



Client Alert

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APPELLATE COURT AFFIRMS MONETARY DAMAGES AGAINST SCHOOL DISTRICT FOR INADEQUATE RESPONSE TO STUDENT SEXUAL ORIENTATION HARASSMENT

In October 2008, the California Fourth District Court of Appeals affirmed a judgment awarding two public school students \$300,000 in money damages against a school district for failure to protect the students from sexual orientation harassment by the students' peers.

Education Code section 220 prohibits discrimination based on a number of protected characteristics, including sexual orientation, in any program or activity conducted by an educational institution that receives, or benefits from, state financial assistance.

Donovan v. Poway Unified School District (2008) 167 Cal.App.4th 567, involved two students who were found to have endured "severe, pervasive and offensive" peer sexual orientation harassment while attending Poway High School. The students began as freshmen in 2002. The harassment peaked during their junior year. The harassment included, but was not limited to, death threats, being spit on, physical violence, threats of violence, vandalism to personal property, and anti-gay epithets. Both students completed their senior year through an independent study program.

The District claimed it adequately responded to the harassment, that plaintiffs provided insufficient information for the district to determine which students were responsible for the harassment, and that the plaintiffs rejected various options suggested by the District in response to the harassment.

Section 220 does not state what a plaintiff must establish to prevail on a claim of sexual orientation discrimination. The Appellate Court looked to Title IX, federal law upon which section 220 was based. The Appellate Court concluded that a plaintiff could establish a claim under Education Code section 220 against a district for its response to peer sexual orientation harassment by showing:

1. He or she suffered "severe, pervasive and offensive" harassment that effectively deprived the student of the right of equal access to educational benefits and opportunities;
2. The school district had "actual knowledge" of the harassment; and

3. The school district acted with “deliberate indifference” in the face of such knowledge.

The Appellate Court also found that money damages were available in this private enforcement action under Education Code section 262.3 which provides for “civil law remedies.” The Appellate Court affirmed the jury’s award of \$300,000 to the students, who were also awarded attorney fees.

If you have any questions regarding this decision, please contact this office.

— Carol J. Grogan, Counsel

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