane M. and Zirkel, Perry A. (2014)
"School Bullying Litigation: An Empirical Analysis of the Case Law," Akron Law Review: Vol. 47: Iss. 2, Article 1

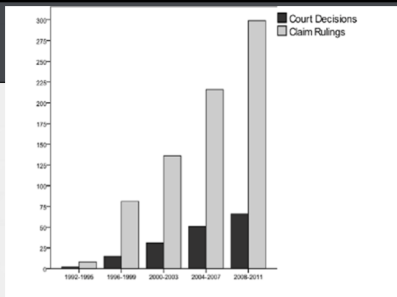
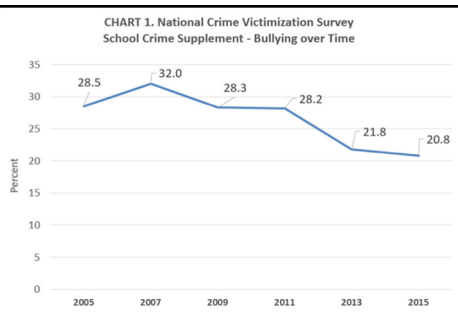


Figure 1. Longitudinal Trend in Frequency of Court Decisions and Claim Rulings



Justin W. Patchin and Sameer Hinduja
www.cyberbullying.org

Bullying Defined

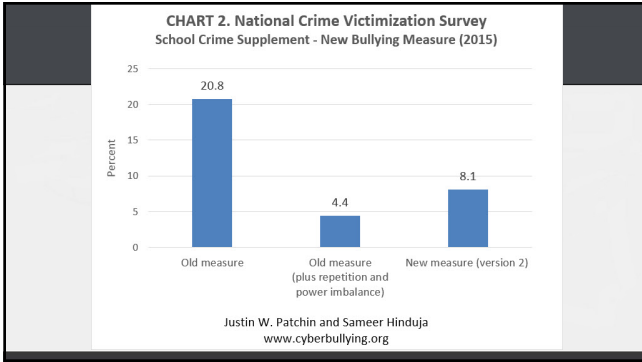
- CDC's uniform definition (as of 2015):
 - "Bullying is any unwanted aggressive behavior(s) by another youth or group of youths who are not siblings or current dating partners that involves an observed or perceived power imbalance and is repeated multiple times or highly likely to be repeated"

Bullying Defined

- CDC's new uniform definition (as of 2015):
 - "Bullying is any **unwanted aggressive** behavior(s) by another youth or group of youths who are not siblings or current dating partners that involves an **observed or perceived power imbalance** and is **repeated multiple times or highly likely to be repeated**"
 - "Behaviors could be verbal, physical or relational"

Objective or Subjective?

- Unwanted = subjective
- Aggressive = objective
- Unequal Power = subjective
- Repeated = objective
- Highly likely = subjective

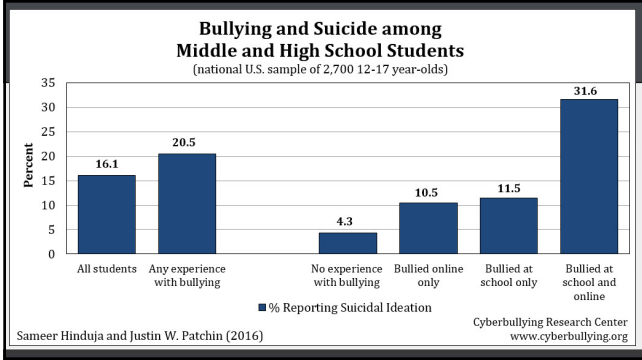


Harassment Defined

- Behavior which is
 - Severe, pervasive, or persistent
 - Creates a hostile environment at school
 - Is sufficiently serious that it interferes with or limits a student's ability to participate in or benefit from the services, activities, or opportunities offered by a school
 - Based on a student's race, color, national origin, sex, disability, or religion

Suicide Risk is Declining but Still of Significant Concern


- Youth suicide rates have steadily declined in the U.S. over the past two decades
- Suicide remains the leading cause of death for high school youth (ages 15-19)
- Suicide is the fourth leading cause of death for middle school students (ages 10-14)
- Although there is very little evidence of causation, there is strong correlation between being victimized and suicide risk





Scenario #1

- Cindy is a third grade student who has grade-level reading and math skills. However, Cindy becomes easily frustrated when her peers don't play the games she wants them to, and she escalates into violent tantrums.
 - Do you convene SAT?
 - Do you seek consent to evaluate?



hulu

Child Find



"We the jury find the defendant, Waldo, right over there next to his lawyer."

Under IDEA Part C

- Part C of the IDEA provides for early intervention services for children from birth up to the age of 3
 - Child find under Part C seeks to identify the children at risk for or exhibiting atypical physical, cognitive, communicative, adaptive, social, or emotional development
- Research indicates there remain issues with under-identification

Under IDEA Part B

- Part B of the IDEA places an affirmative, ongoing obligation on **states** and **covered local educational agencies** to identify, locate, and evaluate all children "who are in need of special education services"
 - 20 USC §1412(a)(3); 34 CFR §§ 300.8, 300.111, 300.131, and 300.300 to 300.311

Child Find Obligation

- Child find obligations triggered when a district has reason to suspect that a student is a “child with a disability” who needs special education and related services
- This obligation applies:
 - Regardless of the severity of the disability
 - Even if the student is advancing in grade level

**Independent Sch. Dist. No. 283.,
74 IDELR 19 (D. Minn. 2019)**

- Student starts missing school in 8th grade
 - Missed 18 days first semester, March stops attending
 - Hospitalized; diagnosed with anxiety disorder & depression NOS
 - SITT does not refer because grades excellent
- 9th grade – attendance irregular
 - readmitted to hospital two different times
 - School disenrolls and allegedly failed to inform that student could continue honors courses with special education services

**Independent Sch. Dist. No. 283.,
74 IDELR 19 (D. Minn. 2019)**

- 10th grade
 - School creates 504 plan (without eval)
 - Disenrolled each semester because missed >15 days
- 11th grade – family requests eval in June
 - Student verifies, placed in alternative program
 - Attends two days and never returns
- Family files DP alleging child find violation

**Independent Sch. Dist. No. 283.,
74 IDELR 19 (D. Minn. 2019)**

- ALJ finds for family; school appeals
- Court:
 - "Although Student's absenteeism was the primary barrier to conducting systematic observations, it has also been one of the most visible symptoms of the Student's disability."
 - "No one disputes that the Student excelled on standardized tests; neither can anyone dispute that her absenteeism inhibited her progress in the general curriculum."

**St. Louis City Sch. Dist.
118 LRP 4657 (SEA MO 01/18/18)**

- Kindergarten student began living with grandmother, who requested IDEA evaluation from his school
- School held an informal meeting and determined it did not have enough information about the student because he was still transitioning into the district
 - Never reconvened to address the student or refer him for special education services

**St. Louis City Sch. Dist.
118 LRP 4657 (SEA MO 01/18/18)**

- During his enrollment in the district, the student exhibited extremely troubling behavior. On a regular basis, the student used profanity and hit classmates with fists, rocks, and belts
 - In one day, student threatened a classmate with a rock, threw a toy at a student, tried to run away from school, and masturbated in class
 - These behaviors were common for the student

St. Louis City Sch. Dist.
118 LRP 4657 (SEA MO 01/18/18)

- IDEA evaluation requested in September 2014
 - School did not convene the initial IDEA eligibility conference until April 2015
- School claimed that student's academic performance kept him from a finding of intellectual disability, and that the team lacked sufficient information to find ED
 - Noted the student's diagnosis of ADHD, but did not assess the student for OHI

St. Louis City Sch. Dist.
118 LRP 4657 (SEA MO 01/18/18)

- Behavior continued into first grade
 - Several disciplinary suspensions
 - Unprovoked, the student walked up to another student and punched her several times in the face and head
 - On several instances, the student threw chairs and other heavy objects at classmates and staff
 - Elopement was persistent
 - One morning the student stole his teacher's lunch, ran away from the classroom, and ate it

St. Louis City Sch. Dist.
118 LRP 4657 (SEA MO 01/18/18)

- Despite these issues, the district still did not find the student eligible for special education services
- Grandmother filed complaint, alleging the student was eligible for, yet denied, special education services
- IHO: district failed to meet its child find obligations and in doing so denied FAPE
 - Even if the student couldn't be verified under SLD or ED, he should have been verified under OHI after ADHD diagnosis

M.P. v. West Hartford Bd. of Educ.
71 IDELR 207 (2d Cir. 08/17/18)

- Student first hospitalized in December 2011
 - Began experiencing suicidal and homicidal ideations
 - After the student graduated, he was diagnosed with Asperger syndrome and a psychotic disorder
- Parents notified the school of student’s hospitalization
- School convened Student Assistance Team (SAT) meeting

M.P. v. West Hartford Bd. of Educ.
71 IDELR 207 (2d Cir. 08/17/18)

- Dec. 2011 SAT: Student is humorous and well-liked, with high ability but inconsistent effort
 - Agreed to accommodate student’s condition and hospitalization, including excusing absences and allowing him to reduce course load
 - Asked for additional information regarding whether student should be diagnosed with ADD
- Jan. 2012: Student diagnosed with ADHD

M.P. v. West Hartford Bd. of Educ.
71 IDELR 207 (2d Cir. 08/17/18)

- Shortly after ADHD diagnosis, district found Student eligible for Section 504 services, but not IDEA
 - Implemented 504 plan with several accommodations
- March 2012: Student experienced an increase in anxiety culminating in refusal to attend school
 - School again evaluates student for IDEA services, but finds him ineligible for ED because difficulties were not experienced over “a long period of time”

M.P. v. West Hartford Bd. of Educ.
71 IDELR 207 (2d Cir. 08/17/18)

- Because student found ineligible for IDEA services, school amends his Section 504 plan to include homebound tutoring
- June 2012: After further troubling behavior, student again evaluated by district and this time is found eligible for IDEA services under ED
 - Began providing IDEA supports that improved student's performance and attendance

M.P. v. West Hartford Bd. of Educ.
71 IDELR 207 (2d Cir. 08/17/18)

- At the end of the student's senior year, dispute arose over the transitional services to be provided
 - Parents brought claims against the district seeking two years of compensatory education on the grounds that it failed to meet child find obligation when it did not find the student eligible for services in January 2012
- Hearing Officer, District Court, and 2d Circuit all found district upheld its obligations

M.P. v. West Hartford Bd. of Educ.
71 IDELR 207 (2d Cir. 08/17/18)

- 2d Cir.: District's actions were both reasonable and accommodating. The student was provided FAPE under both IDEA and Section 504
 - IDEA defines emotional disturbance as requiring a student exhibit characteristics "over a long period of time"
 - Agreed district had basis to deny services until it could further monitor the student's behavior

***Krawietz v. Galveston Indep. Sch. Dist.,
72 IDELR 205 (5th Cir. 08/17/18)***

- 2004: Student deemed eligible for "learning and behavioral problems"
- 2008: Withdrew and began home-schooling due to attempted assault on another student
- 2013: Returned to school as ninth-grader
 - Reminded district of prior IEP upon reenrollment
 - "[A]ssumed ... she had been dismissed" from special education services

***Krawietz v. Galveston Indep. Sch. Dist.,
72 IDELR 205 (5th Cir. 08/17/18)***

- September 2013: District suspended student and placed her in an alternative school for two months
 - She engaged in sexual activity with two students in bathroom
- November 2013: Referred for Section 504
 - Failing most of her classes
 - 504 committee determined she had PTSD, ADHD, and OCD

***Krawietz v. Galveston Indep. Sch. Dist.,
72 IDELR 205 (5th Cir. 08/17/18)***

- She finished 2013-14 school year with accommodations
- Struggled first semester of 2014-15 school year
 - Poor PSAT scores; failed half of her credits
 - Stole \$1,500 from her mother
- Feb. 9, 2015: Family asked for IDEA due process hearing
- Feb. 16, 2015: Resolution session where school offered to evaluate

**Krawietz v. Galveston Indep. Sch. Dist.,
72 IDELR 205 (5th Cir. 08/17/18)**

- April 2015: deemed eligible for special education
- April 29-May 1: Due process hearing
- Hearing officer, District Court, 5th Circuit:
 - District failed child find obligations for six months starting fall semester 2014; must develop IEP
 - Hospitalization, declining grades, and theft were "notice"
 - \$70,000 in attorney's fees

Scenario #1

- Cindy is a third grade student who has grade-level reading and math skills. However, Cindy becomes easily frustrated when her peers don't play the games she wants them to, and she escalates into violent tantrums.
 - Do you convene SAT?
 - Do you seek consent to evaluate?



Parent Request for Evaluation

- Appropriate responses to request to evaluate:
 - "Here's consent form for you to sign and return."
– (Works for IDEA and Section 504)
 - "Here's a document (PWN) explaining why we are not going to evaluate and a copy of your procedural rights."
 - ~~"Eh, let's see how it goes."~~
 - ~~"Are you sure?! We spent so much time and money training on our RTI process!"~~

Scenario #2



Marcia is a high school student who is not qualified for special education or section 504. After an unfortunate accident at home, she comes to school with a swollen nose. Marcia's boyfriend Doug Simpson dumps her and then shares a bunch of nudes that Marcia had sent him on SnapChat. Marcia is then bullied by peers, who call her a "s**t" and say she is fat.

- What is the school's obligation to respond to the complaints of Marcia and her parents?

Phillips v. Robertson County Bd. of Educ., 59 IDELR 227 (Tenn. Ct. App. 2012)

- Student diagnosed with autism; parent constantly reporting bullying incidents to school and requesting that the issue be addressed
 - Did not find eligible for IDEA services, so it set up accommodations for social settings including a system to notify a teacher if he was being bullied
 - Not implemented with fidelity, as many staff members not informed of student's diagnosis or supports

Phillips v. Robertson County Bd. of Educ., 59 IDELR 227 (Tenn. Ct. App. 2012)

- After teacher left the room, student struck in the eye by peer causing permanent damage
- Brought suit against district alleging negligence
- Court: Incident was reasonably foreseeable based upon the circumstances
 - District breached duty of care by failing to notify staff of student's diagnosis and by leaving him unsupervised
- Damages: \$300,000

Kendall v. West Haven Dep't of Educ.,
33 IDELR 270 (Conn. Sup. Ct. 2000)

- Special education student regularly the victim of bullying from a specific peer
 - Racial epithets
 - Spitting
 - Pushing
- Student and mother informed assistant principal of the harassment, considered removing student from school

Kendall v. West Haven Dep't of Educ.,
33 IDELR 270 (Conn. Sup. Ct. 2000)

- Assistant principal assured both that she would "take care of it"
 - Was called out of the building before taking any action
 - Did not inform any other school officials
- After AP left, student assaulted by bully
 - Lost two teeth
 - Jaw broken on both sides

Kendall v. West Haven Dep't of Educ.,
33 IDELR 270 (Conn. Sup. Ct. 2000)

- Filed suit asserting that AP was negligent
- Conn. Superior Court: Under state law, students owed certain duties of care
 - One of those duties is to protect students "from dangers that may reasonably be anticipated"
 - AP could reasonably anticipate this danger, but did nothing
- AP personally liable for \$67,000 damages

Scenario #2



Marcia is a high school student who is not qualified for special education or section 504. After an unfortunate accident at home, she comes to school with a swollen nose. Marcia's boyfriend Doug Simpson dumps her and then shares a bunch of nudes that Marcia had sent him on SnapChat. Marcia is then bullied by peers, who call her a "s**t" and say she is fat.

- What is the school's obligation to respond to the complaints of Marcia and her parents?

Scenario #3



Same facts as before EXCEPT Marcia is verified as a student with a disability due to her anxiety disorder and obsessive compulsive disorder.

- Does the verification before the bullying change the school's obligation to respond to the complaints of Marcia and her parents?

Differing Legal Standards

- Courts
 - Deliberate indifference (*different standard may apply to 504 claims)
 - Schools must respond to reasonably known harassment
- OCR: Schools should...
 - Prevent harassment from happening in the first place
 - Eliminate harassment it knows or should know about
 - Remediate the effects of harassment

Deliberate Indifference

- Under the deliberate indifference standard, courts will not hold a school liable unless its actions are clearly unreasonable
- Concept adapted from Supreme Court opinion in *Davis v. Monroe County Board of Education*, 103 LRP 20059, 526 U.S. 629 (1999)
 - Wherein the court held that being deliberately indifferent to known harassment constituted an affirmative action for which a district could be sued

***Bowe v. Eau Claire Area Sch. Dist.*,
71 IDELR 168 (W.D. Wis. 2018)**

- Student with Asperger syndrome victimized by a number of different students in a variety of incidents
 - Peers directed derogatory and demeaning insults toward the student, often in language that was clearly inappropriate
 - Student's house was also vandalized in acts of bullying
 - Bag of feces was left at the home
 - On another occasion the house was egged

***Bowe v. Eau Claire Area Sch. Dist.*,
71 IDELR 168 (W.D. Wis. 2018)**

- Over the course of the student's time at the district, the student and his parents complained of 30 discrete acts of bullying
- "Defendants investigated each complaint, which generally involved interviewing the students involved, and sometimes the investigation included referring the matter to police or speaking to the classroom teacher."

Bowe v. Eau Claire Area Sch. Dist.,
71 IDELR 168 (W.D. Wis. 2018)

- If the district determined that a student behaved inappropriately, it would call the student’s parents or implement corrective action
 - Corrective action ranged from counseling, to suspension, to referral for criminal charges
- Parents took issue with the adequacy of these responses, alleging that the failure to more severely punish bullies constituted deliberate indifference

Bowe v. Eau Claire Area Sch. Dist.,
71 IDELR 168 (W.D. Wis. 2018)

- Court: District “certainly favored counseling” rather than more punitive forms of punishment... But...
 - The counseling appeared effective in many instances
 - Bullying incidents alleged included a large number of schoolmates, rather than the repeated actions of a select few

Bowe v. Eau Claire Area Sch. Dist.,
71 IDELR 168 (W.D. Wis. 2018)

- Court: “Continued counseling of a handful of students after numerous instances of bullying might be clearly unreasonable, but the evidence does not indicate that’s what happened here.”
 - While the district should not be “particularly proud of its response to the problem,” the district did not act with deliberate indifference.

***Nevills v. Mart Indep. Sch. Dist.,
65 IDELR 164 (5th Cir. 2015, unpublished)***

- Student with tic disorder bullied by peers
 - Called names
 - Items stolen from student's locker
 - Fight in hallway
 - Lunch table chemicals sprayed in student's eye
- Student reported each incident

***Nevills v. Mart Indep. Sch. Dist.,
65 IDELR 164 (5th Cir. 2015, unpublished)***

- Principal
 - Conducted teacher training on bullying
 - Held student assembly with outside speaker
 - Punished offenders in some, but not all, incidents
- Parents sued, alleging school's response was inadequate

***Nevills v. Mart Indep. Sch. Dist.,
65 IDELR 164 (5th Cir. 2015, unpublished)***

- Court: School only liable for "deliberate indifference"
 - "School officials are not required to purge" their schools of all bullying in order to avoid liability
 - Principal documented her investigation of each reported incident, including punishments administered and justification for decisions reached
 - Took action to try to prevent future incidents of bullying

Estate of Barnwell v. Watson,
71 IDELR 122 (8th Cir. 2018)

- C.B., a student with Asperger syndrome, ADHD, depression, and anxiety, had a history of difficulty with positively interacting with others in school
 - Parents eventually chose to homeschool him
 - Behavioral issues continued, and C.B. reported “hearing voices” — though his doctors believed it to be an exaggeration for attention

Estate of Barnwell v. Watson,
71 IDELR 122 (8th Cir. 2018)

- Following two years of homeschooling C.B. desired to return to his resident district and was enrolled
 - Some isolated incidents between C.B. and his peers occurred, but no reported significant instances of conflict between C.B. and other students
- Unfortunately, however, the evening following a verbal altercation between C.B. and a classmate, C.B. committed suicide

Estate of Barnwell v. Watson,
71 IDELR 122 (8th Cir. 2018)

- Parents filed suit against the district alleging a violation of Section 504 arguing the district failed to adequately address or prevent bullying
- 8th Cir.: Such a claim under Section 504 requires parents to show the district acted in bad faith or with gross misjudgment by departing substantially from accepted professional judgment

**Estate of Barnwell v. Watson,
71 IDELR 122 (8th Cir. 2018)**

▪ 8th Cir.: "There is nothing in the record to establish that school officials knew of any specific instance of bullying before Chandler's death, aside from [one altercation] (for which both students arguably bore some responsibility). The District responded to that incident immediately, and there was no further trouble between those two students — which is hardly indicative of bad faith or gross misjudgment."

**Estate of Barnwell v. Watson,
71 IDELR 122 (8th Cir. 2018)**

▪ Parents: Court should be applying the "deliberate indifference" standard of other courts
▪ 8th Cir.: Did not determine whether the deliberate indifference standard should supplant that which was applied, because the issue was irrelevant as there was no evidence to support a showing under either standard

**OCR's Standard:
Dear Colleague Letter on "Harassment and Bullying"**

▪ Letter found at *Dear Colleague Letter*, 55 IDELR 174 (OCR 2010)
▪ Before a claim, schools must:
• Have a clear anti-discrimination policy
• Have a curriculum focused on character/respect
• Ensure a safe environment to report

OCR's Standard:
Dear Colleague Letter on "Harassment and Bullying"

- After a claim, schools must
 - Promptly investigate harassment claims
 - Follow up with students when harassment is suspected
 - Take steps beyond disciplining bullies
 - Provide victim with remedial measures

OCR's Standard:
Dear Colleague Letter on "Harassment and Bullying"

- OCR will find discrimination in violation of Section 504 based on harassment where:
 - Student is bullied based on a disability;
 - The bullying is sufficiently serious to create a hostile environment;
 - School officials know or should know about the bullying; and
 - The school does not respond appropriately.

Westfield (MA) Pub. Schs.,
53 IDELR 132 (OCR 2009)

- Student had non-verbal learning disability, received services in resource room
- Alleged harassment (by other special ed students)
 - Students said he smelled bad
 - Threatened with a knife (after telling racial joke)
 - Called "retard"
 - Tape put in the Student's hair
 - Fight over treatment of girlfriend

**Westfield (MA) Pub. Schs.,
53 IDELR 132 (OCR 2009)**

- Filed complaint with OCR
- School: None of these incidents were “because of disability”
- OCR: “On their face, these acts and comments appeared to be general harassment or bullying, not harassment based on the Student’s disability. ... OCR could not find that the District was on notice of any of the alleged disability harassment.”

**Westfield (MA) Pub. Schs.,
53 IDELR 132 (OCR 2009)**

- OCR: School received written report of “retard” taunt
 - This was sufficient to put the district on notice of potential disability-based harassment
 - Should have investigated
 - School required to train and adopt new policies

**Fairfield-Suisun (CA) Unified Sch. Dist.,
51 IDELR 139 (OCR 2008)**

- 14 y/o student suffered severe burns as a toddler
 - Portions of hair and face missing
 - Lost right hand
- Reported that a classmate was making derogatory comments about her physical disabilities
- School: Interviewed harasser, who said victim gave as good as she got. School told girls to stay away from each other.

**Fairfield-Suisun (CA) Unified Sch. Dist.,
51 IDELR 139 (OCR 2008)**

- OCR: School’s response inadequate
 - Did not investigate whether bullying was “because of disability”
 - “Students with disabilities will almost certainly have disputes with other students at some point. However, if a district has information that a student was harassed because of a disability, it must take prompt action to investigate the complaint.”

**Redding (CA) Sch. Dist.,
69 IDELR 16 (OCR 2016)**

- Student with 504 plan hospitalized due to depression
 - Instagram post of the student with the word “missing” on it and speculation on social media about where she was because she was not at school
 - Student posted image of herself lying in a hospital bed
 - Discussion on social media that student was cutting, contemplating self-harm, and using drugs
 - Comments by students after she returned

**Redding (CA) Sch. Dist.,
69 IDELR 16 (OCR 2016)**

- District heard about rumors on social media
- School response
 - Did not attempt to identify the students involved because it was off campus activity
 - Took generalized steps to improve culture
 - Reviewed the school’s behavioral expectations
 - Developed a Positive Action Committee
 - Held a school rally

**Redding (CA) Sch. Dist.,
69 IDELR 16 (OCR 2016)**

- OCR: Response inadequate
 - Culture changes did not prevent future harassment
 - District had a legal obligation to investigate incidents of harassment on social media and to “respond in a prompt, thorough, and effective manner”
 - District should have convened a Section 504 meeting regarding student to determine whether or to what extent peer bullying affected her educational needs

**Redding (CA) Sch. Dist.,
69 IDELR 16 (OCR 2016)**

- OCR: District must complete training on disability harassment and complaint investigation procedures
 - Additionally required to conduct a psychoeducational assessment of the student to determine any bullying-related changes in her educational needs

Scenario #3




Same facts as before EXCEPT Marcia is verified as a student with a disability due to her anxiety disorder and obsessive compulsive disorder.

- Does the verification before the bullying change the school’s obligation to respond to the complaints of Marcia and her parents?

Bullying Triggering Child Find

Scenario #4



Peter is a general education student who is socially awkward. He randomly imitates old movie stars, references to whom his peers do not understand. Peter is relentlessly bullied as a result. He eventually becomes depressed and starts cutting himself as a result of the harassment.

- Peter's parents sue alleging violations of child find.

Krebs v. New Kensington-Arnold Sch.,
69 IDELR 9 (W.D. Pa. 2016)

- 8th-grade girl bullied:
 - Inappropriate, sexually derogatory name-calling
 - Texted picture of a bloody wrist, KYS
 - Physically assaulted
- Principal
 - Told student to document; then told parents he could not stop the conduct.
 - "This is just something adolescent girls do."

Krebs v. New Kensington-Arnold Sch.,
69 IDELR 9 (W.D. Pa. 2016)

- Student developed mental health issues
 - Diagnosed with anxiety disorder, depressive disorder, and anorexia
- Student committed suicide
- Parents sued alleging violations of
 - Title IX
 - Child Find (Section 504 and IDEA)
 - Section 1983

Krebs v. New Kensington-Arnold Sch.,
69 IDELR 9 (W.D. Pa. 2016)

- Court:
 - The Krebs alerted District on multiple occasions of Destinee’s multiple diagnoses and harassment at the hands of her peers. During her eighth-grade year, Destinee’s conduct and academic performance declined to such a degree her teachers took notice and voiced their concerns to school.
 - Found violation of Child Find and and Title IX.

Cherry Creek Schs.,
118 LRP 43767 (SEA CO 06/22/18)

- High school student not identified as child with a disability
 - Mother sent emails to counselor complaining about student’s problems at home:
 - I feel that he loves to manipulate us and makes us believe he will be hurting himself. I am so sick of it. He needs to stop it and act more mature and respect our rules.

Cherry Creek Schs.,
118 LRP 43767 (SEA CO 06/22/18)

- Mother sent emails to counselor complaining about student's problems at home (cont'd):
 - I am trying to figure out what I can do to make sure this child graduates at least from high school. After that he is on his own. He is always angry and being a bad example for his little brothers especially my 9-year-old by telling him about the vapor thing he smokes and talking to us using the F word in front of the little ones. I am honestly so sick of it. I wish I could send him to anger management school or a boarding school. He needs a wake up call. I don't know what else to do. He will refuse to go see you. If necessary, have security take him. He needs help, and at this point, I'm out of options.

Cherry Creek Schs.,
118 LRP 43767 (SEA CO 06/22/18)

- Mother sent emails to counselor complaining about student's problems at home (cont'd):
 - The last couple of months have been really tough for us and we just want to help him get caught up. His passion is his music and playing his saxophone ... He is taking medication for depression and has been for two weeks now. I am hoping he gets better soon as far as his depression goes.
- Student hospitalized for mental health, upon discharge mother inquired about 504 plan, school did not respond

Cherry Creek Schs.,
118 LRP 43767 (SEA CO 06/22/18)

- No major academic or discipline issues
- School counselor assessed; high risk of suicide
- Friends reported that he had talked about bringing weapons to school and shooting up the school
- School interviewed; student fled
- School proposed expulsion
- Parents claimed child find violation and MDR protection

Cherry Creek Schs.,
118 LRP 43767 (SEA CO 06/22/18)

- SEA:
 - “The fact that a student has a turbulent relationship with his parents or engages in problem behaviors at home will not in itself qualify the student as a child with an emotional disturbance.”
 - After student was identified, school failed to document that it considered depression diagnosis and hospitalization discharge information in MDR.

In re: Student with a Disability,
115 LRP 30843 (SEA WI 03/13/15)

- High school student not identified as student with a disability
 - Suspended multiple times
 - District knew student had been hospitalized for mental health issues
 - District staff did not suspect disability “because, at least for periods of time, student was capable of performing adequately”
 - District eventually proposed expulsion

In re: Student with a Disability,
115 LRP 30843 (SEA WI 03/13/15)

- SEA:
 - The student was enrolled in the district’s high school for nearly two years. During that time, the student experienced periods of low and failing grades. Also, the student incurred excessive absences, including hospitalization and regular outpatient mental health treatment. District personnel were aware that the student received regular mental health treatment and had been hospitalized for mental health issues. Finally, the student exhibited behavior which resulted in multiple suspensions. Combined, these factors triggered the district’s obligation to refer the student for a special education evaluation.

Shelton Sch. Dist.,
115 LRP 54864 (SEA WA 06/13/15)

- Parents claimed child find violation in failure to identify student as having social-emotional learning (SEL) deficits
- Evidence:
 - 1 threatening text to peer, for which student was suspended
 - 1 threat of suicide
 - 1 written note to girl asking her to kick student in the groin

Shelton Sch. Dist.,
115 LRP 54864 (SEA WA 06/13/15)

- ALJ:
 - "The Parents have not proven the District failed to evaluate the Student's social and emotional behavior as it related to the . . . text message, or the prior year's single reference to killing himself. The evidence does not prove that . . . the District knew or should have known the Student had a need for further assessment. The later note referring to his groin has been shown to have been appropriately addressed in private mental health counseling and was not shown to be a significant enough issue at school to warrant evaluation."

Bullying Could Result in Denial of FAPE

- *M.L. v. Federal Way Sch. Dist.*, 105 LRP 13966, 394 F.3d 634 (9th Cir. 2005)
 - "If a teacher is deliberately indifferent to teasing of a disabled child and if the abuse is so severe that the child can derive no benefit from the services that he or she is offered by the school district, the child has been denied FAPE."
 - Parent could not meet this standard


Practical Pointers on Response

- Keep “Responding and Reporting” separate in your mind and mind of responding staff
- Investigate reported incidents
 - Focus on the small stuff
- Determine if bullying is related to victim’s disability
- Document, Document, Document
- Don’t make promises you can’t keep

Supporting the Victim

- Educational Responses
 - SEL
 - Resilience
- SAT/Test
- Social Skills Interventions
- Follow up
 - Report back with information regarding handling

Scenario #4

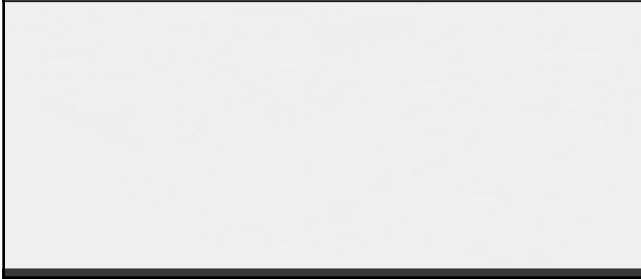


PORK CHOPS AND APPLE SAUCE

Peter is a general education student who is socially awkward. He randomly imitates old movie stars, references to whom his peers do not understand. Peter is relentlessly bullied as a result. He eventually becomes depressed and starts cutting himself as a result of the harassment.

- Peter’s parents sue alleging violations of child find.

Responding to Threats or Harassment From a Student With a Disability



Scenario #5



Jan suffers from a specific learning disability and oppositional defiant disorder. She posts a "kill list" on Instagram identifying all the people she would like to murder, beginning with her sister Marcia, and listing other family members, teacher, and peers at school. Students report the situation to the school district.

- What can/should the district do in response to this threat?

**Copley-Fairlawn City Sch. Dist.,
116 LRP 12829 (SEA OH 03/21/16)**

- Student not identified as student with a disability
 - Family obtained private psych eval, only school-related need identified was ability to walk around classroom
 - Started having trouble with peers
 - Social media posts
 - Confrontation at football game over boy
 - Church youth group issues
- School discovered student's kill list and plan

**Copley-Fairlawn City Sch. Dist.,
116 LRP 12829 (SEA OH 03/21/16)**

- Student arrested, charged, convicted
- Parents filed complaint for failure to conduct MDR
 - Private evaluation
 - Threat itself as triggering need to evaluate
 - Eventual diagnosis of autism
- IHO
 - Ruled in district’s favor

**Copley-Fairlawn City Sch. Dist.,
116 LRP 12829 (SEA OH 03/21/16)**

- Hearing Officer
 - While there was credible testimony that certain events characterized by Petitioners as bullying occurred, the presence of such bullying is not enough to conclude that CFSD should have known, based on those events, that Student was a child with a disability
 - Absent from the evidence of bullying is any evidence that the allegations of bullying impacted Student’s ability to access her education or impeded her educational progress

Scenario #5




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- What can/should the district do in response to this threat?

Punishment of Students with Disabilities for Threats

Scenario #6



Jan reposts her "kill list" after Bobby and Greg embarrass her by making fun of her brunette wig in front of the whole school. She includes a map of the school showing where her targets will be located when she begins the shooting.

- The school proposes to expel Jan, and her parents respond by arguing that her behavior is a manifestation of her SLD and ODD

**Regional Sch. Unit #57,
113 LRP 39386 (SEA ME 05/21/13)**

- HS student harassing teacher on Facebook
 - Teacher obtained protection order
- 1:1 iPads for student's grade level
 - School disabled Internet access on student's iPad; all educational apps accessible
 - Student continued to harass teacher using home Internet and devices
- Parents: Disabling iPad denies son FAPE

**Regional Sch. Unit #57,
113 LRP 39386 (SEA ME 05/21/13)**

- IHO: Student not deprived of any educational benefit
 - IEP does not require Internet access
 - No demonstrated need for Internet-based apps at home
 - "Although I understand why the parents are disappointed that the district will not allow their son the same privileges as other students, I can find no evidence to conclude that this results in a deprivation of FAPE."

**Greenville (SC) County Sch. Dist.,
56 IDELR 145 (OCR 2010)**

- Student made multiple threatening posts on Facebook related to bringing gun to school
 - Was not verified as disabled at time of the threat
 - Was subsequently evaluated and determined eligible
- Principal's response:
 - Contacted law enforcement
 - Recommended expulsion
 - After MDR, student assigned to alternative school

**Greenville (SC) County Sch. Dist.,
56 IDELR 145 (OCR 2010)**

- Parent filed OCR complaint, alleged discrimination in imposing harsher discipline
- OCR: Four other students made Facebook threats and were suspended 1-2 days rather than expelled
 - Threat from student with a disability specifically referred to a gun and threatened harm to entire student body
 - Disparate treatment not based on disability

34 CFR § 300.530(a)

- "School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a child with a disability who violates a code of student conduct."

34 CFR § 300.530(b)(1)

- "School personnel... may remove a child with a disability who violates a code of student conduct from his or her current placement... for not more than 10 consecutive school days... and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under § 300.536)."

"Not more than 10 consecutive school days"

- 10 consecutive days per offense.
- Additional removals in same school year for separate incidents of misconduct allowable so long as not a "pattern of removals" constituting a "change in placement."

**Larimer County Sch. Dist.,
115 LRP 36469 (SEA CO 07/14/15)**

- Student with a serious emotional disability began exhibiting troubling behaviors after HS transition
 - Fascinated by, and identified with, Columbine and other school shooters
 - Exhibited self harm, growled at peers
 - Threatened teacher
 - "It'll be hard to call home when you're disappeared and dead"

**Larimer County Sch. Dist.,
115 LRP 36469 (SEA CO 07/14/15)**

- Student violated school policy and his safety plan through Internet searches for depictions of violence and weapons
- Behavior resulted in removal for total of 14 days
 - 10/21/14 - 2 days for threatening teacher
 - 11/11/14 - 5 days for violating safety plan
 - 11/16/14 - 6 days while district prepared to implement revised IEP
 - 12/17/14 - Suspended remainder of semester, but IEP services resumed after 1 day

**Larimer County Sch. Dist.,
115 LRP 36469 (SEA CO 07/14/15)**

- Complainant: District failed to conduct an MDR in a timely manner
- IHO: 10th day of removal came during the additional removal following the 5-day suspension
 - Failing to provide services during this period meant that it was a removal
 - Time requirement for the MDR triggered on 11/21/14, giving district until 12/10/14 to conduct MDR
 - Failed to conduct MDR in a timely manner

**William S. Hart Union High Sch. Dist.,
117 LRP 43753 (SEA CA 10/13/17)**

- Student with ADHD, Tourette’s, OCD, and anxiety brought suit challenging an MDR finding her disability did not cause her behavior
- Issue arose after series of misbehaviors culminating in threats
 - Frequent outbursts, arguments with others, yelling, inappropriate behaviors, work refusal, use of obscenities, and elopement led to counseling and ISS

**William S. Hart Union High Sch. Dist.,
117 LRP 43753 (SEA CA 10/13/17)**

- April 19, 2017: Student and a friend joked about school shooting with a shotgun, and the student’s friend referenced Columbine
- April 20, 2017: Student sent at least four different snapchat to six friends with photos depicting a gun and telling them not to come to school the next day
 - Also posted a video dancing to “Pumped Up Kicks” and referring to anniversary of Columbine school shooting

**William S. Hart Union High Sch. Dist.,
117 LRP 43753 (SEA CA 10/13/17)**

- Recipients of the messages were alarmed and reported them
 - Police responded and investigated – student had no weapons, downloaded images of guns
- Student provided the district a statement admitting to sending the first three snaps, getting a comical reaction, and stated she was compelled by her OCD to send more messages of same nature

**William S. Hart Union High Sch. Dist.,
117 LRP 43753 (SEA CA 10/13/17)**

- District suspended student for 5 days until MDR was conducted to determine further discipline
- MDR team convened. One member, the school psych, created a pre-typed draft MDR document before reviewing the evidence or meeting as a team
 - Draft contained language that "IEP team agreed Student's actions were not caused by or had a direct and substantial relationship to her disabilities" and further discussed reasons as to the basis of that conclusion

**William S. Hart Union High Sch. Dist.,
117 LRP 43753 (SEA CA 10/13/17)**

- Team adopted draft document's findings and recommended the student for expulsion
 - Argued that sending the messages involved planning and forethought, that the student understood the consequences and could have controlled her behavior
- ALJ: MDR team over-relied on preconceived assumptions, as evidenced by draft determinations, and incorrectly found no causal relationship

**Functional Behavioral Assessment (FBA)
34 CFR § 300.530(f)**

- If student's conduct is a manifestation of the student's disability, the IEP team must:
 - Conduct a functional behavioral assessment (provided the district had not conducted such assessment prior to the conduct at issue) and implement a behavioral intervention plan for the child.
 - When a behavioral intervention plan already has been developed, review the plan and modify it as necessary to address the behavior.
 - Return child to the placement from which he was removed, unless the parent and district agree to a change in placement.

Scenario #6



Jan reposts her "kill list" after Bobby and Greg embarrass her by making fun of her brunette wig in front of the whole school. She includes a map of the school showing where her targets will be located when she begins the shooting.

- The school proposes to expel Jan, and her parents respond by arguing that her behavior is a manifestation of her SLD and ODD

Scenario #7



Peter has an IEP for autism. He is fascinated by knives of all sorts and he contently researches and plays with knives. Peter threatens peers that he is going to kill them with a meat cleaver. He also posts on social media in great detail about how he would go about stabbing and dismembering people he doesn't like.

- The school seeks to place Peter in an interim alternative educational setting for 45 days

Removal to IAES

- Special rules related to weapons, drugs, and serious bodily injury allow schools to remove students to an Interim Alternative Educational Setting for 45 days regardless of outcome of MDR

**Vilonia Sch. Dist.,
72 IDELR 136 (SEA AR 2018)**

- Student, 15-year-old male, eligible for IDEA services as an individual with TBI
 - Behaviorally, the student struggled with respectfully interacting with school staff and with work avoidance
- March 1, 2019: Principal informed of threatening social media post from the student
 - Picture showed the student holding a gun of some type with the message that read "I love it when they run."

**Vilonia Sch. Dist.,
72 IDELR 136 (SEA AR 2018)**

- Principal notified the local police, who confronted the student about the message
 - Student indicated that the image depicted an airsoft gun, that he was not serious, and did not intend to carry out any threats
- Next day, additional audio clips and social media posts emerge wherein the student made threatening statements and referred to committing suicide

**Vilonia Sch. Dist.,
72 IDELR 136 (SEA AR 2018)**

- In response, District recommended the student be expelled and sought to place him in an IAES
 - Parents filed a due process complaint challenging placement in IAES
- District: Student's removal justified based upon the posts and statements

**Vilonia Sch. Dist.,
72 IDELR 136 (SEA AR 2018)**

- IHO: IDEA allows for a student to be removed to an IAES for not more than 45 school days without regard to whether the behavior is a manifestation of the student’s disability if–
 - Student brings a weapon to school;
 - Inflicts serious bodily injury on another person at school; or
 - Knowingly possesses, sells, or uses illegal drugs under school authority.

**Vilonia Sch. Dist.,
72 IDELR 136 (SEA AR 2018)**

- IHO: Student’s behavior did not qualify for IAES
 - Statements were not directed at any specific individuals, or the school itself, and behavior was likely a cry for help
 - Student was not dangerous to himself or others, and the district did not have the authority to remove the student to an IAES following 10-day suspension

Consider IEP of Bully

- Ensure IEP and supports implemented with fidelity
 - Remember to consider this as part of Manifestation
 - Manifestation for every removal over 10 days
- Consider reconvening IEP team to add BIP, 1:1 support, social skills
- If student’s behavior impedes the learning of others, can be moved to a more restrictive placement

Scenario #7



Peter has an IEP for autism. He is fascinated by knives of all sorts and he contently researches and plays with knives. Peter threatens peers that he is going to kill them with a meat cleaver. He also posts on social media in great detail about how he would go about stabbing and dismembering people he doesn't like.

- The school seeks to place Peter in an interim alternative educational setting for 45 days

Reporting Criminal Violations

Scenario #8



Greg has an IEP due to his emotional disturbance. He has fixated on an ex-girlfriend after a bad break-up. The girl shows the school text messages in which Greg expresses his plan to assault her after school today.

- What can/should the school tell the SRO?

**Letter to Hastings,
119 LRP 1745 (FPCO 12/17/18)**

- Incident resulted in injuries to multiple employees, including a paraprofessional who was pregnant
 - Student also injured in incident
- Injured individuals brought to hospital for treatment
- Pursuant to hospital policy, hospital employees contacted local law enforcement to report the assault

**Letter to Hastings,
119 LRP 1745 (FPCO 12/17/18)**

- Local law enforcement responds and begins collecting information from district employees
- Injured paraprofessional provides law enforcement officers with a copy of the incident report she wrote for the school regarding the assault
- Investigation results in charges against student

**Letter to Hastings,
119 LRP 1745 (FPCO 12/17/18)**

- Parents: District violated FERPA by disclosing an education record to the police
- District: Disclosure fell within emergency exception because the paraprofessional "reasonably concluded that there was 'an articulable and significant threat to the health or safety of a student or other individuals'"


**Letter to Hastings,
119 LRP 1745 (FPCO 12/17/18)**

- FPCO: "District's response indicates that based on facts surrounding... the incident, specifically that implementing the strategies incorporated into the Student's IEP did not serve to deescalate the abusive behavior, [para] believed the Student presented a health and safety emergency."

**Letter to Hastings,
119 LRP 1745 (FPCO 12/17/18)**

- FPCO: "It appears further that school officials believed as long as they were responsible for the education and care of the Student there was the possibility of an on-going health and safety emergency."
- "Based on the information provided... we believe that the disclosure was consistent with FERPA's health and safety emergency exception"

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Greg has an IEP due to his emotional disturbance. He has fixated on an ex-girlfriend after a bad break-up. The girl shows the school text messages in which Greg expresses his plan to assault her after school today.

- What can/should the school tell the SRO?

Reporting Criminal Violations of a Student with a Disability

Empty box for notes.

Seven horizontal lines for writing.

Scenario #9



Greg has an IEP due to his emotional disturbance. The school discovers him smoking marijuana in school and summons the police.

- What can/should the school tell the police?

Seven horizontal lines for writing.

Reporting gets trickier...

- SROs not school officials when investigating crimes
- Disclosure to outside law enforcement must be FERPA compliant... But...
 - IDEA imposes affirmative obligation on institutions to share records of students with disabilities when law enforcement is contacted

Seven horizontal lines for writing.

34 CFR § 300.535(b)

- An agency reporting a crime committed by a child with a disability must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.
- However, an agency reporting a crime may transmit copies of the child's special education and disciplinary records only to the extent that FERPA permits the transmission.

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Menominee Area Pub. Schs.,
114 LRP 34039, 17 FAB 40 (SEA MI 2014)

- Bomb threat found written on desk
- Student with undisclosed disability admits to writing the bomb threat
- Principal reports the threat to the police
 - Student arrested
- Parents file complaint with SEA
 - Allege district violated IDEA by failing to inform law enforcement of student’s disabilities

Menominee Area Pub. Schs.,
114 LRP 34039, 17 FAB 40 (SEA MI 2014)

- SEA: Found for parents
- Referred to and applied requirements of 34 CFR § 300.535(b)
 - School failed to provide authorities with records
 - School failed to seek parent’s consent to disclose

Pikes Peak BOCES,
66 IDELR 56 (SEA CO 07/01/15)

- Student with an undisclosed disability has backpack searched
 - Marijuana pipe, lighter, pornography found
- School reported the infraction to the SRO, who in turn reported it to the sheriff’s office
- Parents file complaint with Colorado SEA

Pikes Peak BOCES,
66 IDELR 56 (SEA CO 07/01/15)

- District violated IDEA
 - Did not inform law enforcement of student’s disability
 - Did not provide education records
 - Did not seek consent to disclose education records

Brookwood Acad.,
114 LRP 53987, FAB 20 (SEA OH 11/28/14)

- Student assaulted paraprofessional at school
- School administrator told para she “had the option” to file a criminal complaint
- Para did file charges with juvenile court, and brought a copy of her incident report
- School never supplied court with records or had any other involvement with proceedings

Brookwood Acad.,
114 LRP 53987, FAB 20 (SEA OH 2014)

- SEA: Regulation applies to reporting by “an agency”
 - Para acted on her own in reporting the alleged crime
 - Therefore, the referral did not trigger district’s duty to provide student’s records to law enforcement

**Suraci v. Hamden Bd. of Educ.,
73 IDELR 173 (D. Conn. 01/10/19)**

- Elementary student drew detailed pictures of weapons and threatened to bring a weapon to school
- Teachers alarmed; school contacted police
- Father sued for IIED
- Court:
 - "Whatever could be seen in hindsight as a less traumatic way to address Plaintiff's situation, [teacher]'s conduct could certainly not be found to have been 'beyond all possible bounds of decency...atrocious...and utterly intolerable'"

Scenario #9



Greg has an IEP due to his emotional disturbance. The school discovers him smoking marijuana in school and summons the police.

- What can/should the school tell the police?

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