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By the EdLaw Group at Lindabury

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## Civil Rights Hearing for District after Inadequate Response to Racial Harassment

By Scott D. Zucker

A recent finding of probable cause by the Division of Civil Rights (“DCR”) against the Franklin Township Board of Education (“the District”) is instructive for how school districts should respond to reports of bullying, harassment, or intimidation.

The case focused on recurring race-based harassment that an African-American girl (hereinafter referred to as “the victim”) endured from the third grade through sixth grade while attending the District’s elementary school.

### Third Grade

The victim’s parents reported the first incident of harassment, which occurred on a school bus, to the school principal in the fall of her third grade year. They informed the principal that similar incidents had occurred. The principal responded that the alleged harassers denied making any racial comments or even speaking to the victim on the bus, but she warned the students not to call the victim or anyone else by anything other than their proper names. The principal notified the bus driver of the incident, and an aide was assigned to the bus. The principal asked the parents to encourage their daughter to promptly report incidents to the bus driver, a teacher, or her parents. The victim’s parents were dissatisfied with the response and held their daughter out of school for fifteen days that month. Due to continuing racial harassment, at the end of the school year, the victim’s parents requested to transfer their daughter to another district for the following school year, but the request was denied.

The next fall, the victim’s parents learned that one of the students from the prior year’s bus incident apologized to their daughter for calling her names based on her race. Because they felt this contradicted the principal’s earlier findings, the parents asked the superintendent to take appropriate action. The superintendent responded by suggesting that the parents allow their “daughter to accept the alleged apology so that the children can move forward and learn from this experience.”

### Fourth Grade

Racial harassment of the victim continued when she was in fourth grade, and the victim’s parents notified the superintendent and the school principal. One incident occurred while the victim was on the bus. The principal confirmed that the incident occurred and that the harassers were no longer sitting by the victim on the bus. The principal spoke with (cont’d ►)

the harassers' parents, the harassers served suspensions, and the harassers "viewed several videos regarding discrimination and equal rights," including ones related to Rosa Parks and Martin Luther King, Jr. The same two harassers called the victim race-based names on school property later in the school year. The victim's family did not report the subsequent incident to the District administration because they were becoming reluctant to report the incidents to the District.

### **Fifth Grade**

The racial harassment of the victim continued and grew "even more aggressive" the following school year, when the victim was in fifth grade. The parents reported another incident where their daughter was subject to race-based verbal harassment by two white male students on the school bus. Both students acknowledged teasing the victim but only one confessed to calling her the n-word. The principal moved the student, who admitted using the n-word, to the front seat of the bus, away from the victim. The principal spoke to the harassers and their parents about the severity of the racial remarks, and he reported the incident to the District's interim superintendent. The principal claims that he sent a letter to all parents of the school's students, reminding them of the school calendar and providing "information about the Golden Rule, . . . highlight[ing] policies in general terms and remind[ing] the children to be mindful of inappropriate comments and conduct, verbal or otherwise, which would be hurtful to other students."

The victim's parents were dissatisfied with the District's response and shared this sentiment in a letter to the principal. The letter expressed the parents' concerns about the number of incidents their daughter had endured since she had started to attend the school in third grade. The victim's parents said that their daughter was experiencing emotional stress, pain and suffering, and again requested to transfer her to another school. Apparently, the principal told the victim's parents that "[the school] can not stop children from calling out racial names . . . at

the school." The principal had also said, in the victim's presence, that "he does not know how to stop the racial problems in the school and just does not know what to do." The parents reported that they felt that there was no benefit to reporting the harassment to the principal.

### **Sixth Grade**

The victim continued to endure even more frequent and severe racial harassment when she was in the sixth grade. Her parents reported another incident that occurred on the school bus to the superintendent. The principal met with one student who admitted to engaging in the harassment and his parents. The student was assigned to detention, and the student viewed and reported on a video about Rosa Parks. Another student received "disciplinary action" and was required to watch a video called "The Children's March." The superintendent offered the victim's parents the opportunity to view and provide feedback on the school's diversity materials. The superintendent also said that he was "trying to raise awareness of racial slurs and the importance of respect for diversity" and listed programs the District held to accomplish this goal in the past month. The District provided to the DCR a list of videos from the "Teacher Tolerance" series that were presented to all students and assignments and videos relating to African-American history, Martin Luther King, Jr., and civil rights. The District also presented two school-wide cultural diversity programs in January and February 2009.

### **DCR Finding**

Based on its investigation, the DCR made a finding of probable cause, which means that it found "a reasonable ground for suspicion supported by facts and circumstances strong enough to warrant a cautious person to believe that the law was violated and that the matter should proceed to a hearing." The DCR determined that there was a reasonable suspicion that the victim was subjected to bias-based peer harassment that was sufficiently severe or pervasive to create a racially hostile school environment. Conduct is defined as severe or

pervasive when “a reasonable student of the same age, maturity level, and protected characteristic would consider the harassment to be sufficiently offensive to create an intimidating, hostile, or offensive school environment.”

In making this determination, the DCR emphasized that the victim was repeatedly subjected to racial slurs from third through sixth grades, by several students, some of whom were repeat offenders. The DCR noted that for a child of the victim’s age, attending a school in which she is substantially in the minority, the circumstances could likely constitute severe and pervasive bias-based harassment.

Additionally, the DCR’s investigation supported a reasonable suspicion that the District failed to take sufficient action that was reasonably calculated to stop the racial harassment. The DCR pointed out that the District was aware of the incidents which recurred in each of the victim’s four years at the elementary school, the incidents intensified in the sixth grade, and the incidents involved several students and repeat offenders. Further, the evidence indicated that the District took insufficient appropriate action “**specifically and reasonably calculated** to address the systemic aspect of the problem” (emphasis added). The DCR acknowledged that “after-the-fact discipline and remedial education for individual offenders, tailored to the specific offending conduct, may be a necessary part of a remedial scheme,” but a school district may need to do more.

Further, the DCR pointed out that the racial harassment appeared to intensify, and that the District should have recognized that its responses to the individual offenders were not satisfactory in preventing and eliminating racial hostility. The DCR suggested that the District could have taken broader affirmative steps to address racial hostility in the school culture, or that it could have “explicitly put the entire student population or their parents on notice that racial harassment was taking place and would not be tolerated.” The DCR found that the

majority of the District’s correspondence evaded or downplayed the issue.

Finally, the DCR noted that the existence of an anti-harassment, intimidation, and bullying policy could not shield the District from potential liability. The DCR found that the evidence did not indicate that the District “meaningfully and fully explored the entire range of possible responses, given the significant duration and type of harassment alleged.”

### Some Lessons

School districts should note several lessons from the Franklin case. First, districts should intensify or modify their responses appropriately if harassment, intimidation, or bullying intensifies or features repeat offenders or victims. Second, if acts of harassment, intimidation, or bullying are committed by several offenders within a group, class, or grade, districts should strongly consider broadly addressing the issue with the group, class, grade, or even the school through educational or preventative programs in an effort to prevent harassment, intimidation, or bullying from becoming pervasive and to eliminate such acts entirely. The response should be “specifically and reasonably calculated to address the systemic aspect of the problem.” Third, when the circumstances warrant it, districts may need to advise the school community of frequent acts of harassment, intimidation, or bullying. Fourth, districts should measure the effectiveness of their responses to acts of harassment, intimidation, or bullying. In other words, if acts of harassment, intimidation, or bullying continue to be committed by an individual or group that the district had already addressed, the district may need to consider whether it should respond differently to future offenders.



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