SAMANTHA SCHONFELD

Long v. Murray County School District


ABOUT THE AUTHOR: Samantha Schonfeld is a 2014 J.D. candidate at New York Law School.
In recent years, teenage bullying has become a national phenomenon. Two recent examples include the cases of Phoebe Prince of Massachusetts and Tyler Clementi of Rutgers University, who both tragically ended their lives after being tormented by classmates at their educational institutions because of their sexual behavior and orientation. The current rise in bullying is not limited to students’ sexual behavior, but targets students’ disabilities as well. Several states, including New Jersey, have enacted rigid anti-bullying laws, but, for the most part, federal and state laws do little to deter such acts from occurring. Teachers, principals, guidance

1. Julie Sacks & Robert S. Salem, Victims Without Legal Remedies: Why Kids Need Schools to Develop Comprehensive Anti-Bullying Policies, 72 ALB. L. REV. 147, 148–49 (2009) (“‘Bullying,’ a term used interchangeably with peer harassment, means aggressive acts made with harmful intent, repeatedly inflicted by one or more students against another. Acts may be physical, verbal, indirect (such as social exclusion), or electronic (such as posting threatening messages to a website). What distinguishes bullying from mere aggression is that bullying is repetitive and involves a power imbalance between a socially powerful perpetrator and a socially weaker victim. Hence, bullies prey on students who are often marginalized in the wider school community because of actual or perceived differences such as obesity, disability, or sexual orientation.”).

2. Three factors that may help explain why bullying is on the rise include:
   - Greater awareness of the seriousness of bullying, which could be due to the higher reporting rates by students.
   - The addition of cyber-bullying as a new, easy, and round-the-clock place to bully.
   - A number of early childhood risk factors that have increased that might also increase a child’s vulnerability to bully or be bullied, such as an insecure attachment to a primary care giver or lack of parental supervision.


3. See Erik Eckholm & Katie Zezima, 6 Teenagers Are Charged After Classmate’s Suicide, N.Y. TIMES, Mar. 29, 2010, http://www.nytimes.com/2010/03/30/us/30bully.html?pagewanted=all&_moc.semityn (reporting that prosecutors brought charges against six of Prince’s classmates alleging that their “taunting and physical threats were beyond the pale” and led to Prince’s suicide); Times Topics: Tyler Clementi, N.Y. Times, http://topics.nytimes.com/top/reference/timestopics/people/c/tyler_clementi/index.html (last updated Mar. 16, 2012) (reporting that Tyler Clementi, a homosexual student at Rutgers University, committed suicide after being a victim of anti-gay bullying when he learned that his roommate taped him via webcam engaging in sexual conduct with another man and posted about it on Twitter).


6. Richard Pérez-Peña, Christie Signs Tougher Law on Bullying in Schools, N.Y. TIMES, Jan. 6, 2011, http://www.nytimes.com/2011/01/07/nyregion/07bully.html (illustrating the new requirements of the recent New Jersey anti-bullying law, which include (1) training sessions for teachers on how to address issues of bullying; (2) appointment of individuals in each school district to be in charge of anti-bullying programs; (3) mandatory investigations of bullying episodes within days of its occurrence; and (4) bi-annual reports
counselors, and other school support staff must take the initiative in creating an accepting environment for disabled students and should ultimately assume responsibility when their efforts fall short. Yet, federal statutory law places the burden on the student—or the guardian of a bullying victim—to prove the school’s liability and sets the standard far too high, allowing it to be met only when a school district’s conduct is “reckless, malicious, in bad faith, or outside of the scope of employment.” Whether a school district will have liability rests on the court’s interpretation of whether the school acted with “deliberate indifference,” that is, whether the school did enough to address the bullying and individual episodes of peer-on-peer harassment. Specifically, a court’s application of either a narrower and stricter, or a broader interpretation} of deliberate indifference will determine whether a school is rightfully held liable and whether justice is achieved for bullied students.

In *Long v. Murray County School District*, the U.S. District Court for the Northern District of Georgia granted the school district’s motion for summary judgment, holding that a school district that does little more than issue verbal warnings to student bullies is not liable for a failure to do more. The court relied on a stricter interpretation of the deliberate indifference standard, which derives from a peer-on-peer sexual harassment case, *Davis v. Monroe County Board of Education*, to determine the liability of the school district. Under *Davis*, a school district is deliberately indifferent “only where the recipient’s response to the harassment or lack thereof is clearly unreasonable in light of the known circumstances.” The majority in *Davis* explained that under Title IX of the Education Amendments of 1972, which

---

7. See Sacks & Salem, supra note 1, at 150.
8. *Id.*
9. As used in this case comment, a narrower or stricter interpretation of “deliberate indifference” would find a school liable only if it turned a blind eye to the harassment. A “broader” interpretation would find schools to be deliberately indifferent when they continue to use the same methods of combating the bullying to little or no avail—resulting in a lower threshold for liability. Vance v. Spencer Cnty. Pub. Sch. Dist., 231 F.3d 253, 260–61, 264 (6th Cir. 2000).
11. *Id.* at *82 (“Although Davis addresses Title IX liability for peer-on-peer sexual harassment, courts have applied the case law and reasoning governing Title IX peer-on-peer sexual harassment claims to § 504 and ADA peer-on-peer disability harassment claims.”); *Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 633 (1999) (holding that a school district’s deliberate indifference can be established when the plaintiffs illustrate that the school board made little effort to inquire into episodes of harassment or to stop it).
provides students with a cause of action for peer-on-peer sexual harassment, there is no requirement that the school “remedy” the peer harassment; rather, the school is only required to respond in a way that is not clearly unreasonable. In Long, the school district responded to Tyler’s bullying by repeatedly issuing verbal and written warnings, which the court viewed as acting reasonably under the circumstances under the Davis standard. As a result, the district court’s decision affords school districts the opportunity to avoid punishment when they simply continue to use the same methods, to no avail, to prevent bullying.

This case comment contends that the court, first, should have applied the broader interpretation of “deliberate indifference” that has been adopted by other jurisdictions and, second, failed to consider the rise in bullying and its effect on students who suffer from it. The court’s decision threatens to leave bullied children without relief against school districts that do little more than verbally reprimand students for their bullying, and effectively gives school districts a “green light” to exert minimal effort to curb student bullying.

Tyler Long was an eleventh grader who suffered from Asperger’s syndrome and committed suicide at his home on October 17, 2009. He had been a student at Murray County High School (MCHS), where he was bullied since the ninth grade and called derogatory names, including “retard, slow, and faggot.” Furthermore, students cursed at him, knocked books out of his hand as he walked down the hallway, and repeatedly kicked him. Tyler was unable to even step foot in the hallway without being called an idiot or shoved into lockers. After his death, students at MCHS wore nooses around their necks, drew a hangman’s noose on the walls of the school, and scribbled, “We will not miss you . . . it was your own fault” throughout the building. Tyler’s suicide note offered a glimpse into the abuse he experienced throughout his high school career:

All forms of sex-based harassment are prohibited, including sexual harassment, harassment based on a student’s failure to conform to gender stereotypes and sexual assault. It does not matter whether the harasser intends to harm or not, the harasser and target do not need to be of different sexes, and severe harassment does not necessarily require repeated incidents.

Nat’l Women’s L. Ctr., supra note 5.

16. Id. at *2 n.3 (citation omitted) (“Asperger’s is . . . ‘a social anxiety disorder that prevents the afflicted individual from, among other things, normal social interaction with other people, understanding other people’s emotions, and differentiating between joking and serious interaction with others.’”).
17. Id.
18. Id.
19. Id. at *84.
20. Id. at *59.
21. Id.
22. Id. at *108.
If you are reading this I am DEAD. I don’t want to live any longer with this burden I have. . . . You think I am worthless and pathetic. All I wanted was acceptance and kindness, but no I didn’t get love. . . . I want to end this pain I have and to live in eternal happiness. I hate myself because I don’t make everyone happy.23

Though the staff of MCHS met a couple of times throughout Tyler’s high school years to discuss his Individual Education Program (IEP) and disability, they did not remedy the relentless bullying by his fellow students, T.M. and N.B.24 Ms. Gallman, one of the teachers at the school, verbally reprimanded a student for spreading rumors that Tyler was “gay and looks at gay porn.”25 In another incident, a teacher issued warnings to students for “picking on special needs students.”26 Tyler’s Spanish teacher issued warnings in October 2008 to students who said “unkind” things about not wanting to work with him on a class project.27 Additionally, in November 2008, Tyler’s English teacher submitted a report documenting that Tyler was kicked by another student in the hall.28 In her report, she dismissed the behavior as “horse play.”29 Moreover, faculty and staff failed to respond to many of Tyler’s encounters with his bullies. One such incident involved Mr. Archie, one of Tyler’s instructors, who failed to reprimand a student for rubbing his private parts on Tyler’s leg because Mr. Archie was not paying attention and on his cell phone.30

Furthermore, MCHS’s disciplinary procedures and plans did not include a protocol for reprimanding students accused of bullying.31 The school failed to hold assemblies or programs regarding anti-bullying, anti-taunting, and anti-harassment policies.32 And MCHS did not provide teachers with any “training, programs, instructions, seminars, presentations, or meetings focused on bullying and harassment, how to respond to it, and that it would not be tolerated.”33

In January 2010, after Tyler’s death, his parents David and Tina Long filed suit on behalf of Tyler in the U.S. District Court for the Northern District of Georgia alleging that the defendants, Murray County School District and Principal Gina Linder, failed to investigate, intervene, or train school employees to adequately protect Tyler from bullying, and that this failure was the “sole or a substantial” factor

23. Id. at *4–5.
24. Id. at *27, *44.
25. Id. at *44–45.
26. Id. at *48.
27. Id. at *49–50.
28. Id. at *50.
29. Id.
30. Id. at *32–33.
31. Id. at *105–06.
32. Id.
33. Id. at *23.
in Tyler’s decision to commit suicide. Their claims were asserted under Title II of the Americans with Disabilities Act (ADA) and section 504 of the Rehabilitation Act. In order to satisfy a claim under Title II of the ADA and section 504 of the Rehabilitation Act, a plaintiff must satisfy a five-part test requiring the disabled plaintiff to prove that he or she was harassed because of this disability, that the defendant knew about the harassment and was deliberately indifferent towards it.

The defendants moved for summary judgment, arguing that their repeated verbal and written warnings to students, and intent interest in Tyler’s development illustrated that they were not deliberately indifferent towards Tyler’s plight. Though the court acknowledged that the plaintiffs had satisfied parts one through four of the test to determine claims under the ADA and section 504 of the Rehabilitation Act, it granted the defendants’ motion for summary judgment by employing the stricter interpretation of “deliberate indifference.”

Although the court noted that Tyler was a victim of “severe disability harassment,” the crux of its decision rested on the notion that there was no obvious pattern of inaction by school officials and no evidence that any school employees participated in harassing Tyler. “At best, plaintiffs’ evidence demonstrates that defendants’ harassment prevention techniques were not always effective, and that defendants should have done more to protect Tyler and address disability harassment.”

The court in Long stated that a school will be found deliberately indifferent only if its employees take part in harassing the student or if the school turns a blind eye to the situation.

The court’s interpretation of the deliberate indifference standard was improper for two reasons. First, the court failed to consider that other jurisdictions have adopted the broader interpretation of “deliberate indifference.” Through this broader approach, plaintiffs can illustrate a school district’s deliberate indifference when the school has actual knowledge that its efforts to remedy the bullying were ineffective, yet continued to employ those same methods to no avail. Had the broader standard been utilized in Long, the court would have noted that MCHS implemented the same methods of bullying prevention—verbal and written warnings—to little or no avail.

34. Id. at *5, *67–68.
35. Id. at *80.
36. Id. at *88–89, *124.
37. Id. at *84–96.
38. Id. at *96–97 (“Deliberate indifference is an exacting standard; school administrators will only be deemed deliberately indifferent if their ‘response to the harassment or lack thereof is clearly unreasonable in light of the known circumstances. Neither negligence nor mere unreasonableness is enough.’” (quoting Davis v. Monroe Cnty. Bd. of Educ. 526 U.S. 629, 642, 648 (1999))).
39. Id. at *122–23.
40. Id. at *123.
41. Id. at *122–23.
43. See id.
Second, the court’s ruling failed to take into consideration the nationwide rise in bullying. Applying the stricter interpretation of deliberate indifference, the court gave school districts across the country the “green light” to do no more than issue verbal and written warnings when faced with peer-on-peer harassment. This fails to hold schools to their responsibility of keeping students safe at a time when a rise in bullying makes students more vulnerable than ever. This case comment will examine the decisions of other circuit and district courts that have applied a broader interpretation of deliberate indifference and explain why it is the better approach.

Federal statutory law affords victims of bullying a cause of action under Title II of the ADA and Title IX. Under the ADA, a plaintiff must satisfy the following five-part test in order to prevail on a claim:

1. The plaintiff is an individual with a disability,
2. he or she was harassed based on that disability,
3. the harassment was sufficiently severe or pervasive that it altered the condition of his or her education and created an abusive educational environment,
4. the defendant knew about the harassment and,
5. the defendant was deliberately indifferent to the harassment.

Title IX provides a cause of action for students who are victims of sex-based harassment. In order to establish deliberate indifference under Title IX, a plaintiff must show that the school district:

1. Had actual knowledge of the harassment,
2. had reason to believe that it posed a serious risk to the student,
3. either failed to take readily available measures to address the risk or took measures knowing they would be ineffective to protect the student, and
4. had no excuse or justification for acting or failing to act as it did.

Though both causes of action protect distinct immutable traits, plaintiffs asserting violations under the ADA and Title IX must establish that the defendants were deliberately indifferent towards the harassment.

In Davis, the plaintiff, a female student, was a victim of prolonged sexual harassment by a fellow fifth-grade student at Hubbard Elementary School. Fellow student G.F. tried to touch the plaintiff’s breasts and private parts while making suggestive comments such as, “I want to get in bed with you.” Though the harassment was reported to Hubbard, G.F. was not disciplined or separated from the

44. See, e.g., S.S. v. E. Ky. Univ., 532 F.3d 445, 454 (6th Cir. 2008).
45. Id.
46. See also N.A.T. Women’s L. Ctr., supra note 5 (“Title IX protects every person—boys and girls; men and women; students and employees—from sex-based harassment in schools and colleges that receive federal funding.”).
47. Anne M. Payne, Particular Public School District Liability Issues Arising from Student or Staff Use of Computer, Internet, or Other Electronic Media to Harass or Bully Students, 115 Am. Jur. Trials 355 (2010).
49. Id. at 633.
Long v. Murray County School District

The plaintiff filed suit under Title IX, claiming that the school’s deliberate indifference to G.F.’s constant sexual advances created an “intimidating, hostile, offensive and abusive school environment.” The Davis court held that Hubbard could only be found deliberately indifferent if its response to the bullying was clearly unreasonable in light of the known circumstances. The court opined that if it were to broaden what constitutes deliberate indifference, “nothing short of expulsion of every student accused of misconduct involving sexual overtones would protect school systems from liability.” This strict interpretation, though cited as precedent in Long, is outdated and misinformed.

For example, the U.S. Court of Appeals for the Sixth Circuit declined to adopt the Davis approach and employs a broader interpretation of deliberate indifference. In Vance v. Spencer County Public School District, the plaintiff was bullied and harassed within her middle school and high school. She was taunted based on her sexuality, called names such as “whore” and “motherfucker,” violently pushed into walls, hit, and had her bra snapped.

The plaintiff repeatedly reported the episodes of abuse to school faculty and each time the school spoke with, and verbally reprimanded, the students responsible for the bullying. In response to a particular episode of name-calling, the assistant principal advised the plaintiff that the boys were picking on her because they liked her and that she should just “be friendly.”

The plaintiff filed suit in 1995 alleging a violation of Title IX because the school failed to address the episodes of harassment. The lower court granted the plaintiff relief and the school appealed. The Sixth Circuit’s decision was based on its interpretation of the deliberate indifference standard. Because there was no evidence presented to the jury that the school took any action other than talking to the offenders, the court rejected the strict application of deliberate indifference from Davis, explaining that if it were to adopt that standard, schools could escape liability.

50. Id. at 635.
51. Id. at 629.
52. Id. at 648–49.
53. Id. at 648.
55. Id. at 255.
56. Id. at 256.
57. Id. at 262.
58. Id. at 256.
59. Id. at 257.
60. Id. at 258.
61. Id. at 259–60.
by merely looking into the harassment and doing nothing more to stop it. The court held:

Thus, where a school district has knowledge that its remedial action is inadequate and ineffective, it is required to take reasonable action in light of those circumstances to eliminate the behavior. Where a school district has actual knowledge that its efforts to remediate are ineffective, and it continues to use those same methods to no avail, such district has failed to act reasonably in light of the known circumstances.

The court determined that a school is deliberately indifferent when it continues to employ the same methods of remediation to no avail, and knows that those methods are ineffective.

Similarly, in Patterson v. Hudson Area Schools, students had harassed and taunted the plaintiff since the sixth grade. They did so by calling him “faggot,” “queer,” and “pig,” shoving him into lockers, and vandalizing his personal belongings with phrases such as “I HEART penis” and “I lick it in the Ass.” Because of such intense harassment and bullying, the plaintiff was unable to attend Hudson for his junior and senior years of high school and had to take courses at another location. The plaintiff and his parents repeatedly reported incidents of harassment to the school and eventually filed suit. In 2005, they alleged violations of Title IX.

Although Hudson investigated the incidents of derogatory name-calling and punished individual students, through verbal warnings and scolding, for taunting the plaintiff, the court relied heavily on Vance, and held that the plaintiff had satisfied the deliberate indifference standard because Hudson continued to use the same methods of discipline against the plaintiff’s harassers—including verbal warnings and reprimands—to little or no avail.

The Sixth Circuit has refused to apply the Davis approach to deliberate indifference and in both Vance and Patterson utilized a broader application of deliberate indifference than Davis. In those cases, the schools were found to be deliberately indifferent because they continued to utilize the same methods of

---

62. Id. at 260, 262.
63. Id. at 261.
64. Id.
66. Id. at 439, 442.
67. Id. at 443.
68. Id. at 441 (explaining that the plaintiffs spoke to teachers and principals, reporting incidents of teasing, name-calling, pushing, and shoving).
69. Id. at 443 (explaining that the plaintiffs raised other claims including violation of equal protection rights, and that the superintendent “failed to implement and enforce meaningful procedures to ensure compliance with federal law and policies of [Hudson] and failed to ensure the proper education and training of staff as to harassment issues”).
70. Id. at 450.
punishment—which included verbal reprimands and written warnings—despite actually knowing that these methods were ineffective.\textsuperscript{71} This broader application is better because plaintiffs can illustrate deliberate indifference on the part of a school district by providing evidence that the school knowingly repeated futile anti-bullying techniques.

Similarly, in \textit{Long}, Tyler experienced similar forms of persistent teasing from the time he was in middle school until his late high school years.\textsuperscript{72} And, as in \textit{Patterson}, the school continued to issue the same knowingly futile verbal warnings.\textsuperscript{73} Moreover, even if the verbal reprimands stopped individual students from bullying Tyler, his overall abuse continued, a fact of which MCHS was well aware.\textsuperscript{74} The \textit{Long} court, however, saw \textit{Patterson} “only . . . as persuasive authority” because it involved “sexual harassment not disability harassment” and distinguished it accordingly.\textsuperscript{75} Because \textit{Patterson} did not involve disability harassment, the court failed to utilize the broader approach of deliberate indifference that \textit{Patterson} employed. Instead it relied on the outdated \textit{Davis} standard. However, the \textit{Long} court failed to recognize that \textit{Davis} did not involve disability harassment either;\textsuperscript{76} and although the basis for the distinction it drew was unfounded, the \textit{Long} court cited \textit{Davis} as precedent for a strict application of the deliberate indifference standard.\textsuperscript{77}

Additionally, the U.S. District Court for the District of Kansas has adopted the broader application of deliberate indifference, holding that school districts have acted unreasonably in light of the circumstances when the incidents of harassment are more than isolated and the school continues to implement the same methods of bullying prevention to no avail.\textsuperscript{78}

In \textit{Theno v. Tonganoxie Unified School District}, students harassed and bullied the plaintiff throughout his junior high and high school years.\textsuperscript{79} Beginning in seventh grade, the plaintiff was teased and called names such as “faggot” and “gay” and was the butt of many jokes containing sexual undertones.\textsuperscript{80} Students regularly asked him about masturbating,\textsuperscript{81} and during gym class told him to “finish out strong you

\begin{thebibliography}{99}
\bibitem{38} Vance v. Spencer Cnty. Pub. Sch. Dist., 231 F.3d 253 (6th Cir. 2000); \textit{Patterson}, 551 F.3d at 438.
\bibitem{40} \textit{Id.}
\bibitem{41} \textit{Id.}
\bibitem{42} \textit{Id.} at *105.
\bibitem{44} \textit{Long}, 2012 U.S. Dist. LEXIS 86155, at *82.
\bibitem{46} \textit{Id.} at 954.
\bibitem{47} \textit{Id.} at 955.
\bibitem{48} \textit{Id.}
\end{thebibliography}
queer.” In the plaintiff’s ninth-grade year he was harassed again in his gym class. Additionally, one of his classmates scribbled on the chalkboard that the plaintiff “likes men, is a fag, is a queer and masturbates.” Classmates yelled at him, “Way to go queer Theno” when he missed a shot during a basketball game.

The plaintiff reported incidents to the faculty at Tonganoxie and the school took measures to discipline the individual harassers in each incident. Specifically, teachers issued verbal warnings to students and the vice principal sat down with several of them in his office to discuss the gravity of sexual harassment. He explained to the perpetrators that if they continued to harass the plaintiff they could face suspension. Despite the vice principal’s warnings, the students continued to harass the plaintiff who then filed suit, asserting that the Tonganoxie school district violated Title IX. By being “deliberately indifferent to the harassment,” the plaintiff claimed the school district continued to enforce the same, largely ineffective methods of bullying prevention.

The Theno court noted that the school district’s discipline of individual harassers through mostly verbal warnings was “largely effective.” However, the court found that the school district’s efforts to remediate the plaintiff’s relentless four years of abuse were “clearly unreasonable because this is not a case that involved a few discrete incidents of harassment. It involved severe and pervasive harassment that lasted for years.” Further, the court noted that, although Tonganoxie’s warnings were effective towards individual harassers and the ringleaders, Tonganoxie took relatively few disciplinary measures to combat the entirety of the plaintiff’s situation. The court drew close parallels to Vance in that both plaintiffs were harassed for several years and both schools primarily gave verbal warnings to combat the bullying. The Theno court ultimately found that because Tonganoxie knowingly continued to employ the same methods to fight against the bullying to no avail, the plaintiff had shown that the school district was deliberately indifferent. Theno highlighted that although

82. Id. at 961.
83. Id. at 957.
84. Id.
85. Id.
86. Id. at 958–59.
87. Id. at 959.
88. Id.
89. Id. at 954.
90. Id. at 965.
91. Id. at 966.
92. Id.
93. Id.
94. Id. (“Where a school district has actual knowledge that its efforts to remediate are ineffective, and it continues to use those same methods to no avail, such district has failed to act reasonably in light of the known circumstances.” (quoting Vance v. Spencer Cnty. Pub. Sch. Dist., 231 F.3d 253, 261 (6th Cir. 2000)).
Tonganoxie was successful in punishing individual harassers, its actions were unreasonable in light of the known circumstances because (1) the episodes of harassment were far from isolated and (2) the school issued only the same forms of verbal punishment, knowing the futility of that punishment.95

The facts in Theno also are analogous to those in Long. In Long, MCHS disciplined, on an individual basis, students who bullied Tyler by issuing warnings and verbal reprimands.96 MCHS was fully aware that Tyler’s bullying was a persistent problem and took few measures to curb it.97 As Vance and Patterson so clearly point out, MCHS used the same methods of punishment for years to little or no avail. Overall, Vance, Patterson, and Theno recognized that a school district which attempts to curb bullying by employing the same inadequate methods is deliberately indifferent.

In light of the continued increase in bullying nationwide, the deliberate indifference standard adopted in Davis should be replaced with the broader standard employed in Vance, Patterson, and Theno. First, in recent years, schools’ power over their student bodies has increased.98 Currently, school districts are allowed to curb students’ free speech and expose them to unwarranted searches and seizure.99 Because schools have increased their control over their students, there should be a “corresponding broadening of schools’ responsibilities” in managing and preventing incidents of peer-on-peer bullying.100 One of these broader responsibilities is a school’s duty to protect its students from violence, harm, and danger, including from each other. Under the doctrine of parens patriae,101 a school district should be required to assume the protector role when bullying occurs, and engage in efforts to free victimized students from abuse.

Second, employing a broader interpretation of deliberate indifference will pressure schools nationwide to re-evaluate their disciplinary procedures regarding student bullying and harassment.102 If school districts are aware that they may incur liability for continuing to use the same ineffective methods to combat bullying, school administrators may be more likely to implement more productive forms of punishment, or even include anti-bullying policies in their student handbooks. Finally, the underlying premise of anti-bullying campaigns is to make schools a place

---

95. See id. at 966.
97. Id.
99. Id.
100. Id.
101. For a definition of parens patriae, see Black’s Law Dictionary 1221 (9th ed. 2009) (“[T]he state in its capacity as provider of protection to those unable to care for themselves . . ..”).
102. Gao, supra note 98.
of tolerance and acceptance for all students. If schools, judged under this broader standard, are found deliberately indifferent to bullying, other districts may improve their own policies and responses, and as a result ultimately achieve the goal of creating an environment of respect and acceptance for students.

In contrast, by employing a stricter interpretation of deliberate indifference, the district court in *Long* leaves the door open for school districts to escape liability for peer-on-peer bullying that occurs within school walls. In light of the pressing bullying epidemic, it is imperative that schools be held accountable when they continue to implement the same disciplinary procedures with knowledge that those procedures are ineffective. The courts in *Vance*, *Patterson*, and *Theno* recognized the need for schools to assume responsibility in those situations.

Under the *Long* court’s interpretation of deliberate indifference, schools have little incentive to monitor and prevent student bullying. If courts were to apply the Sixth Circuit’s broader interpretation, then high schools would feel compelled to shield students from excessive taunting and bullying, potentially reducing the rate of student suicide.

---

103. Pérez-Peña, supra note 6, at 1.