

**Steps a School Administrator Can Take
to Avoid Liability
for a Bullied Student's Suicide**

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Long v. Murray County School District, 2012 WL 2277836 (ND Georgia 2012).

Note: The steps a school administrator can take to avoid liability for a bullied student's suicide are demonstrated both by the steps that the school administration in this case *could have* taken to protect the bullied student and by the many steps that they actually *did take* to protect the student.

The Facts:

1. Tyler Long, a 17 year old, 11th grade student at Murray County High School in Chatsworth, Georgia, committed suicide on October 17, 2009;
2. Tyler had been diagnosed with [Asperger's Syndrome](#) 4 years earlier.
3. Defendant, Gina Linder, was first assigned to the position of Principal of Murray High in July, 2007, and remained the principal as of the date of the Court decision.
4. Prior to his suicide, Tyler's parents did not inform Murray school officials that Tyler had been taken to a psychologist for a mental health evaluation; that Tyler had been wearing adult diapers at home; that Tyler had been in acute psychological distress; or that they had specific concerns that Tyler might commit suicide.
5. After Tyler's death, two students reported to Tyler's counselor, Julie Gallman, that A.H. had bullied Tyler in his guitar class on October 15, 2009 and October 16, 2009—the two days prior to Tyler's death. The guitar teacher, Mr. Weaver, did not intervene in either bullying incident.

6. There were many other bullying incidents in 11th grade, including, students knocked Tyler's books out of his hands while he was walking down the hallway and pushed him into a desk. A student witness identified the three students that were involved and reported the incident to an English teacher at Murray, but not to any administrator.
7. The MCSD Code of Student Conduct prohibited bullying, harassing and taunting of any student. Although the Code of Conduct prohibited all verbal and physical harassment, it did not specifically mention or address disability harassment.
8. While Tyler was a student, Murray did not hold any assemblies where the subject of the school's anti-taunting, anti-bullying, or anti-harassment policies were discussed.
9. Mr. Thornbury, the Assistant Principal in charge of discipline at Murray, never arranged any program or went to any student classroom to explain to students and teachers that bullying would not be tolerated, or to explain how teachers could confidentially report bullying and inappropriate conduct.
10. Although Murray did not have any established policy in place for anonymously reporting or complaining about the bullying, it did have an online complaint form that students could use when they had a concern or complaint.
11. Murray never gave teachers any training, programs, instruction, seminars, presentations, or meetings focused on bullying and harassment, how to respond to it, and that it would not be tolerated.
12. Murray never arranged for teachers to have any training or instruction on the bullying policy, on how to explain the bullying policy to the students, or on how the bullying policy would be enforced.

13. Murray required teachers with classrooms to stand outside their classroom doors in the hall in the morning before classes and during every class change to monitor student conduct in the hall.
14. While Tyler was a student, Murray had forty-two video cameras throughout the building. All the administrators could monitor video cameras from computers at their desks or later on recorded video for at least the previous two to three weeks.
15. Murray also had two school resource officers with a station at the intersection of several halls from which they monitored the halls on video camera monitors as well as through the windows of the station itself.
16. Murray IEPs are designed to protect against bullying and harassment of students with disabilities.
17. At around 6:00 a.m. on October 17, 2009, Mr. Long found Tyler dead at home hanging by a belt tied to a shelf in Tyler's closet.
18. After Tyler's suicide, students wrote the words "*we will not miss you*" and "*it was your own fault*" on the walls of Murray. In addition, a hangman's noose was drawn on one of the walls of the school, and students wore nooses around their necks to school.

The Suit:

Tyler's parents sued the school district and the Murray administrators in federal court for damages alleging that:

- a. school officials had a duty to intervene, investigate, correct, or train their employees to adequately protect Tyler from bullying;
- b. school officials' breach of that duty was a substantial contributing cause of Tyler's decision to take his own life; and
- c. school officials had a *deliberate indifference* towards their duty to protect Tyler.

The Court Ruling:

The Murray school district and administrators filed a pretrial motion for summary judgment asking that the parents' suit be thrown out of court without a trial.

The court threw the case out of court without a trial on the following grounds:

1. To establish liability by the school and its officials, under federal civil rights laws, the parents had the burden of proving the school officials were *deliberately indifferent* toward their duty to protect the student victim from disability harassment.
2. School officials will be held "deliberately indifferent" only if their response to the disability harassment of the student victim by other students was clearly unreasonable in light of the known circumstances.
3. A school district is not "deliberately indifferent" simply because the measures it takes are ultimately ineffective in stopping harassment.
4. Tyler's parents must show that the school district's deliberate indifference to the initial discrimination subjected the student victim to further discrimination.
5. Although the parents have established that the Murray school officials could have done more to address the disability harassment of Tyler, they failed to meet the high bar of "deliberate indifference" and demonstrate that the response to the disability harassment by Murray school officials was clearly unreasonable.
6. To constitute an "appropriate response" to the disability harassment of a student victim, school officials must:

“Take immediate and appropriate steps to investigate or otherwise determine what occurred and take steps reasonably calculated to end any harassment, eliminate a hostile environment if one has been created, and prevent further harassment from occurring again.”

7. In spite of all of the steps that Murray school officials failed to take to protect Tyler, the school officials demonstrated a *lack* of “deliberate indifference” by actually taking the following **steps** to prevent future harm to Tyler:

First, each time school officials became aware of a bullying incident, they disciplined the harassers and took measures to prevent future harm.

- a. Tyler’s parents failed to provide even one example of a reported incident where school officials failed to respond or where school officials’ response was clearly unreasonable.
- b. Tyler’s parents argued that “nothing was done about”: (1) Ms. Long’s complaints about Mr. Archie; (2) Ms. Long’s allegation that a student spit in Tyler’s lunch; and (3) Ms. Long’s report that Tyler had been kicked while waiting for the bus. The evidence, however, shows that school officials responded to each incident.
- c. In response to Ms. Long’s first complaint about Mr. Archie, Mr. Swilling talked to Mr. Archie and arranged an IEP meeting to inform Tyler’s teachers of his disability, address potential social misunderstandings, and increase adult monitoring during Mr. Archie’s class.
- d. After Ms. Long lodged a second complaint about Mr. Archie, Defendant Linder met directly with Mr. Archie to address Ms. Long’s allegations and followed up with a letter of reprimand—Mr. Archie eventually resigned.

- e. Although Mr. Swilling ultimately could not confirm the spitting incident, he investigated the incident and put teachers in the cafeteria on notice about Tyler and his situation.
- f. Finally, in response to allegations that students bullied Tyler on the bus, Ms. Bowers arranged for Tyler to walk to the bus with a teacher, stand next to a special education teacher while waiting for the bus, and sit behind the bus driver.
- g. Although school officials could have issued more severe discipline or taken more preventative steps, given that school officials investigated each incident and took remedial measures to prevent future, similar incidents, the Court cannot find that school officials' responses to the individual incidents identified by the Longs were clearly unreasonable.
- h. The evidence shows that school officials diligently investigated each reported incident and, when they could identify the harasser, disciplined offenders based on the severity of the incident and the accused's disciplinary history.
- i. In some cases, the school counselor and the assistant principal held a meeting with Tyler and the alleged perpetrators to help the students understand Tyler and his disability.
- j. In other cases, school officials met with the perpetrators, discussed their problems, and issued warnings.
- k. In the most severe cases, students received in-school suspension.
- l. Tyler's parents argued and presented expert testimony indicating that school officials' disciplinary measures should have been more severe and consistent. Specifically, they contended that school officials should have contacted the police in response to the September 2008 incident with J.M. and B.M. The undisputed evidence, however, shows that school officials' disciplinary

responses successfully deterred students from harassing Tyler again. Significantly, no student who received discipline from the school ever caused problems for Tyler again after being disciplined. School officials' response to the reported incidents was therefore 100 percent effective.

- m. Under those circumstances, even viewing the evidence in a light most favorable to Tyler's parents, the Court cannot find that school officials' disciplinary responses to the reported harassment incidents were clearly unreasonable or subjected Tyler to further discrimination.
- n. Outside of investigating reported incidents and disciplining or working with offenders, the evidence also shows that school officials took reasonable steps to prevent future abuse.
- o. Through Tyler's IEP, school officials worked with Tyler's parents to develop a *safety plan* to address Tyler's specific needs. After school officials received notice of Tyler's problems at the beginning of 9th grade, the IEP team met with Tyler's parents and determined that Tyler would be permitted to come directly to Ms. Bowers' classroom when he arrived in the morning and eat breakfast with Ms. Bowers, to sit near a teacher in the lunchroom, and to leave five minutes early to change classes.
- p. The IEP team met with Tyler's parents and many of Tyler's teachers every semester to address any parental or student concerns and adjust the IEP plan if necessary.
- q. Moreover, administrators instructed teachers to keep an eye on Tyler in common areas such as the gym, hallways, and the cafeteria.
- r. Tyler's parents argue that school officials' prevention and monitoring techniques were inadequate. Specifically, Tyler's parents' experts criticize school officials for withholding Tyler's

IEP from the staff and argue that the IEP resulted in further social isolation. According to Tyler's parents, although school officials allegedly placed cameras and teachers in the hallways, Tyler was still bullied in the hallways and cafeteria, school officials did not capture the incidents on camera, and the teachers consistently failed to intervene. At best, however, these criticisms show that school officials' monitoring and prevention techniques could have been improved.

- s. Even viewing the evidence in a light most favorable to Tyler's parents, however, the Court cannot find that school officials' remedial measures suggest an official decision by school officials not to remedy the violation or that school officials' response caused future harassment. To the contrary, the evidence shows that school officials took reasonable measures, even if those measures ultimately proved to be ineffective, to prevent future harassment. Under those circumstances, the Court cannot find that school officials' precautions against future abuse were clearly unreasonable.

Second, the Court cannot find that school officials knew that their remedial action was ineffective, but unreasonably failed to implement measures to eliminate harassment. There is no evidence that school officials "knew how to combat harassment ... and simply chose not to implement that known method of success."

- a. Additionally, there is no evidence that the level of harassment "escalated." In fact, the evidence shows that the harassment was most severe in 9th grade.
- b. Tyler's parents argue that, even if school officials did not discontinue an effective method of protection, the culture of harassment at Murray should have put school officials on notice that their remedial measures were ineffective. As evidence, Tyler's parents point to numerous incidents of harassment

reported after Tyler's death and to the students who wore nooses and painted inappropriate messages in the bathrooms the day after Tyler's suicide. Tyler's parents, however, point to no specific evidence indicating that school officials knew about, but deliberately ignored, a culture of disability harassment. Obviously, school officials are not responsible for failing to stop harassment of which it was not made aware.

- c. Based on their communication with Ms. Long, school officials could have reasonably believed that their efforts to combat harassment were succeeding. In the beginning of Tyler's 9th-grade year, Ms. Long sent school officials a series of emails describing widespread harassment of Tyler at Murray. In response to those emails, school officials met with Tyler's parents and developed a flexible IEP plan to address Tyler's parents' concerns about Tyler's safety.
- d. After the first semester of Tyler's 9th grade year, however, Ms. Long never reported another specific incident of harassment or complained about the general culture of harassment at Murray. In fact, Ms. Long sent numerous emails complimenting school officials' work with Tyler.
- e. Further, school officials received no reports of harassment from December 2008 until after Tyler's death in October 2009. Under those circumstances, even if school officials could have done more to remedy the culture of harassment, the Court cannot find that school officials ignored clear evidence that their remedial measures were ineffective.

Third, the Court cannot find that school officials' failure to implement more bullying awareness programs constitutes "deliberate indifference".

- a. Tyler's parents' experts specifically point to the lack of teacher training, the lack of school-wide assemblies, the ineffective

bullying policy, and the failure to provide specific instruction on bullying, disability harassment, and Asperger's as evidence that school officials failed to effectively respond to disability harassment against Tyler. Although the evidence clearly demonstrates that school officials could have implemented more programs to address bullying generally and disability harassment specifically, the evidence shows that school officials took affirmative steps to address bullying and disability harassment. Under those circumstances, the Court cannot find that school officials were “deliberately indifferent”.

- b. 1st, the Code of Conduct contained an anti-bullying policy that prohibited all verbal and physical harassment and described the range of consequences and the procedures for administering the disciplinary process.
- c. Administrators at Murray expected teachers to read and understand the bullying policy and discussed discipline procedures with the faculty at the beginning of the school year and at various times throughout the school year as needed.
- d. 2nd, although school officials did not hold school-wide assemblies addressing bullying, through the “Teachers as Advisors” program, teachers met with small groups of students, provided students with character education and instruction related to interpersonal relationships, and reviewed the Code of Conduct with their students.
- e. Murray also participated in the “Mix It Up” program, which addressed tolerance between students.
- f. In addition, in the fall of 2009, Murray implemented the Positive Behavioral Intervention and Support program to help improve overall student behavior.
- g. 3rd, although Murray did not have a confidential drop box, the

evidence shows that Murray had an online complaint form through which students and teachers could confidentially report concerns or complaints.

- h. Although Tyler's parents' criticisms of these programs "may speak to the overall effectiveness of the policies and programs, and may be relevant if negligence were the standard," merely showing that school officials should have done more does not demonstrate deliberate indifference.
- i. Under those circumstances, the Court cannot find that school officials' anti-bullying programs were clearly unreasonable and constitute deliberate indifference.

Summary

This is an emotionally charged case with very difficult facts. There is little question that Tyler was the victim of severe disability harassment, and that school officials *could have* done more to stop the harassment and prevent future incidents. To establish a claim however, Tyler's parents must demonstrate that school officials' response to disability harassment constitutes "deliberate indifference". In view of the many steps taken by the Murray administration to protect Tyler from future harm by disability harassment, the parents have failed to do so.

Case dismissed.

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