

School Bullying in Connecticut: Can the Statehouse and the Courthouse Fix the Schoolhouse? An Analysis of Connecticut's Anti-Bullying Statute

LAURIE BLOOM[†]

I. INTRODUCTION

School bullying is hardly a new or local phenomenon. Traditionally viewed as a social problem and a normal part of growing up,¹ bullying tragedies have made their way into the headlines in Connecticut, across the nation, and around the globe. Bullying may include any form of personal harassment repeated over time, regardless of discriminatory intent or reason.² It includes behavior that is physically, verbally or emotionally abusive.³ Increasing incidents of school violence rooted in bullying behavior, including school shootings such as Columbine High School (1999) in Littleton, Colorado⁴ and teen and pre-teen suicides such as J. Daniel Scruggs (2002) in Meriden, Connecticut,⁵ have raised public and political awareness that has generated anti-bullying legislation in thirty-two states⁶ including Connecticut.⁷ There are even groups calling for federal anti-bullying laws linked to the fulfillment of the *No Child Left Behind Act*.⁸

[†] Juris Doctor candidate, University of Connecticut School of Law, 2008.

¹ See DAN OLWEUS, *BULLYING AT SCHOOL: WHAT WE KNOW AND WHAT WE CAN DO* (Blackwell Publ'g Ltd., 1993).

² See Stop Bullying Now, <http://www.stopbullyingnow.com/identify.htm> (last visited Sept. 13, 2007).

³ *Id.*

⁴ U.S. SECRET SERVICE AND U.S. DEPARTMENT OF EDUCATION, *THE FINAL REPORT AND FINDINGS OF THE SAFE SCHOOL INITIATIVE: IMPLICATIONS FOR THE PREVENTION OF SCHOOL ATTACKS IN THE UNITED STATES* 12, 21, 35–36 (2002), available at http://www.secretservice.gov/ntac/ssi_final_report.pdf. [hereinafter SECRET SERVICE/DEPT OF EDUCATION REPORT 2002].

⁵ *60 Minutes: Suicide of a 12-year-old* (CBS television broadcast Oct. 29, 2003), available at <http://www.cbsnews.com/stories/2003/10/28/60II/main580507.shtml>.

⁶ BullyPolice.org, Bully Police USA, <http://www.bullypolice.org> (last visited Sept. 27, 2007); S. Vitaska, *Bullying*, LEGISBRIEF, National Conference of State Legislatures (2006), available at http://www.ncsl.org/programs/pubs/summaries/06LBNovDec_Bullying-sum.htm.

⁷ CONN. GEN. STAT. § 10-222d (2007); 2002 Conn. Acts. 02-119.

⁸ Petitiononline.com, Federal Anti-Bullying Law Online Petition, <http://www.petitiononline.com/FedABLAW/petition.html> (last visited Aug. 29, 2007).

Bullying affects the educational experience of the bullying victims, the bullies and all members of the school community.⁹ Bullying impacts all aspects of the educational environment and its effects on those involved may endure long after the bullying has stopped, even into adulthood.¹⁰ Not only do the scars of bullying, intimidation and humiliation remain with the victims, but today's school bullies may become tomorrow's office bullies,¹¹ as well as perpetrators of domestic violence and other crimes.¹² Former school bullies are four times more likely to be repeat serious criminal offenders than their non-bullying classmates.¹³

Retaliatory bullying pits victims against their aggressors and is believed to have been the impetus for the Columbine High School shootings¹⁴ and other outrageous acts of school violence.¹⁵ Over seventy percent of school attackers have reported feeling persecuted, bullied or threatened;¹⁶ they may have been seeking revenge. School shootings and other acts of school violence across the nation have not gone unnoticed by the Connecticut legislature and other states in drafting and amending anti-bullying statutes across the country.¹⁷

There has been much fanfare and self-congratulatory promotion in states that have adopted anti-bullying laws.¹⁸ In observance of America's Safe Schools Week and Connecticut Safe Schools Week last October, Governor Jodi Rell proclaimed October 16, 2006 Anti-bullying Day in Connecticut.¹⁹ Despite these efforts, the fact remains that substantial

⁹ Bullying in Schools: Fighting the Bully Battle, Bullying Fact Sheet Series, 2006, Fact Sheet No. 2, National School Safety Center, available at <http://www.schoolsafety.us/pubfiles/bullyingfactsheets.pdf>.

¹⁰ *An Act Concerning a Safe Learning Environment for Children and Youth: Hearing on H.B. 5504 Before Conn. Select Comm. on Child.*, 119th Sess., 177 (Conn. 2006), available at <http://www.cga.ct.gov/coc/PDFS/legislativeioq/2006/022806bSelectcmtestimony.pdf> [hereinafter *Hearing on 2006 H.B. 5504*].

¹¹ *It's a Girl's World: A Documentary about Social Bullying* (CBC RadioOne IDEAS broadcast), available at http://www.cbc.ca/ideas/features/girls_world/index.html; *It's a Girl's World*, National Film Board of Canada, 2004, available at <http://www.nfb.ca/trouverunfilm/fichefilm.php?id=51404&v=h&lg=en&exp=105726#>.

¹² See generally OLWEUS, *supra* note 1.

¹³ *Id.*

¹⁴ The Ophelia Project, *The Current State of Relational Aggression*, http://www.opheliaproject.org/main/ra_current.htm. (last visited Nov. 15, 2007).

¹⁵ See SECRET SERVICE/DEPT OF EDUCATION REPORT 2002, *supra* note 4, at 35–36.

¹⁶ *Id.* at 21.

¹⁷ See BullyPolice.org, *supra* note 6.

¹⁸ Camilla A. Herrera, *It's Time to Take Bullies Seriously*, STAMFORD ADVOCATE, Oct. 16, 2006.

¹⁹ *Id.*; National School Safety Center, *America's Safe Schools Week*, <http://www.schoolsafety.us/Safe-Schools-Week-p-24.html> (last visited Oct. 4, 2007); *Anti-Bullying Day Declared*, POSITIVE PARENTING (Mental Health Assn. of Conn., Inc., Wethersfield, Conn.) Summer 2006, at 1; Herrera, *supra* note 18.

numbers of students at all grade levels fear being bullied every day.²⁰ This is reflected by rising truancy rates nationwide.²¹ One day of awareness is not enough to protect students for the remaining 180 days that school is in session. Every day must be an anti-bullying day.

While anti-bullying laws may be well intended, they are by-and-large both vague and ineffective, providing only false comfort, if any, to bullying victims, parents and school officials.²² Even when bullying leads to violence and tragedy, the statutes provide no remedy in the courts for victims.²³ Schools shirk their statutory duty to report and remediate, by underreporting bullying or simply ignoring it.²⁴ Juvenile bullies and their parents are rarely held accountable,²⁵ and school administrators hide behind a shield of municipal immunity.²⁶

Connecticut's Anti-bullying law²⁷ was recently tested in *Santoro v. Hamden*,²⁸ where its intent and authority was questioned,

[T]his court finds insufficient indicia that the legislature intended to create a private cause of action pursuant to section 10-222d. Therefore this court concludes that section 10-222d does not provide a basis for circumventing the doctrine of sovereign immunity The manner within which a school district establishes its educational system and the manner in which it implements its bullying policy are discretionary.²⁹

The *Santoro* court's holding is a sad testament to Section 10-222d's ineffectiveness. It quashes any hope that it would positively impact the educational environment in Connecticut schools and the health, safety and educational benefits enjoyed, or alternatively suffered, by Connecticut children.

²⁰ See Interview with Peter Yarrow, Founder, Operation Respect (Feb. 2005) available at <http://www.nea.org/neatoday/0502/yarrow.html>.

²¹ *Id.*

²² BullyPolice.org, *supra* note 6.

²³ See *infra* Parts V, VI.

²⁴ Editorial, *Anti-Bullying Law Ineffective*, HARTFORD COURANT, Oct. 30, 2006, at A10.

²⁵ *But see infra* note 138.

²⁶ Daniel B. Weddle, *Bullying in School: The Disconnect Between Empirical Research and Constitutional, Statutory and Tort Duties to Supervise*, 77 TEMP L. REV. 641, 683 (2004).

²⁷ CONN. GEN. STAT. § 10-222d.

²⁸ *Santoro v. Hamden*, No. CV040488583, 2006 WL 2536595, at *1 (Conn. Super. Ct. Aug. 18, 2006).

²⁹ *Id.* at *2-3.

This Note examines the status of school bullying policy, anti-bullying legislation, and Connecticut and federal school bullying case law. Constitutional and statutory considerations are examined, followed by an assessment of the effectiveness of Connecticut's anti-bullying statute in carrying out the legislative goals. The impact of district-controlled anti-bullying policy on the safety of students and the social and educational environment in Connecticut schools is also discussed. Case law in Connecticut and other jurisdictions is reviewed to determine courts' successes in applying state and federal statutes for bullying victims. This Note concludes with a comparative discussion of workplace bullying and the current status of Connecticut's anti-bullying policy and proposes changes to make the law more effective.

II. BULLYING DEFINED

The National Education Association estimates that 160,000 students avoid school every day for fear of being physically or emotionally abused by their peers³⁰ under the not-so-watchful eyes of school staff. There is, or ought to be, an expectation that students should be able to attend school without fearing for their personal safety. The law must provide a cause of action when schools fail to meet their obligation to provide a safe (and respectful) learning environment. Determining what constitutes bullying is vital to these goals, yet extremely difficult to do.

“[B]ullying” means any overt acts by a student or a group of students directed against another student with the intent to ridicule, harass, humiliate or intimidate the other student while on school grounds, at a school-sponsored activity or on a school bus, which acts are repeated against the same student over time. Such policies may include provisions addressing bullying outside of the school setting if it has a direct and negative impact on a student's academic performance or safety in school.³¹

This definition, taken from the Connecticut anti-bullying statute, is vague and far from comprehensive. The overt acts typical of younger children and adolescent/teenage boys, including physical and verbal abuse, harassment, and humiliation, are far more easily identified than their covert

³⁰ Yarrow, *supra* note 20.

³¹ CONN. GEN. STAT. § 10-222d; *see infra* Part III (unlike discrimination and harassment claims under *Title IX*, the Connecticut definition of bullying does not require that a member of a protected class be targeted; in fact, bullying conduct or harassment may single out an individual for no reason whatsoever).

cousins.³² Covert acts could arguably be considered more pernicious forms of emotional and psychological torment and perhaps even more damaging to the victims.³³ This covert or “relational aggression” infects the lives of adolescent and teenage girls (and to a lesser extent boys) and their classmates in middle schools and high schools across the country.³⁴ State anti-bullying laws, and school district anti-bullying policies, most often do not address relational aggression or even recognize it as a form of bullying.³⁵ Its existence and the adverse impact it has on the educational environment are simply ignored and denied by school administrators and school policy makers.³⁶

Bullying, whether overt or covert, is about social power.³⁷ Bullies may physically overpower their victims, verbally abuse them, sexually harass them, or torment their victims psychologically through social isolation and fear tactics.³⁸ In relational aggression, the bully controls her/his victim by manipulating her/his relationship with others by social exclusion, rumor spreading, threats, deception and lies, and in today’s electronic age, by cyberbullying.³⁹

It is difficult to determine when bullying crosses the line from marginalized but acceptable social behavior such as personal harassment, minor physical contact, and non-physical social and emotional interaction among peers, to more questionable conduct that gives rise to public policy concerns, rule enforcement, and the accountability of bullies and enablers. Echoing these concerns, in a precedent-setting Canadian bullying trial in response to the widely publicized bully-suicide death of fourteen-year-old Dawn Marie Wesley,⁴⁰ Judge C.J. Rounthwaite asked, “When do school yard taunts cross over the line to become a criminal offence of threatening death or bodily harm? When does a teenager’s annoying behaviour towards a fellow student amount to an offence of criminal harassment?”⁴¹ In an

³² The Ophelia Project, *supra* note 14.

³³ *Id.*

³⁴ RACHEL SIMMONS, *ODD GIRL OUT: THE HIDDEN CULTURE OF AGGRESSION IN GIRLS* (2002); Margaret Talbot, *Girls Just Want to Be Mean*, N.Y. TIMES MAG., Feb. 24, 2002, at 24.

³⁵ See e.g. CONN. GEN. STAT. § 10-222d (defining bullying as an “overt act”).

³⁶ See generally The Ophelia Project, *supra* note 14; BullyPolice.org, *supra* note 6.

³⁷ HAMILTON FISH INSTITUTE, THE GEORGE WASHINGTON UNIVERSITY, THE 4-1-1 ON BULLYING (2004) available at <http://www.hamfish.org/newsroom/bullying411.pdf>.

³⁸ *Id.*

³⁹ The Ophelia Project, *supra* note 14.

⁴⁰ CBC News: Teen’s Suicide Leads to Charges, http://www.cbc.ca/news/story/2000/11/17/bc_suicidecharges.html (last visited Nov. 15, 2007); *The Oprah Winfrey Show: The Hidden Culture of Aggression in Girls* (ABC television broadcast April 24, 2002), available at http://www.oprah.com/tows/pastshows/tows_2002/tows_past_20020424.jhtml.

⁴¹ R. v. D.W., 2002 B.C.J. 627.

effective anti-bullying plan, schools must intervene to positively alter the school climate *before* students cross over that line.

III. ANTI-BULLYING POLICY: THE CONSTITUTIONAL AND STATUTORY CONSIDERATIONS

In the context of school bullying there remains a tension between the school's responsibility to all students to promote a safe learning environment and the duty to respect students' individual rights, including due process rights and First Amendment protection. Student speech and expression protected by the First Amendment has been defined by three seminal cases: *Tinker v. Des Moines Independent School District*,⁴² *Bethel School District Number 403 v. Fraser*⁴³ and *Hazelwood School District v. Kuhlmeier*.⁴⁴ Speaking for the Court in *Tinker*, Justice Fortas famously proclaimed, "It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."⁴⁵ Where student speech and expression does not substantially disrupt or materially interfere with the work of the school *or intrude on the rights of other students to be secure and let alone*, then such speech shall not be unconstitutionally prohibited.⁴⁶ Clearly, bullying is not the kind of speech or conduct which *Tinker* sought to protect.

Intimidation of one student by another, including intimidation by name calling, is the kind of behavior school authorities are expected to control or prevent. There is no constitutional right to be a bully . . . Students cannot hide behind the First Amendment to protect their "right" to abuse and intimidate other students at school . . . [T]he First Amendment does not interfere with basic school discipline.⁴⁷

Seventeen years after *Tinker*, the Court continued to wrestle with line drawing "in the area where students in the exercise of First Amendment rights collide with the rules of the school authorities."⁴⁸ The Court distinguished Matthew Fraser's use of obscene language and gestures in a

⁴² 393 U.S. 503 (1969).

⁴³ 478 U.S. 675 (1986).

⁴⁴ 484 U.S. 260 (1988).

⁴⁵ *Tinker*, 393 U.S. at 506.

⁴⁶ *See id.* at 508-09, 514.

⁴⁷ *Sypniewski v. Warren Hills Reg'l Bd. of Educ.*, 307 F.3d 243, 264 (3d Cir. 2002).

⁴⁸ *Tinker*, 393 U.S. at 507.

school-sponsored student government assembly from Tinker's passive expression of political protest.⁴⁹ The school district's "disruptive conduct rule"⁵⁰ was an appropriate exercise of time, place, and manner restrictions for conduct that substantially interferes with the educational process, even though the government might not be able to censor the same conduct or speech in another setting.⁵¹

The final prong in the student speech trilogy, *Hazelwood*, held that schools may regulate/censor student speech and expression where it is reasonably related to legitimate educational interests.⁵² The school newspaper published by the high school journalism class is not a public forum and may reasonably be perceived by members of the public to bear the imprimatur of the school.⁵³ As a school sponsored publication it is considered part of the curriculum and as such "educators do not offend the First Amendment by exercising editorial control over the style and content of student speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical concerns."⁵⁴

Consider what constitutes First Amendment protected student speech or expression where bullying, harassment, or intimidation are concerned. Dylan Klebold and Eric Harris both wrote graphic, violent stories involving guns and bomb-building for their classes at Columbine High School in Littleton, Colorado and created films for a high school videography class featuring themselves wielding fake weapons in school, shooting fellow students, and blowing up the school.⁵⁵ Teachers and administrators were aware of this 'creative expression' long before the tragic events of April 20, 1999.⁵⁶ Harris' website contained vague threats and hate speech against various groups of people and detailed descriptions of constructing and detonating pipe bombs.⁵⁷ The balance between censorship of young minds expressing sometimes gruesome fantasies⁵⁸ and the safety of students is at the heart of First Amendment concerns.⁵⁹ Like Columbine, the tragic shooting rampage at Virginia Tech in April 2007

⁴⁹ *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 680 (1986).

⁵⁰ *See id.* at 675.

⁵¹ *See id.* at 680–86.

⁵² *See Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 273 (1988).

⁵³ *Id.* at 271.

⁵⁴ *Id.* at 273.

⁵⁵ *Castaldo v. Stone*, 192 F.Supp.2d 1124, 1145–47 (D.Colo. 2001).

⁵⁶ *See id.* at 1164–66.

⁵⁷ *See id.* at 1145.

⁵⁸ *See Joseph Berger, Deciding When Student Writing Crosses the Line*, N.Y. TIMES, May 2, 2007, at B7 (discussing the dilemma faced by teachers when determining when and how to address certain 'disturbing' creativity in student work).

⁵⁹ *Id.*

demonstrates what can go terribly wrong when, after years of being bullied, compounded by mental health problems, the bullying victim seeks revenge and self-destruction.⁶⁰ As an English major, the Virginia Tech shooter, Cho's writings were violent and disturbing and had raised the concerns of his professors and mental health professionals, but no one intervened to protect the safety of other students for fear of violating Cho's rights.⁶¹

When schools have failed to implement effective bullying prevention policies consistently, at all grade levels, the long-term consequences may be unleashed on society, revealed years later, in the form of egregious school and workplace violence.⁶² In a comprehensive joint study by the Secret Service and U.S. Dept. of Education, over two decades of school shootings were analyzed.⁶³ They found nearly three quarters of school "attackers" had reported being bullied, threatened and harassed prior to the shooting incident.⁶⁴ Their own victimization may have had a significant impact on their violent, destructive conduct.⁶⁵

The constantly changing technologies of the internet age pose new First Amendment challenges to a civilized society and a healthy school environment. A new generation of "cyberbullies" are now anonymously manipulating the psyche and emotional stability of victims via text message, instant message, and cruel and hateful customized websites.⁶⁶ "Cyberbullying is the epitome of covert aggression; it is anonymous, destructive, and now, instantaneous."⁶⁷ Although internet harassment, for the most part, originates outside the school, it functions as the electronic bathroom wall, insidiously disrupting the school environment. Cyberbullying creates a tension between the First Amendment protection of student speech and the duty of school administrators to prevent the impact of abusive, harassing, threatening or other potentially harmful expression unleashed on the school community.⁶⁸

⁶⁰ See generally VIRGINIA TECH REVIEW PANEL, MASS SHOOTINGS AT VIRGINIA TECH: REPORT OF THE REVIEW PANEL (2007) available at <http://www.governor.virginia.gov/TempContent/techPanelReport-docs/FullReport.pdf>; Virginia M. Shiller, Letter to the Editor, *Where Bullying Leads*, HARTFORD COURANT, Apr. 28, 2007, at A7.

⁶¹ Tamar Lewin, *Laws Limit Colleges' Options When a Student is Mentally Ill*, N.Y. TIMES, Apr. 19, 2007, at A1.

⁶² See generally, SECRET SERVICE/DEPT OF EDUCATION REPORT 2002, *supra* note 4.

⁶³ *Id.*

⁶⁴ *Id.* at 21.

⁶⁵ *Id.*

⁶⁶ Renee L. Servance, Comment, *Cyberbullying, Cyber-Harassment, and the Conflict Between Schools and the First Amendment*, 2003 WIS. L. REV. 1213; see also e.g., Catherine Patch, *Faceless Bullies Prey Online; Computer-based Harassment is 'Everywhere; Issue is Still 'About Relationships and Abuse of Power*, TORONTO STAR NEWSPAPERS, Aug. 24, 2006, at J05.

⁶⁷ The Ophelia Project, *supra* note 14.

⁶⁸ Servance, *supra* note 66, at 1215.

The varying standards of conduct and expectations in our judicial system raise additional issues when seeking protection from school bullying, peer harassment, and abuse under the law. In a recent New Jersey bullying case,⁶⁹ a student who was bullied⁷⁰ based on his perceived sexual orientation made a claim under New Jersey's employment discrimination statute, the *Law Against Discrimination (LAD)*.⁷¹ The school district was held liable for compensatory damages because they knew or should have known of the harassment and failed to take *adequate* steps to remedy the situation.⁷² While progressive disciplinary action had been taken against the individual offending students, "[school] administrators had failed to act appropriately in addressing the . . . hostility in the school environment as a whole."⁷³ The New Jersey Court applied the standard for assessing liability for sexual harassment in the workplace under *LAD* to the school context.⁷⁴ The school board unsuccessfully appealed on the grounds that the *LAD* applies to adults in the workplace, not students in the school setting. The school board argued that the school context should be evaluated under the liability standard established under *Title IX*⁷⁵ by the Supreme Court in *Davis v. Monroe County Board of Education*.⁷⁶

In *Davis*, the Eleventh Circuit had affirmed the district court holding that *Title IX* provided no private cause of action for student-on-student harassment.⁷⁷ A divided Supreme Court decided that the school could only be held liable for peer harassment based on its own misconduct; the school must have shown deliberate indifference to known harassment.⁷⁸ The harassment must take place under the school district's control and must be so severe, pervasive, and offensive that it bars the victim's educational access or benefit.⁷⁹ The Court opined that children in school should not be held to the same code of conduct as adults in the workplace.⁸⁰ Students do not know what is appropriate and should be expected to engage in some offensive behavior as a part of growing up.⁸¹ Notwithstanding the high bar set by the Court, the dissent was still concerned with the "potentially

⁶⁹ *L.W. v. Toms River Reg'l Sch. Bd. of Educ.*, 886 A. 2d 1090 (App. Div. 2005).

⁷⁰ *See id.* at 1096.

⁷¹ *See* N.J. STAT. ANN. § 10:5-12 (2004).

⁷² *L.W.*, 886 A. 2d at 1103.

⁷³ *Id.* at 1100.

⁷⁴ *Id.* at 1099–1100.

⁷⁵ *Id.* at 1101.

⁷⁶ *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629, 650 (1999).

⁷⁷ *Id.* at 633, 652.

⁷⁸ *Id.* at 633.

⁷⁹ *Id.* at 633, 652.

⁸⁰ *Id.* at 651.

⁸¹ *Id.* at 651–52.

crushing financial liability”⁸² that could be imposed on schools for failure to respond appropriately to student conduct⁸³ that violates the intent of *Title IX* to protect equal access to education.⁸⁴

There is something perverse in recognizing a duty on the part of universities to provide protection to adults against third-party acts but recognizing no such duty on the part of elementary and secondary schools to provide protection against bullying to students who are neither adults nor capable of protecting themselves from the abuse . . . No principled distinction between colleges and lower schools justifies allowing elementary and secondary schools to leave children vulnerable to foreseeable and preventable injuries by their peers despite the consensus of educational researchers and the wealth of data concerning bullying, its harms, and its prevention.⁸⁵

When bullying involves sexual harassment, discrimination, or even physical assault, victims may look to other areas of the law for protection and/or remedy.⁸⁶ While victims may find remedies for their individual claims outside anti-bullying statutes, these actions do not address the overall school culture that enables bullying conduct to thrive.⁸⁷ The implementation of a comprehensive research-based program addressing the culture of hostility, disrespect, and violence that persists in our schools is what is needed.⁸⁸

IV. CONNECTICUT’S ANTI-BULLYING STATUTE & LEGISLATIVE HISTORY

Public Act No. 02-119, the state’s first anti-bullying statute, was passed by the Connecticut legislature in the spring of 2002 and became effective February 1, 2003.⁸⁹ Currently, thirty-two states have anti-bullying laws,⁹⁰

⁸² *Id.* at 672.

⁸³ *Id.*

⁸⁴ *Id.* at 652.

⁸⁵ Weddle, *supra* note 26, at 699.

⁸⁶ *See infra* Parts V, VI.

⁸⁷ *See* Weddle, *supra* note 26, at 652 (discussion of bullying as a function of school climate).

⁸⁸ Editorial, *supra* note 24; *see also* OLWEUS, *supra* note 1.

⁸⁹ 2002 Conn. Acts No. 02-119 (Reg. Sess.) (addressing bullying behavior in schools); CONN. GEN. STAT. § 10-222d.

⁹⁰ BullyPolice.org, *supra* note 6.

with statutes pending in several others.⁹¹ The swift passage of the Connecticut act was precipitated by public outrage and media attention resulting from the tragic suicide of a twelve-year-old Meriden boy who had been relentlessly bullied and tormented at school.⁹² He ultimately chose to take his life on January 2, 2002 rather than return to school after the Christmas break.⁹³ The purpose of the law is multifaceted, focusing on the school boards' duty to develop a written anti-bullying policy in each school district that addresses procedures for student, parent, and teacher reporting of bullying, school administrators' investigation of reported bullying, and intervention in verified bullying incidents.⁹⁴ While the legislative intent was to protect the victims from bullying and peer harassment and make schools a safe place for children,⁹⁵ it has both failed to protect children⁹⁶ and failed to meaningfully address prevention strategies that must be part of any effective anti-bullying policy.⁹⁷

Connecticut law requires that school policy must permit anonymous student reports,⁹⁸ yet the school is only required to investigate written reports.⁹⁹ Victims and bystanders most often maintain a code of silence for fear of retaliation, or feel that it will make no difference, even when offered anonymity.¹⁰⁰ Parents of both bullies and victims must be notified by the school of any verified acts of bullying and a list of such verified acts must be maintained by the school and be available for public inspection.¹⁰¹ Each school district, however, may interpret the definition of bullying, as well as the requirements for verifying a report, differently.¹⁰² Some districts may choose not to include an incident on their list unless it results in disciplinary action.¹⁰³ District policy must include an intervention

⁹¹ *Id.*

⁹² *Hearing on 2006 H.B. 5504, supra* note 10.

⁹³ *60 Minutes, supra* note 5.

⁹⁴ CONN. GEN. STAT. § 10-222d.

⁹⁵ *Hearing on 2006 H.B. 5504, supra* note 10.

⁹⁶ *See Santoro v. Hamden*, No. CV040488583, 2006 WL 2536595 (Conn. Super. Ct. Aug. 18, 2006); *see also* Jim Farrell, *Bullying: Uncounted Problems with School Data*, HARTFORD COURANT, Oct. 22, 2006, at A1.

⁹⁷ *See generally* OLWEUS *supra* note 1 (research based anti-bullying education/training for students, teachers, staff and parents demonstrate positive outcomes); *see also* U.S. DEP'T OF EDUC., PREVENTING BULLYING: A MANUAL FOR SCHOOLS AND COMMUNITIES (1998) (gov't pamphlet addresses the problem of bullying in schools and cites several examples of successful anti-bullying programs).

⁹⁸ CONN. GEN. STAT. § 10-222d (2007).

⁹⁹ *Id.*

¹⁰⁰ *See generally* HAMILTON FISH INSTITUTE, *supra* note 37.

¹⁰¹ CONN. GEN. STAT. § 10-222d.

¹⁰² Editorial, *supra* note 24.

¹⁰³ *Id.*

strategy,¹⁰⁴ but the law offers no requirements or even guidelines for this strategy.¹⁰⁵ Even when school policy requires investigation of all reported incidents and intervention in all “verified” bullying claims, as Connecticut’s statute does,¹⁰⁶ frequently no action is taken.¹⁰⁷ Anonymous student reports may go unverified¹⁰⁸ and school administrators do not wish to be held accountable or have their school stigmatized by exposure of recorded bullying incidents.¹⁰⁹ Of thirty central Connecticut public schools surveyed, fourteen reported zero bullying incidents for the entire 2005-2006 school year.¹¹⁰ Yet students in these same schools reported staying out of school for fear of their personal safety.¹¹¹

Until recently amended in 2007, the law set forth no provisions for enforcement or penalties when a school district fails to implement an effective anti-bullying policy.¹¹² There are no requirements for reporting bullying to the state Department of Education or any social services agencies.¹¹³ There is no independent monitoring of the effectiveness of school policy or intervention strategies.¹¹⁴ School boards have been a longstanding icon of local control.¹¹⁵ While legislators referred to the statute as a mandate for anti-bullying policy,¹¹⁶ after almost four years, it has proven to be no more than advisory. This is demonstrated by the court’s decision in *Santoro v. Hamden* declaring “the manner within which a school district establishes its educational system and the manner in which it implements its bullying policy are discretionary.”¹¹⁷

In 2006, the Connecticut legislature reviewed the status of *Conn. Gen. Stat. §10-222d* and considered various recommendations for and amendments to the law, some of which were adopted in *Public Act No. 06-*

¹⁰⁴ CONN. GEN. STAT. § 10-222d.

¹⁰⁵ *See id.*

¹⁰⁶ *Id.*

¹⁰⁷ Farrell, *supra* note 96.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² Compare CONN. GEN. STAT. § 10-222d (2006) and 2007 amended version, *infra* Part IX.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ See FINESSA FERRELL-SMITH, NATIONAL CONFERENCE OF STATE LEGISLATURES, TACKLING THE SCHOOLYARD BULLY: COMBINING POLICY MAKING WITH PREVENTION (2003), available at <http://www.ncsl.org/programs/cyf/schoolyard.htm>.

¹¹⁶ CONN. GEN. STAT. § 10-222d (“board[s] of education shall develop a policy . . . to address the existence of bullying in its schools” and minimum requirements for the policy).

¹¹⁷ *Santoro v. Hamden*, No. CV040488583, 2006 WL 2536595, at *3 (Conn. Super. Ct. Aug. 18, 2006)

115.¹¹⁸ Speaking in the Connecticut General Assembly in support of the 2006 anti-bullying law revisions, State Senator LeBeau reminded his colleagues that “[s]chools are supposed to be for growth, for intellectual growth, emotional growth, and social growth. When we have this bullying going on, this harassment going on, that essential process of the school is stopped.”¹¹⁹ *An Act Concerning School Reporting of Bullying Incidents*¹²⁰ and *An Act Concerning Bullying Policies in Schools and Notices Sent to Parents and Legal Guardians*¹²¹ proposed revisions to the procedures for school reporting, parent notification, and incident intervention.¹²² The new notification procedures include incident reporting to non-custodial parents and annual student notification of the district’s anti-bullying policy and procedures, including procedures for anonymous reporting.¹²³ The 2006 amendments to the statute require school district development of case-by-case incident interventions as well as expansion of the statutory definition of bullying to include “harassment” and overt acts of bullying on a school bus.¹²⁴ Additionally, districts must address bullying that takes place outside the school setting if there is a direct negative impact on the student’s academic performance or safety in school.¹²⁵

In 2006, *An Act Concerning a Safe Learning Environment for Children and Youth*¹²⁶ proposed an analysis by the Connecticut Department of Education of the effectiveness of school responses in reducing bullying.¹²⁷ This included a report on the relationship between bullying, school drop-out rates, and student suicide.¹²⁸ The bill described the role of the state Department of Education as a clearinghouse for documenting school districts’ needs for training related to implementing anti-bullying programs.¹²⁹ It also required the Department of Education to establish a State Bullying Ombudsman and grant funding for school districts programs to create safe learning environments.¹³⁰ The Bullying Ombudsman was

¹¹⁸ 2006 Conn. Acts 06-115 (Jan. Sess.); H.B. 5563, 2006 Leg., Jan. Sess. (Conn. 2006).

¹¹⁹ *An Act Concerning Bullying Policies in Schools and Notices Sent to Parents or Legal Guardians: Hearing on H.B. 5563 Before the Conn. Comm. On Child*, 2006 Leg. 9 (2006). (statement of Gary LeBeau, State Senator).

¹²⁰ H.B. 5548, 2006 Leg., Jan Sess. (Conn. 2006).

¹²¹ 2006 Conn. Acts 06-115.

¹²² H.B. No. 5548; 2006 Conn. Acts 06-115.

¹²³ 2006 Conn. Acts 06-115.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ H.B. 5504, 2006 Leg., Jan. Sess. (Conn. 2006).

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *See id.*

¹³⁰ *Id.*

not incorporated into the Safe Learning Grant Program,¹³¹ which invites grant applications “within available appropriations”¹³² from local and regional school boards to assist districts in carrying out programs to create a school environment free from physical or verbal harm or intimidation.¹³³ There is, however, no commitment or requirement on the part of the Department of Education to fund these programs.¹³⁴ The fact that the law is silent on a cause of action, as well as persons or agencies responsible for accountability, and provides no stated remedies for bullying victims, essentially renders the legislative mandate powerless.

V. SCHOOL BULLYING CASE LAW IN CONNECTICUT

Prior to the adoption of *Conn. Gen. Stat. § 10-222d*, bullying victims brought their claims under other areas of the law,¹³⁵ most often seeking accountability of school administrators and school boards for failure to provide a safe school environment.¹³⁶ However, claims against school administrators and school boards have largely been defeated by the shield of sovereign immunity.¹³⁷ Victims of overt bullying and physical assault have been more successful in sustaining tort actions against their aggressors,¹³⁸ rather than against the school board and school administrators.

Victims attempting to hold schools accountable for failing to protect them from bullying abuse have been confronted by a nearly insurmountable burden of proof.¹³⁹ Courts most often hold that bullying and attacks were unforeseeable to school administrators under a theory of negligent supervision.¹⁴⁰ Additionally, Under *Title IX*, even when the Court recognizes that discrimination or sexual harassment has taken place amongst students, the school district is only liable for student-peer

¹³¹ See CONN. GEN. STAT. § 10-263e (2006).

¹³² *Id.*

¹³³ *Id.*

¹³⁴ See *id.*

¹³⁵ See *infra* Part V.

¹³⁶ *Id.*

¹³⁷ Weddle, *supra* note 26, at 683.

¹³⁸ See, e.g., *Albert v. Kelly*, No. CV030082538S, 2005 WL 2435898, at *1–2 (Conn. Super. Ct., Sept. 12, 2005) (judgment awarded against bully and his parents for medical expenses, non-economic and punitive damages resulting from plaintiff’s injuries and humiliation in a high school locker room assault.); *Gasper v. Sniffin*, No. CV010343743S, 2003 WL 21152855, at *1 (Conn. Super. Ct., May 6, 2003) (high school student doused with water, locked in metal school locker and threatened with electrocution sustained claims for intentional infliction of emotional distress and false imprisonment).

¹³⁹ Weddle, *supra* note 26, at 643.

¹⁴⁰ *Id.*

harassment based on its own misconduct,¹⁴¹ including deliberate indifference to known harassment.¹⁴² School officials' failure to prevent harm to a student at school is not alone a violation of due process rights.¹⁴³

In *Bungert v. Shelton*,¹⁴⁴ a female high school student brought a Fourteenth Amendment due process action against the city, school board, superintendent, principal, and assistant principal for failing to protect her from sexual harassment by her peers.¹⁴⁵ The federal due process claim was dismissed for insufficient evidence regarding whether defendants had knowledge of or condoned the abuse because they were not actually witness to the abuse.¹⁴⁶ Consistent with *DeShaney*,¹⁴⁷ the school's failure to protect a student from harassment by another student is not a violation of due process. *Title IX* is the exclusive remedy against a school district for sexual harassment claims requiring a showing of deliberate indifference on the part of the Defendant to the student sexual harassment.¹⁴⁸ This posture of the courts ensures that gender-based bullying will continue as an "underground" activity, away from the eyes of school officials.¹⁴⁹

The widely publicized suicide of twelve-year-old Daniel Scruggs of Meriden¹⁵⁰ and the sensational criminal trial of his mother on charges of risk of injury to a minor¹⁵¹ followed years of Daniel being victimized by bullies at school.¹⁵² Following the criminal proceedings, Daniel's mother brought suit against the Meriden Board of Education for a number of civil rights violations, including injury to Daniel's rights as a student with a learning disability.¹⁵³ Scruggs charged the board with failure to respond to the known bullying situation and failure to provide required special education services.¹⁵⁴ Scruggs' claims were made pursuant to violations of the Fourteenth Amendment due process and equal protection clauses, the

¹⁴¹ *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629, 629 (1999).

¹⁴² *Id.* at 646–47.

¹⁴³ See *Bungert v. City of Shelton*, No. 3:02-CV-01291 (RNC), 2005 WL 2663054, at *1 (D. Conn., Oct. 14, 2005).

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ See *id.* at *4.

¹⁴⁷ *DeShaney v. Winnebago County Dep't. of Soc. Servs.*, 489 U.S. 189 (1989).

¹⁴⁸ *Bungert*, 2005 WL 2663054, at *1 n. 2.

¹⁴⁹ Weddle, *supra* note 26, at 643.

¹⁵⁰ *60 Minutes*, *supra* note 5.

¹⁵¹ *State v. Scruggs*, No. CR020210921S, 2004 WL 1245557 at *1 (Conn. Super. Mar. 8, 2004).

¹⁵² M. Lauren Gillies, *Placing Blame After the Suicide of a Minor: Analysis of State v. Scruggs and Connecticut's Risk-of-Injury*, 5 CONN. PUB. INT. L.J. 131–32 (2005).

¹⁵³ *Scruggs v. Meriden Bd. of Educ.*, No. 3:03CV2224(PCD), 2005 WL 2072312, at *1–*2 (D. Conn., Aug. 26, 2005).

¹⁵⁴ *Id.* at *6.

Americans with Disabilities Act (ADA),¹⁵⁵ and the *Individuals with Disabilities Education Act (IDEA)*,¹⁵⁶ including improperly exiting Daniel from Special Education services.¹⁵⁷ No anti-bullying statute was in effect at that time.¹⁵⁸ In 2005, the court denied the defendants' motion for judgment on the pleadings with respect to both governmental immunity and qualified immunity defenses.¹⁵⁹ In 2007, the court denied the defendants' motion for summary judgment for lack of subject matter jurisdiction for failure to exhaust plaintiff's administrative remedies under *IDEA* after her son had already committed suicide.¹⁶⁰ The defendants were denied summary judgment on the issue of denial of a free and appropriate public education (FAPE) in violation of *IDEA*.¹⁶¹ "In the context of school bullying and harassment, courts have held that schools have no duty under the due process clause to protect students from assaults by other students, even where the school knew or should have known of the danger presented,"¹⁶² granting defendants' summary judgment on the due process claims.¹⁶³ Summary judgment was also entered for the defendants on the alleged violations of the *Rehabilitation Act* and *Americans with Disabilities Act* charging the defendants with discriminatory animus in failing to provide an FAPE to a disabled student.¹⁶⁴ The defendants were denied qualified immunity under federal law (the *IDEA* claims) and were granted immunity as to the state negligence claim.¹⁶⁵ At this point, the defendants, School Board and school administrators, still must face the plaintiff's surviving claims.

*Smith v. Guilford Board of Education*¹⁶⁶ is another recent, unsuccessful bullying suit brought on behalf of a learning disabled student arising from conduct pre-dating the Connecticut Anti-Bullying Statute.¹⁶⁷ Similar to

¹⁵⁵ 42 U.S.C. § 12132 (2004).

¹⁵⁶ 20 U.S.C. § 1400 (2004).

¹⁵⁷ *Scruggs v. Meriden Bd. of Educ.*, No. 3:03CV2224(PCD), 2007 WL 2318851, at *9 (D. Conn., Aug. 10, 2007).

¹⁵⁸ 2002 Conn. Acts No. 02-119 (Reg. Sess.) (addressing bullying behavior in schools).

¹⁵⁹ *Scruggs*, 2005 WL 2072312, at *14-16.

¹⁶⁰ *Scruggs*, 2007 WL 2318851, at *7.

¹⁶¹ *Id.* at *11.

¹⁶² *Id.* at *12.

¹⁶³ *Id.* at *13.

¹⁶⁴ *Id.* at *17.

¹⁶⁵ *Id.*

¹⁶⁶ *Smith v. Guilford Bd. of Educ.*, No. Civ. A.303CV1829(WWE), 2005 WL 3211449, at *1 (D. Conn. Nov. 30, 2005).

¹⁶⁷ (The bullying conduct took place at Guilford High School from Sept 2001 to Jan. 2002 prior to CONN. GEN. STAT. §10-222d).

Scruggs,¹⁶⁸ the victim was identified as a student with a disability (ADHD) under *IDEA* and had an IEP (Individual Education Plan) as required by state and federal law.¹⁶⁹ Additionally, the victim was a child of small stature, which is not a “protected class.”¹⁷⁰ The plaintiffs alleged civil rights violations (due process and equal protection) under 42 U.S.C. §§1983, 1985, 1986 *et al* and under *IDEA*, the *Rehabilitation Act*, and *Americans with Disabilities Act* and claimed damages for the resulting injuries.¹⁷¹ His parents sued the Guilford Board of Education and all its members individually, the superintendent of schools, and the principal and assistant principal.¹⁷² The court found that “[w]hile it is tragic that Jeremy Smith suffered repugnant treatment by his peers, such treatment does not rise to the level of the violation of constitutional rights.”¹⁷³ The victim’s voluntary withdrawal from Guilford High School in response to peer abuse was not a denial of a free and appropriate public education (FAPE).¹⁷⁴ Furthermore, although plaintiff sought protection under the *Americans with Disabilities Act*, the bullying had not been targeted at the victim’s disability; rather, he had been singled out because of a completely unrelated condition: his small stature.¹⁷⁵ In cases where the failure of school officials to protect a disabled child from bullying resulted in a violation of the child’s right to a FAPE, the *IDEA* may provide a legal basis for bringing suit against school administrators that regular education students would not have.¹⁷⁶

Although school districts have created ‘anti-bullying policies’¹⁷⁷ in response to the law, it provides little more than minimal compliance without either a training and implementation plan on the part of school districts or an enforcement plan on the part of the Department of Education.¹⁷⁸ The court’s holding in *Santoro v. Hamden* stripped §10-222d of any potency by holding that the statute creates no private cause of action and does not provide a basis for circumventing the doctrine of sovereign

¹⁶⁸ *Scruggs v. Meriden Bd. of Educ.*, No. 3:03CV2224(PCD), 2005 WL 2072312, at *6 (D. Conn. Aug. 26, 2005).

¹⁶⁹ *Smith*, 2005 WL 3211449, at *1.

¹⁷⁰ *Id.* at *7.

¹⁷¹ *Id.* at *1.

¹⁷² *Id.* at *1.

¹⁷³ *Id.* at *7.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.* at *6.

¹⁷⁶ Paul M. Secunda, *At the Crossroads of Title IX and a New “IDEA:” Why Bullying Need Not be “A Normal Part of Growing Up” for Special Education Children*, 12 DUKE J. GENDER L. & POL’Y 1, 6 (2005).

¹⁷⁷ CONN. GEN. STAT. § 10-222d.

¹⁷⁸ Secunda, *supra* note 176, at 6; *see supra* Part IV; *infra* Parts VIII, IX.

immunity.¹⁷⁹ “The manner within which a school district establishes its educational system; and the manner in which it implements its bullying policy are discretionary and contingent upon a multitude of variables, too numerous to permit any court to fashion a simple enjoinder which would not unduly interfere with governmental function.”¹⁸⁰ Simply put, the court declines to intervene in what it views as a school policy issue.

VI. OTHER JURISDICTIONS

Beyond Connecticut’s courts, bullying cases have met with varying results in different jurisdictions under both state and federal claims.¹⁸¹ In *L.W. v. Toms River Regional Schools*,¹⁸² another sexual harassment case brought on behalf of a high school student, the plaintiff sought relief under New Jersey’s *Law Against Discrimination*,¹⁸³ rather than a *Title IX* federal suit. The student had been bullied and harassed at school on a regular basis, both verbally and physically, based on his perceived sexual orientation.¹⁸⁴ Although the school district had a policy to address harassment¹⁸⁵ and had suspended assailants and taken other disciplinary measures on a case-by-case basis,¹⁸⁶ the court held that administrators had “failed to address the anti-homosexual hostility in the school environment as a whole.”¹⁸⁷ The district was held liable for compensatory damages because they knew or should have known of the harassment and failed to take adequate steps to remedy the situation.¹⁸⁸ Contrary to *Davis* and *Title IX*, the New Jersey court recognized a same-sex peer harassment claim against a school district applying the same standards for assessing sexual harassment in the workplace under *LAD*.¹⁸⁹

¹⁷⁹ See *Santoro v. Hamden*, No. CV040488583, 2006 WL2536595, at *3, (Conn. Super. Ct. Aug. 18, 2006).

¹⁸⁰ *Id.* at *3.

¹⁸¹ Bullying cases have been brought under statutory and constitutional claims (*supra* Part III), tort actions and occasionally related to criminal complaints.

¹⁸² *L.W. v. Toms River Reg’l Schs. Bd. of Educ.*, 886 A. 2d. 1090, 1090–91 (N.J. Super. Ct. App. Div. 2005).

¹⁸³ N.J. STAT. ANN. § 10:5-12.

¹⁸⁴ *L.W.*, 886 A. 2d. at 1100.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ See *id.* at 1100.

¹⁸⁹ *Id.*

At about the same time, a Kansas court held that a same-sex peer harassment claim was justiciable under *Title IX*,¹⁹⁰ although it dismissed state claims for the same conduct.¹⁹¹ In that case, *Theno v. Tonganoxie Unified School District No. 464*, the court discussed how sexual harassment claims are treated under *Title VII* and *Title IX*.¹⁹²

Harassment is not discrimination based on sex merely because the words or gestures used have sexual content or connotation or are based upon sexual orientation or perceived sexual orientation To constitute gender-based harassment under *Title IX*, the harasser must be motivated by [the target's] gender or his failure to conform to stereotypical male characteristics.¹⁹³

Theno's harassers had created a hostile school environment for their victim motivated by his failure to conform to stereotypical expectations of teenage masculinity.¹⁹⁴ This gender stereotyping theory was recognized by the Supreme Court as an actionable form of sex-based harassment under *Title VII*.¹⁹⁵ Although the individual episodes of harassment, in isolation, might not be actionable under *Title IX*, Theno's torment persisted for years and was known to teachers and administrators who turned a blind eye.¹⁹⁶ The fact that Theno dropped out of school in the 11th grade was "wholly attributable to the school district's failure to combat the harassment."¹⁹⁷ The jury awarded Theno a \$250,000 verdict against the Tonganoxie Unified School District for their deliberate indifference to five years of severe, pervasive, and offensive gender-based harassment which the court determined had deprived Theno of access to educational benefits and opportunities.¹⁹⁸

¹⁹⁰ *Theno v. Tonganoxie Unified Sch. Dist. No. 464*, 377 F. Supp. 2d 952, 963–65 (D. Kan. June 24, 2005).

¹⁹¹ *Id.* at 968–70.

¹⁹² *Id.* at 964 (comparing workplace sexual harassment (Title VII) with sexual harassment in school (Title IX); see also *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989) on sexual stereotyping in Title VII complaints).

¹⁹³ *Theno v. Tonganoxie Unified Sch. Dist. No. 464*, 394 F.Supp.2d 1299, 1302 (D. Kan. Oct. 18, 2005).

¹⁹⁴ See *Theno*, 377 F. Supp.2d at 965.

¹⁹⁵ *Id.* at 964 (citing *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989)).

¹⁹⁶ *Theno*, 394 F.Supp.2d at 1311.

¹⁹⁷ *Id.* at 1309.

¹⁹⁸ *Id.* at 1301; Caroline Trowbridge, *Federal Jury Awards \$250,000 to Former Tonganoxie Student*, TOGANOXIE MIRROR, Aug. 11, 2005 available at <http://www.toganoxiemirror.com/section/breaking-news/storypr/8135>.

The tragic suicide of a fourteen-year-old British Columbia girl resulted in three teenage girls being charged in provincial court with uttering threats to cause death or bodily harm and criminal harassment.¹⁹⁹ Despite the fact that much of the threatening behavior took place on school grounds and that the victim notified a school counselor about the threats every day, no charges were brought against the school district or school administrators.²⁰⁰ The victim, Dawn Marie Wesley, named several former friends as her tormentors in a suicide note.²⁰¹ The victim and the bullies were all Canadian First People, members of the same tribe.²⁰² When two of the three girls were convicted, the provincial judge, sensitive to the importance of community involvement in addressing the broader issues of bullying, cooperated with a tribal sentencing circle and the families of both the victim and the accused to mete out justice.²⁰³

VII. BULLYING IN THE WORKPLACE

As advocacy groups and state legislatures across the country grapple with the need for school bullying laws, a workplace anti-bullying movement is gathering support²⁰⁴ and spawning new legislation. This year, Connecticut became the twelfth state to introduce a Healthy Workplace Bill²⁰⁵ to address the issue of workplace bullying.²⁰⁶ The nationwide movement to eliminate employer abuse in the workplace was first launched in California

¹⁹⁹ R. v. D.W., 2002 B.C.P.C. 96, ¶1 (Mar. 25, 2002); Regina v. D.H., 2002 B.C.P.C. 386, ¶1 (Sept. 18, 2002).

²⁰⁰ See Regina, 2002 B.C.P.C. 96.

²⁰¹ Regina, 2002 B.C.P.C. 386 at ¶8.

²⁰² See CBC News: Teen Bully Given 18 Months Probation, (May 15, 2002), http://www.cbc.ca/canada/british-columbia/story/2002/05/15/bc_sentenced020514.html. (last visited Nov. 5, 2007).

²⁰³ Id.

²⁰⁴ Research has shown that workplace harassment not only takes its toll on the victims' psychological and physical well-being, but hurts the employers' bottom line through lost productivity, low morale, departure of experienced workers, and higher health care costs for stressed-out victims. See Carolyn Said, *Bullying Bosses Could be Busted: Movement Against Worst Workplace Abusers Gains Momentum with Proposed Laws*, S.F. CHRON., Jan 21, 2007; Marjo Johne, *When Bullies Go to Work*, GLOBE AND MAIL, Apr. 17, 2004, at C1; Aaron C. H. Schat, et al., *Prevalence of Workplace Aggression in the U.S. Workforce: Findings from a National Study* in HANDBOOK OF WORKPLACE VIOLENCE 47 (E.K. Kelloway, et al., eds., Sage 2006); Pamela Lutgen-Sandvik, Sarah J. Tracy & Jess K. Alberts, *Burned by Bullying in the American Workplace: Prevalence, Perception, Degree, and Impact*, 44 J. MGMT. STUDIES 837 (2007). Yet employers largely oppose such legislation fearing an onslaught of frivolous litigation and the accompanying costs. Don Stacom, *Anti-Bullying Movement Turns to Workplace*, HARTFORD COURANT, Mar. 10, 2007, at A1.

²⁰⁵ S.B. 371, 2007 Leg., Jan. Sess. (Conn. 2007).

²⁰⁶ Busters: National Coordinators of U.S. Legislation Initiatives to Stop Workplace Bullying, <http://bullybusters.org/> (last visited Sept. 18, 2007).

in 2003.²⁰⁷ To date, however, no state has passed such legislation²⁰⁸ despite popular support.²⁰⁹ A recent survey found that sixty-four percent of American workers felt employees should have a right to sue their employers for workplace abuse, harassment, and humiliation.²¹⁰ Connecticut Senate Bill No. 371 is intended to provide just such a private cause of action for victims of workplace bullying and abuse.²¹¹ Curiously, the bill's proponents believe they are attempting to provide protection from victimization in the workplace modeled after the school anti-bullying law,²¹² which does not provide a private cause of action.²¹³

Internationally, Sweden was the first country to enact a *Victimization at Work Ordinance* in 1994, concerning workplace bullying, harassment, and violence.²¹⁴ While awareness of and responses to bullying vary across the European Union member nations, efforts to address this serious problem have been increasing, especially in the last few years.²¹⁵ The workplace environment that tolerates psychological harassment inevitably leads to the conclusion that "the insidious effects of bullying and mobbing . . . [and] the psychological and behavioural effects of the experience may increase the target's chance of further victimization, and perpetuate the bullying culture in the workplace."²¹⁶

In June 2004, Quebec Province became the only North American jurisdiction that has enacted a workplace anti-bullying law,²¹⁷ modeled

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ Press Release, Employment Law Alliance, New Employment Law Alliance Poll: Nearly 45% of U.S. Workers Say They've Worked for an Abusive Boss - 64% Say Bullied Workers Should be Able to Fight Back in Court (Mar. 21, 2007), available at <http://www.bullyinginstitute.org/res/ela032107.html> (including a link to charts and graphs of poll results).

²¹⁰ *Id.* For more extensive survey data and analysis of workplace bullying see also Schat, et al., *supra* note 204; Lutgen-Sandvik, et al., *supra* note 204.

²¹¹ S.B. 371, 2007 Leg., Jan. Sess. (Conn. 2007).

²¹² Stacom, *supra* note 204.

²¹³ See Santoro v. Hamden, No. CV040488583, 2006 WL2536595, at *2 (Conn. Super. Ct., Aug. 18, 2006).

²¹⁴ The Workplace Bullying & Trauma Inst., Rev. of Int'l Laws Related to Workplace Bullying <http://www.bullyinginstitute.org/bbstudies/Sweden.pdf> (last visited Sept. 19, 2007) (providing a summary of workplace bullying in Sweden); see also Susan Dunn, *What's Going on with Mobbing, Bullying and Work Harassment Internationally*, WEBPRONNEWS, June 10, 2003 available at <http://www.bullybusters.org/press/webpronews.html> (good summary of workplace bullying around the globe).

²¹⁵ VITTORIO DIMARTINO, HELGE HOEL & CARY L. COOPER, EUROPEAN FOUNDATION FOR THE IMPROVEMENT OF LIVING AND WORKING CONDITIONS, PREVENTING VIOLENCE AND HARASSMENT IN THE WORKPLACE, (2003), available at <http://www.eurofound.europa.eu/pubdocs/2002/109en/1/ef02109en.pdf>.

²¹⁶ *Id.* at 87.

²¹⁷ Act Respecting Labour Standards, 2004 R.S.Q., c. N 1.1, § 81.18 (Quebec), available at <http://www.cnt.gouv.qc.ca/en/lois/normes/harcelement.asp>; Ross Marowitz, *Report Confirms Quebec Bullying Law Not Abused*, CANADIAN PRESS, Jun. 13, 2006, available at

after existing laws in Sweden, France and Belgium.²¹⁸ The Canadian government is considering similar provisions on a national scale, incorporating language regarding psychological harassment from the Quebec law into the Canada Labour Code.²¹⁹ Most recently, members of the European Union have made a commitment to crack-down on workplace bullying and harassment in the April 2007 Framework Agreement on Harassment and Violence at Work.²²⁰ The European social partners, representing both management and labor, organized under the European Commission, drafted the agreement in response to existing European Union Directives which define the employer's duty to protect workers from harassment and violence in the workplace.²²¹ The agreement condemns all forms of workplace harassment, requires employers to adopt a zero-tolerance policy, and requires employers to institute procedures to prevent and manage bullying, harassment, and violence in the work place.²²² Employers in all EU member states have three years to implement the agreement.²²³ Schoolchildren deserve the same protection from their school against peer harassment and bullying as employees do from their employers. In a civilized society, a psychologically and physically safe environment should be an accepted expectation in the workplace *and* in school.²²⁴

VIII. LEGISLATIVE REFORM

Clearly, finding a cause of action in the law to remedy bullying conduct is difficult. Bullying may be unrelated to the victims' status in any protected class. Physical bullying may find remedies in tort action, but other manifestations of personal harassment such as verbal bullying, cyber-bullying, social exclusion, and other forms of psychological abuse fall into a gray zone where remedies may only be sought when statutes have

<http://www.bullyinginstitute.org/bbstudies/quebecreport.html>.

²¹⁸ Marowits, *supra* note 217.

²¹⁹ *Id.*; Canada Labour Code, R.S., c. L 2 (1985) available at <http://laws.justice.gc.ca/en>.

²²⁰ The Parliament.com: European Politics and Policy, EU-wide Crackdown on Workplace Bullying, <http://www.eupolitix.com/EN/News/200704/b346184f-65ce-4083-89c9-54cd80ddefef.htm>. (last visited Nov. 15, 2007).

²²¹ European Social Dialogue: Framework Agreement on Harassment and Violence at Work http://ec.europa.eu/employment_social/news/2007/apr/harassment_violence_at_work_en.pdf. (last visited Nov. 15, 2007).

²²² *Id.*

²²³ *Id.*

²²⁴ Freda Steel, *The Right to a Respectful and Emotionally Healthy Environment – The Next Legal Frontier*, CAPDHHE (Can. Assn. for the Prevention of Discrimination and Harassment in Higher Education), Fall 2002, at v.14 no.2 available at <http://www.ucalgary.ca/sexualharassment/files/sexualharassment/The%20Next%20Legal%20Frontier.pdf>

expressly provided for them. The fact that thirty-two states have enacted anti-bullying laws²²⁵ is proof of both the public awareness and legislative desire to address this chronic problem in our schools. However, in order for the anti-bullying statutes to be effective, the legislators must be explicit in their intent to create a cause of action with appropriate remedies for bullying victims. Simply requiring that school districts have a written anti-bullying policy is clearly not enough. School districts must be accountable for maintaining a safe and healthy learning environment at all grade levels, for all students.

In addition to policies that define bullying conduct, reporting procedures, and disciplinary actions, schools must be responsible for adopting measures to address bullying awareness and bullying prevention for students and staff. School administrators must develop standards for accurately reporting bullying incidents and evaluating their school's progress toward a bully-free learning environment. Perhaps the two greatest obstacles to an effective anti-bullying statute are the long-standing tradition of local control over public education and the shield of governmental immunity enjoyed by school administrators and school board members. While compulsory education gives the illusion that students are entrusted to the care of school personnel, no such duty of care exists.²²⁶ In the context of student-peer bullying, "a State's failure to protect an individual against private violence simply does not constitute a violation of the due process clause."²²⁷ Only when "the State takes a person into its custody . . . against his will, the Constitution imposes . . . a duty to assume some responsibility for his safety and general well-being."²²⁸ Incarcerated prisoners and involuntarily committed mental patients are in the custodial care of the State, whereas school children are not.²²⁹

State anti-bullying laws must reach beyond the high bar set by *Davis* for *Title IX* claims,²³⁰ which, even when the plaintiff succeeds, fail to address the underlying issues of bullying prevention and the need to change the social and educational environment in schools. *An Act Concerning a Safe Learning Environment for Children and Youth*²³¹ was a well intended legislative attempt to create and fund policy to prevent bullying and evaluate schools' progress in both enforcing school anti-bullying policy and carrying out bullying prevention initiatives to promote

²²⁵ BullyPolice.org, *supra* note 6.

²²⁶ Weddle, *supra* note 26, at 664–66.

²²⁷ *DeShaney v. Winnebago County Dep't of Soc. Serv.*, 489 U.S. 189, 197 (1989).

²²⁸ *Id.* at 199–200.

²²⁹ *Id.* at 200; Weddle, *supra* note 26, at 666 ("There is something disturbing about the fact that the state can compel children to attend school yet not incur a duty to protect them from their peers.").

²³⁰ *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629 (1999).

²³¹ H.B. 5504, 2006 Leg., Jan. Sess. (Conn. 2006).

safe schools.²³² The *Safe Learning Grant Program*, passed in 2006, is a Department of Education competitive grant application program.²³³ It is essentially unfunded, supported only by private donations, allocating ‘available appropriations’ to promote a safe learning environment, bullying prevention, and crisis intervention in all facets of the school environment.²³⁴ There are no provisions for evaluation or follow-up of the grant recipient’s safe learning initiatives.²³⁵ There is no mandate to train administrators, staff and students so that they may create and maintain a safe learning environment.²³⁶ And, there is no mandate to enforce anti-bullying policy, to accurately report bullying incidents, or to hold administrators accountable for the school environment that allows students to suffer the cruelty inflicted by their peers.²³⁷

IX. 2007 CONNECTICUT LEGISLATIVE UPDATE

As the 2007 legislative session drew to a close, Connecticut legislators and child advocates continued to evaluate the existing anti-bullying statute as the General Assembly prepared to vote on proposed changes intended to make the law more effective.²³⁸ Senate Bill No.1094 was passed into law²³⁹ amending Sec. 10-222d of the general statutes requiring school districts not only to develop anti-bullying policy but to implement it and would impose penalties on districts that failed to do so by withholding up to ten thousand dollars in education cost-sharing funds.²⁴⁰ Significantly, the Connecticut bill departs from all other anti-bullying statutes in redefining bullying by eliminating the requirement that such “acts are repeated against the same student over time.”²⁴¹ The act also provides for incorporating bullying prevention along with the existing required topics of school violence prevention and conflict resolution for in-service training of teachers, administrators, and other certified staff.²⁴²

Other bills that might have had an impact on bullying prevention and intervention, either directly or indirectly, have been considered by the legislature this session under the guidance of the Select Committee on

²³² *Id.*

²³³ CONN. GEN. STAT. § 10-263e.

²³⁴ *See id.*

²³⁵ *See id.*

²³⁶ *See id.*; CONN. GEN. STAT. § 10-222d.

²³⁷ *See* CONN. GEN. STAT. § § 10-263e, 10-222d (2007)..

²³⁸ S.B. No.1094, 2007 Leg., Jan. Sess. (Conn. 2007).

²³⁹ *Id.*; *see infra* Appendix II.

²⁴⁰ *Id.*

²⁴¹ *Id.*

²⁴² *Id.*

Children and/or the Education Committee. *An Act Concerning School-based Health Centers*²⁴³ sought to provide funding to expand existing school-based health services to include prevention programs for both bullying and obesity.²⁴⁴ *An Act Concerning Off-Campus Assault and Battery*²⁴⁵ would extend the power of a school board to expel a student for disrupting another student's educational performance.²⁴⁶ This is in addition to the criteria for allowing expulsion for the serious disruption of the educational process of the school already provided for in the law. *An Act Concerning a Gang Prevention Grant Program and Task Force*²⁴⁷ sought to provide funding for developing and implementing gang prevention programs to address the violence, harassment, and bullying perpetrated by gangs both in and out of schools.²⁴⁸

*An Act Concerning Workplace Safety*²⁴⁹ could be significant in its impact on future school anti-bullying legislation in several ways. First, the bill proposes a broad definition of actionable "abusive conduct" including threatening, intimidating, or humiliating behavior, as well as sabotaging an employee's work performance.²⁵⁰ The translation to the school setting is implicit, where bullying could include undermining another student's educational performance. Under the act, employer retaliation is clearly prohibited.²⁵¹ The employer would be held in violation whether he dispensed the abusive conduct or had knowledge that an employee was subject to an abusive work environment and failed to exercise reasonable care to prevent and remediate the situation.²⁵² Most importantly, unlike the anti-bullying statutes in the school context, the act expressly provides for a private cause of action and explicitly denies any waiver of liability.²⁵³

This most recent legislative session demonstrates that our legislators are at least aware of the deficiencies in the existing anti-bullying law. They continue to raise important concerns and listen to and question many experts testifying about the pervasiveness of bullying in our schools and the long term effects of bullying, on the bullies, their victims, and society, when left unabated.²⁵⁴ The inadequacy and inaccuracy of incident

²⁴³ H.B. 6515, 2007 Leg., Jan. Sess. (Conn. 2007).

²⁴⁴ *Id.*

²⁴⁵ H.B. 7356, 2007 Leg., Jan. Sess. (Conn. 2007).

²⁴⁶ *Id.*

²⁴⁷ H.B. 7245, 2007 Leg., Jan. Sess. (Conn. 2007).

²⁴⁸ *Id.*

²⁴⁹ S.B. 371, 2007 Leg., Jan. Sess. (Conn. 2007).

²⁵⁰ *Id.*

²⁵¹ *Id.*

²⁵² *Id.*

²⁵³ *Id.*

²⁵⁴ *Hearing on 2006 H.B. 5504, supra note 10.*

reporting becomes obvious when a majority of schools report zero bullying incidents for an entire school year,²⁵⁵ yet local newspapers report students being bullied and harassed by their peers at these same schools.²⁵⁶ The failure of school districts throughout the state to implement comprehensive bullying prevention programs in our schools could prove to be a costly fiscal and societal mistake.

X. CONCLUSIONS & RECOMMENDATIONS

Significantly, the passage of Conn. Gen. Stat. § 10-222d in 2002²⁵⁷ (amended in 2006 and 2007)²⁵⁸ recognized the widespread existence of bullying in Connecticut schools and the importance of establishing anti-bullying policy in every school district.²⁵⁹ However, after four years, it has failed to provide a means for policy enforcement, consistent standards for incident reporting and disciplinary action, or measures for evaluating a school district's progress toward reducing or eliminating bullying conduct. Notably, as demonstrated in *Santoro*,²⁶⁰ there is no cause of action for bully victims to hold school administrators accountable for occurrences in school.²⁶¹ In order to circumvent the doctrine of sovereign immunity the legislature must expressly do so by statute or the state actors (school board, superintendent, school administrators) must have clearly exceeded statutory authority.²⁶² Now is the time for legislators to re-visit the anti-bullying statute and incorporate the language necessary to provide for a private cause of action when school districts fail to comply with their own policies on bullying and fail to carry out the objectives and intent of the law.

Notwithstanding the legislative efforts in this area, bullying remains a pressing social and educational problem and a daily concern for many Connecticut schoolchildren. No child should have to sacrifice their education, their self-respect, or their physical and mental well-being, before the statehouse and the courthouse will step forward to protect children from bullies and the culture that allows them to exist in the schoolhouse.

²⁵⁵ *Id.*

²⁵⁶ See Farrell, *supra* note 96.

²⁵⁷ 2002 Conn. Acts No. 02-119 (Reg. Sess.) (addressing bullying behavior in schools); CONN. GEN. STAT. § 10-222d (2007).

²⁵⁸ See generally CONN. GEN. STAT. § 10-222d (2007).

²⁵⁹ See generally *id.*

²⁶⁰ *Santoro v. Hamden*, No. CV040488583, 2006 WL2536595, at *2 (Conn. Super. Ct., Aug. 18, 2006).

²⁶¹ *Id.* at *2.

²⁶² *Id.* at *3.

APPENDIX I: C.G.S.A. § 10-222d**CONNECTICUT GENERAL STATUTES ANNOTATED
TITLE 10. EDUCATION AND CULTURE
CHAPTER 170. BOARDS OF EDUCATION
§ 10-222d. Policy on bullying behavior**

Each local and regional board of education shall develop a policy, for use on and after February 1, 2003, to address the existence of bullying in its schools. Such policy shall:

- (1) Enable students to anonymously report acts of bullying to teachers and school administrators and require students to be notified annually of the process by which they may make such reports,
- (2) Enable the parents or guardians of students to file written reports of suspected bullying,
- (3) Require teachers and other school staff who witness acts of bullying or receive student reports of bullying to notify school administrators,
- (4) Require school administrators to investigate any written reports filed pursuant to subdivision (2) of this section and to review any anonymous reports,
- (5) Include an intervention strategy for school staff to deal with bullying,
- (6) Provide for the inclusion of language in student codes of conduct concerning bullying,
- (7) Require the parents or guardians of students who commit any verified acts of bullying and the parents or guardians of students against whom such acts were directed to be notified,
- (8) Require each school to maintain a list of the number of verified acts of bullying in such school and make such list available for public inspection, and
- (9) Direct the development of case-by-case interventions for addressing repeated incidents of bullying against a single individual or recurrently perpetrated bullying incidents by the same individual that may include both counseling and discipline.

The notification required pursuant to subdivision (7) of this section shall include a description of the response of school staff to such acts and any consequences that may result from the commission of further acts of bullying. For purposes of this section, "bullying" means any overt acts by a student or a group of students directed

against another student with the intent to ridicule, harass, humiliate or intimidate the other student while on school grounds, at a school-sponsored activity or on a school bus, which acts are repeated against the same student over time. Such policies may include provisions addressing bullying outside of the school setting if it has a direct and negative impact on a student's academic performance or safety in school.

Current through the 2006 Feb. Reg. Sess.

APPENDIX II: Senate Bill No. 1094, Session Year 2007

Approved by the Legislative Commissioner

June 1, 2007

AN ACT CONCERNING SCHOOL BULLYING.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 10-222d of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2007*):

(a) Each local and regional board of education shall develop and implement a policy, for use on and after February 1, 2003, to address the existence of bullying in its schools. Such policy shall: (1) Enable students to anonymously report acts of bullying to teachers and school administrators and require students to be notified annually of the process by which they may make such reports, (2) enable the parents or guardians of students to file written reports of suspected bullying, (3) require teachers and other school staff who witness acts of bullying or receive student reports of bullying to notify school administrators, (4) require school administrators to investigate any written reports filed pursuant to subdivision (2) of this section and to review any anonymous reports, (5) include an intervention strategy for school staff to deal with bullying, (6) provide for the inclusion of language in student codes of conduct concerning bullying, (7) require the parents or guardians of students who commit any verified acts of bullying and the parents or guardians of students against whom such acts were directed to be notified, (8) require each school to maintain a

list of the number of verified acts of bullying in such school and make such list available for public inspection, and (9) direct the development of case-by-case interventions for addressing repeated incidents of bullying against a single individual or recurrently perpetrated bullying incidents by the same individual that may include both counseling and discipline. [The] When necessary to protect the health or safety of a student or other individual, the notification required pursuant to subdivision (7) of this section shall include a description of the response of school staff to such acts and any consequences that may result from the commission of further acts of bullying. For purposes of this section, "bullying" means any overt acts by a student or a group of students directed against another student with the intent to ridicule, harass, humiliate or intimidate the other student while on school grounds, at a school-sponsored activity or on a school bus, which acts are [repeated against the same student over time] committed more than once against any student during the school year. Such policies may include provisions addressing bullying outside of the school setting if it has a direct and negative impact on a student's academic performance or safety in school.

(b) On and after January 1, 2008, if the Department of Education finds that a local or regional board of education has failed to implement the policy required pursuant to subsection (a) of this section, the department shall withhold from the grant paid pursuant to section 10-262i to the town or regional school districts an amount not less than two thousand five hundred dollars nor more than ten thousand dollars.

Sec. 2. Subsection (a) of section 10-220a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2007*):

(a) Each local or regional board of education shall provide an in-service training program for its teachers, administrators and pupil personnel who hold the initial educator, provisional educator or professional educator certificate. Such program shall provide such teachers, administrators and pupil personnel with information on (1) the nature and the relationship of drugs, as defined in subdivision (17) of section 21a-240, and alcohol to health and personality development, and procedures for discouraging their abuse, (2) health and mental health risk reduction education which includes, but need not be limited to, the prevention of risk-taking

behavior by children and the relationship of such behavior to substance abuse, pregnancy, sexually transmitted diseases, including HIV-infection and AIDS, as defined in section 19a-581, violence, child abuse and youth suicide, (3) the growth and development of exceptional children, including handicapped and gifted and talented children and children who may require special education, including, but not limited to, children with attention-deficit hyperactivity disorder or learning disabilities, and methods for identifying, planning for and working effectively with special needs children in a regular classroom, (4) school violence prevention, [and] conflict resolution and prevention of bullying, as defined in subsection (a) of section 10-222d, as amended by this act, (5) cardiopulmonary resuscitation and other emergency life saving procedures, (6) computer and other information technology as applied to student learning and classroom instruction, communications and data management, (7) the teaching of the language arts, reading and reading readiness for teachers in grades kindergarten to three, inclusive, and (8) second language acquisition in districts required to provide a program of bilingual education pursuant to section 10-17f. The State Board of Education, within available appropriations and utilizing available materials, shall assist and encourage local and regional boards of education to include: (A) Holocaust education and awareness; (B) the historical events surrounding the Great Famine in Ireland; (C) African-American history; (D) Puerto Rican history; (E) Native American history; (F) personal financial management; and (G) topics approved by the state board upon the request of local or regional boards of education as part of in-service training programs pursuant to this subsection.

Sec. 3. Subdivision (3) of subsection (a) of section 10-233d of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2007*):

(3) Unless an emergency exists, no pupil shall be expelled without a formal hearing held pursuant to sections 4-176e to 4-180a, inclusive, and section 4-181a, provided whenever such pupil is a minor, the notice required by section 4-177 and section 4-180 shall also be given to the parents or guardian of the pupil. If an emergency exists, such hearing shall be held as soon after the expulsion as possible. The notice shall include information concerning legal services

provided free of charge or at a reduced rate that are available locally and how to access such services.