

NATIONAL CATHOLIC REPORT

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CATHOLIC
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The Diocesan Liability Insurance Specialist



BULLYING AND RETALIATION: ADVICE FOR AVOIDING ADDITIONAL CLAIMS

Dear Shareholders & Industry Partners,

We've arrived...the fourth of our four-part series on this important topic we hope is appreciated by all we reach with this publication.

As I've mentioned in previous messages, creating, and adhering to policies and procedures adopted and implemented by your organization is crucial. Adults simply must do better at observing and listening as these situations are typically well-known amongst the kids involved, especially in schools. Most troubling is when the adults in charge of these kids are aware, and either turn a blind eye, or support these unacceptable actions. This simply can't be tolerated any longer and those who set policies must ensure proper adherence to these policies with serious consequences for those who choose to ignore them. This publication focuses on potential retaliation exposures created when someone feels they have been subjected to adverse actions following a report of "bullying."

Our author, Ashley R. Lynam, is a partner at Montgomery, McCracken, Walker & Rhoads where she advises clients on institutional responses to sex, gender, and race-based harassment, discrimination, and abuse. A former rape prosecutor, Ashley has handled the investigation, prosecution, and defense of high-profile claims involving allegations of misconduct, and counsels her clients on policy drafting, implementation, and risk assessment.

Please forward this to anyone within your diocese or organization who may find this information valuable and who has exposure to kids in their daily responsibilities. If you'd like any of the first three publications authored by Ashley, please let me know and I will get those out to you!

*Tony McLaughlin
Vice President, Claims & Shareholder Initiatives*

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Both public and parochial schools are increasingly prioritizing student well-being, with increasing awareness of and support for mental health as a primary focus of those efforts. Students should feel free and safe to make reports to school administration about bullying.

However, a latent concern in this space can bring about additional legal troubles for schools administrations: how to avoid additional claims of retaliation as a result of a poor handling of student bullying complaints.

Similar to retaliation claims in the workforce, students may bring claims of retaliation against schools when students and their families believe they have been subjected to adverse actions as a direct result of a report of bullying. Adverse actions can include something as simple as a negative mark, undesirable assignment, or detention, or something as serious as expulsion.

Parochial schools frequently rest their anti-bullying and retaliation efforts on the somewhat mistaken belief that they, as institutions, are categorically immune from claims arising from sex-based discrimination under Title IX and similar state and federal statutes. Retaliation claims, however, provide something of a “back-door” path to liability for would-be plaintiffs whose claims otherwise would not survive due to religious-based protections baked into the law.

In *Jauquet v. Green Bay Area Catholic Education, Inc.*, 996 F.3d 802 (7th Cir. 2021), for example, a student brought Title IX and related sex-based discrimination claims against her Catholic school after she was allegedly bullied by a fellow student and reported the behavior. The Seventh Circuit Court of Appeals ultimately affirmed the lower court’s dismissal of the bullied student’s Title IX claims, but remaining throughout the appeal process was a retaliation-based claim styled as a breach of contract for failure to follow policy. Even though the defendant school “won” on securing dismissal of the Title IX claim, there remained a legal vulnerability as to the retaliation claim, making the Title IX dismissal a pyrrhic victory.

How do parochial schools guard against retaliation-based claims? As always, the answer lies in sound policies and consistent implementation. Schools should maintain well-documented policies that explicitly prohibit retaliation. Mere publication without training simply is not enough – all employees and volunteers within a school system should receive ongoing training on such manuals. Regular training on anti-bullying and retaliation policies can serve to move a document from mere policy into cultural practice, effecting a school’s ethos and ultimately reducing the likelihood of misbehavior and failure to adhere to school policies overall. Where bullying and retaliation does happen, ensuring clear reporting mechanisms are in place with thorough and fair investigation plans can mitigate risks of legal claims down the road, as well.

In conclusion, retaliation claims after a report of bullying can pose a serious risk of legal threat. By understanding the legal framework, recognizing the potential risks, and implementing robust preventative measures, schools can protect themselves from liability while fostering a safe and supportive learning environment. Ultimately, addressing and preventing bullying and retaliation is not only a legal obligation but also a critical component of maintaining a healthy school culture.

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