



Radtke Education Law LLC

This is the second in a series of education law nuggets for parents and students



Court: No Guarantee of Bully-Free Education for Special Needs Students

Bullying – name-calling, exclusion or physical abuse – is a daily challenge for many students. It’s a serious concern for parents. It also tops the charts as a public policy issue in state legislatures. Since 2005, 45 states have passed laws against bullying. Many of those laws were kicked up a notch in 2010 with new training requirements for school staff. Bullying has even reared its ugly head in the White House, where the President announced the launch of an anti-bullying website and a new commitment to continually shine a spotlight on bullying issues. "With big ears and the name that I have, I wasn't immune," he said.

These policies are laudable and important. But they don’t offer guidance on how to mitigate the bullying of special needs students, who are especially susceptible to disruptions in their relationships and learning environments. The courts, for their part, don’t offer much help.

Case in point: In a recent case in Pennsylvania, a federal district judge ruled that parents' fears about bullying didn't authorize them to transfer their special needs child to a private school without the consent of the public school responsible for the student's IEP.

The student – a 10th-grader -- had been diagnosed with Asperger's syndrome, reading, math, and writing disorders, as well as a learning disorder related to auditory and visual processing. He attended a private school under the terms of an IEP negotiated by the public school and his parents.

When the student was bullied at the private school, the parents took matters into their own hands (and thus technically violated the IEP) by transferring him to a different private school without the public school district's permission. When the parents sought reimbursement for tuition at the second private school, the school refused to pay the bill and said he must return to the public school, because since his transfer, they had developed a new class tailored to the needs of students with autism.

The parents rejected the offer for several reasons, including his risk of being bullied at the public school.

The judge said that the parents' fear of bullying was not enough to warrant the student's transfer to the second private school. While federal law (IDEIA) requires schools to provide special education students with a free, appropriate, public education (FAPE), the court said this standard didn't mean that schools must agree to the placement of special needs students based on the risk of bullying by other students. In the judge's words: "[The student] may face bullying, but a fair appropriate public education does not require that the District be able to prove that a student will not face future bullying at a placement, as this is impossible."

When it comes to predicting the risk of bullying for general education students, the Judge may have a point. For students with special needs, however, the odds of being bullied are virtually guaranteed. Las Vegas odds makers would take the bet in a heartbeat.

We can't put special needs children in a risk-free bubble. No school can guarantee that special needs students will never be subject to bullying. Still, state legislatures and courts could at least set an example by demonstrating a more nuanced understanding of how bullying impacts our most vulnerable children. Schools could do likewise, by fostering learning environments where students are encouraged to appreciate the different abilities of other students.

The series is written by Radtke Education Law, LLC, a law firm offering quality legal representation for parents and students in their disputes with schools, from child care through college. This article series offers information on emerging school issues so parents can proactively manage their relationships with teachers and school administrators.

ABOUT RADTKE EDUCATION LAW, LLC

Radtke Education Law, LLC is solely owned by Melva Radtke. She is an attorney, teacher and parent. She received her J.D. From William Mitchell College of Law in 1986, her Master's Degree in Teaching from the University of Chicago and her Bachelor's Degree, cum laude, from Augustana College in Rock Island, Illinois.

Melva worked fourteen years in the Minnesota State Senate and House of Representatives as a policy researcher and writer, providing legislative, practical and strategic analysis on a broad range of policy issues for legislators, including early childhood education and public health. Melva is the proud mother of three young adults. One of her sons has Asperger's Syndrome and he has inspired her to work on a variety of autism-related ventures. She serves on the Board of Autism Works, an emerging nonprofit organization with an individualized service model for individuals on the autism spectrum. She also serves on the Board of Stepping Stone, an organization which is developing an independent-lifestyle dorm for young adults with Asperger's Syndrome. Melva is also the founder of a new company which produces social skills training videos for young adults on the autism spectrum. Melva owned a family law practice and mediated and prosecuted student truancy cases in Ramsey County. She also served as a member of the Stillwater School Board, with four years as board chair. If you have questions related to your child's education or school law disputes, you can reach Melva at:

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