



Risk Manager

[School Officials May Be Liable For Suicide of Student Who Was Bullied](#)

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There has been a lot of attention recently about a number of recent suicides among middle school, high school, and even college-age students who killed themselves after suffering from pervasive bullying. Most people have focused on trying to get the message out to youth that bullying does end and life will get better (for example, [this video posted by Ellen DeGeneres on her facebook.com site](#) and [this YouTube.com video entitled "It Gets Better" posted by a gay couple who share their "happily ever after" story](#) to inspire gay youth who are in a high risk group for suicide due to bullying). One grieving mother has taken another approach, by [bringing a wrongful death lawsuit against school officials](#) at Grafton High School alleging negligence for their failure to protect her teenage son from bullying that lead to his suicide.

In the suit, the mother alleges that the school principal, the two assistant principal, the school counselor, and the school resource officer failed their duty to protect her son while he was in their custody or under their supervision at Grafton High. The school resource officer was dismissed on demurrer, with the court holding that a school resource officer serves a peacekeeping function at the school, not one intended to supervise the students. The attorney for the defendants argued that school administrators did not have a duty to prevent a suicide that occurred at home, after the child left their custody. There was also a question whether the school administrators could have foreseen the student's suicide based on the information available to them. The court held that the plaintiff pled enough for the case to move forward past the initial pleadings, to determine what the administrators knew about the bullying suffered by the student while he was in their care and what they could have done or should have done to protect him.

The theory of the case is not as novel as it may sound at first. The U.S. Supreme Court has dealt with a related issue in the case [Davis v. Monroe County Board of Education, 526 U.S. 629 \(1999\)](#). In *Davis* a mother brought a claim against the school board for not preventing the harassment of her daughter by a male student. She based her claim on [Title IX of the Education Amendments of 1972](#), which guarantees equal access to educational benefits by students, regardless of the sex of the student. Because the male student sexually

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harassed the plaintiff's daughter, the Court held that a school may be liable if a school is deliberately indifferent to student-on-student harassment that is "so severe, pervasive, and objectively offensive that it effectively bars the victim's access to an educational opportunity or benefit."

Although *Davis* imposes a duty on school administrators to stop gender-based sexual harassment bullying, [Title IX](#) does not offer protection based on sexual orientation or other traits that might make a student the target of bullying – anything from socioeconomic status [to red hair](#) can single out a student for pervasive harassment that bars them from educational access without triggering Title IX's protections. If Alise Williams prevails in her wrongful death suit against Grafton High School administrators, she may create a common law protection similar to Title IX's protection against sexual harassment.

As a defense attorney, I wonder if this type of liability really will make our schools safer for male victims of bullying. (Interestingly, the recently publicized deaths of victims of bullying due to suicide were all male.) It may make school officials less likely to dismiss a student's complaint with a shrug and a "boys will be boys" mentality. On the other hand, how much power to school administrators really have to stop bullies from harassment that extends to facebook messages, twitter posts, and bus stop assaults? When a student is so depressed from bullying that he takes his own life, that seems to be a problem that is better addressed through parental involvement to seek mental health counseling for their child to help them withstand the psychological effects of bullying and live until their son can make his own "happy ending" like the one shared by the couple in the "It Gets Better" video, rather than school administrators who can at best offer physical security for students in their care, but not the self-confidence and counseling needed to survive the psychological effects of bullying. At the same time, if school administrators are aware of bullying but don't provide that sense of physical safety and don't partner with parents to alert them that their child may need counseling, maybe they should have some liability for their inaction.

For example, the recent suicide of Rutgers' student [Tyler Clementi](#) seemed to have been triggered by his roommate posting messages and video links to a Twitter feed revealing the teenager was gay. That kind of bullying is far beyond the ability of school administrators to regulate or control. Although Clementi and his roommate were college students and the wrongful death case involves the suicide of a persecuted high school student, Clementi's death highlights how hard it is for parents and school officials to protect kids from cyber-bullying, which can be just as psychologically damaging as physical threats.

I would be interested to hear your thoughts on how effective the civil litigation system is to prevent bullying. Should we turn up the heat on school administrators to protect younger students from bullying by imposing civil liability for suicides that result from a student's harassment at school or is this the wrong vehicle for finding ways to increase protections to students harassed by other students in ways that are outside the protections of Title IX? Do school officials have a duty to keep kids physically safe from bullies, but leave kids like Clementi unprotected from cyber bullies? These are questions worth asking as the legal system works to address the growing problem of bullying, the pervasiveness of cyberspace that allows bullies to reach kids even at home, and the devastating effects.

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