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Proving school liability

DISCOVERY AND EXPERT TESTIMONY IN SCHOOL-BULLYING CASES

A child is seriously assaulted at school. The child's parents have photographs of the injuries, emergency-room records, screenshots, and sometimes a video of the attack as evidence. The immediate focus is understandably on what happened that day: Where was the teacher? Was anyone supervising?

But in many school-bullying cases, the most important evidence to establish liability predates the incident that resulted in injury. It may be an email sent three months earlier: "My daughter is afraid this student is going to hurt her." It may be an incident report documenting an earlier confrontation. It may be a counselor's note reflecting that the student was afraid to attend school. It may be testimony from a teacher who had already separated the same students. It may even be another parent who complained about the same aggressor before the child was injured.

The most important questions become: (1) What did school personnel know before the injury; (2) How did they know it, and (3) What did they do with that information?

School authority figures have a duty to supervise students and to enforce rules necessary for their protection. (Ed. Code, § 44807.) School personnel also have a special relationship with students and a duty to use reasonable measures to protect them from foreseeable injury at the hands of third parties acting negligently or intentionally. (*C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 869-870.) Under Government Code section 815.2, subdivision (a), a school district may be vicariously liable for injuries proximately caused by the negligence of its employees acting within the scope of employment. (*Ibid.*)

Duty can be easily established in these cases. The challenge is in proving breach, notice, foreseeability, and causation. That is where discovery, evidence, and experts become the case.

Chronology for notice before serving discovery

One of the most important decisions in conducting discovery is to focus on the timeline of events and evidence occurring before the date of loss. Build a notice chronology before serving discovery.

During the first client meeting, work backward. When did your client first encounter the aggressor? When did the bullying begin? Were there threats? Prior physical contact? Sexual comments? Group chats? Fake social-media accounts? Were photographs or videos circulated? Was the victim targeted because of race, disability, gender, gender identity or expression, sexual orientation, religion, nationality, or another actual or perceived protected characteristic? Who did the child tell? Who did the parents tell? What happened after each report?

A chronology can be as simple as this:

- September 12: Plaintiff reports threats to classroom teacher.
- September 28: Mother emails assistant principal.
- October 3: Teacher separates the students after an argument.
- October 17: Plaintiff reports that bully threatened to attack her after school.
- November 2: Parent again contacts administration because threats continue.
- November 10: School advises parent the situation is being "handled."
- December 4: Bully assaults plaintiff, causing serious injury.

The chronology changes the litigation focus. In this example, the defense may characterize December 4 as an unforeseeable act committed by another student. The plaintiff may be able to show continued, escalating acts that several school employees had repeatedly been warned about.

The recently published decision *E.I. v. El Segundo Unified School Dist.* (2025) 111 Cal.App.5th 1267, addresses this type of scenario. In that case, a jury awarded a middle-school student $1 million after finding the district negligently failed to protect her from bullying by other students. The Court of Appeal affirmed the verdict. It reiterated that, independent of various student-discipline statutes, school officials owe students a duty to supervise their conduct and protect them from harm while on school grounds. (*Id.* at pp. 1281-1282.) The evidence included repeated reports by the student and her parents, observations by school staff, the district's own anti-bullying procedures, and evidence that employees did not follow many of those procedures.

Not every bullying complaint creates liability. However, the chronology of prior warnings can change how a jury evaluates foreseeability and the reasonableness of the school's response.

Discovery aimed at prior knowledge

School-bullying cases largely depend on information that is not immediately available to the Plaintiff and their parents. Parents know what they reported, but they usually do not know what happened inside the school after the report. This is where discovery can make or break the case.

The goal is not merely to prove that a principal received an email. The goal is to find out what was done with the information thereafter. Was it forwarded to a counselor? Did administrators discuss the bully? Was a safety plan created? Were teachers warned? Was supervision altered? Had another family complained? Did the bully have prior incidents involving similar conduct? Were pieces of the same risk sitting in different departments without anyone connecting them?

Start with the family's evidence

Before propounding written discov-

ery, obtain everything the family has in their possession: emails, texts, school-portal messages, screenshots, photographs, videos, social-media communications, meeting notes, discipline notices, attendance records, and any other related communications among family members.

Ask the parents to search old emails with the bully's name, the principal's name, the counselor's name, and any discussions with any teachers. Parents often forget communications sent months earlier. Those communications can become very important because they show what school personnel were told before the date of loss.

An email written before the serious incident stating, "I am afraid this child is going to hurt my son," has evidentiary force that no retrospective summary can replicate.

Preserve electronic evidence

Bullying cases often don't have complete documentation. Students communicate by text, Snapchat, Instagram, TikTok, group chats, and other platforms. They record confrontations, create fake accounts, post humiliating photographs, and send messages designed to disappear.

Preservation should begin immediately. Determine who sent each message, when it was sent, who received it, whether the complete thread remains available, what occurred before and after the screenshot, and whether the communication was shown to school personnel.

A threatening post may prove notice of the bully's conduct. The same post forwarded to an assistant principal two weeks before the assault may also prove notice.

The statutory approach to cyberbullying continues to get stronger. Education Code section 234.41, added by Assembly Bill 772 and effective January 1, 2026, required the California Department of Education to develop a model policy addressing certain reported off-campus cyberbullying. Local educational agencies must adopt a policy, or modify existing procedures, by July 1, 2027, concerning off-campus cyberbullying that is sufficiently severe or pervasive to have the actual and reasonably expected effect of creating an intimidating or hostile educational environment. (Ed. Code, § 234.41, subd.(c)(1).) The statute expressly states that it does not impose liability on an educational agency for failing to address off-campus acts covered by the section. (*Id.* at subd. (e).)

Ultimately, there is very little difference between online bullying and bullying at school. Conduct begins during lunch, continues in a group chat that evening, and affects the same students when they return to campus the next morning. All evidence of that kind should be preserved.

Request more than the incident report

The district will usually produce documents concerning the incident only. That is not enough. Written discovery should reach backward and should be tied to the theory of notice and foreseeability.

Depending on the facts, consider seeking:

- Prior incidents involving the plaintiff and aggressor.
- Prior complaints by the plaintiff or the plaintiff's parents.
- Communications concerning threats to the plaintiff or concerns for the plaintiff's safety.
- Communications among teachers, counselors, administrators, security personnel, and other staff concerning either student.
- Prior similar incidents involving the aggressor that were known to school personnel.
- Incident and disciplinary reports relevant to the alleged pattern, subject to appropriate privacy protections.
- Safety plans, behavior plans, separation plans, or other protective measures concerning the students.
- Supervision assignments, duty schedules, campus maps, and staffing records for the locations at issue.
- Surveillance video and video-retention policies.
- Anti-bullying, student-safety, complaint-handling, threat-assessment, and supervision policies.
- Training materials provided to employees regarding bullying, threats, mandated reporting, and student safety.
- Documents reflecting investigations of the plaintiff's complaints and the district's conclusions.
- Communications showing whether prior interventions worked and what occurred when they did not.

The goal is to compare what the district knew with what its employees did.

Student privacy is not necessarily a dead end

Discovery concerning earlier incidents involving another student will most likely result in privacy objections being asserted. California pupil records are protected by Education Code sections 49073 through 49079.7 and federal law, including the Family Educational Rights and Privacy Act (FERPA). However, those protections are not an automatic bar to court-ordered discovery. Education Code section 49077 provides for access pursuant to judicial order, and FERPA permits disclosure of education records in compliance with a judicial order or lawfully issued subpoena, subject to applicable notice requirements. (20 U.S.C. § 1232g(b)(2)(B); 34 C.F.R. § 99.31(a)(9).)

The safer approach is not to demand a bully's entire educational file. If the issue is notice of prior behavior, seek information and records concerning prior similar incidents known to school personnel during a defined period. Consider redaction, pseudonyms, protective orders, or an in-camera review to address legitimate privacy concerns.

Where a legally protected privacy interest, reasonable expectation of privacy, and serious intrusion are shown, courts balance the privacy interest against the need for discovery and consider whether less intrusive means are available. (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 552-557; *Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 35-40.)

The theme for the motion to compel should be relevance with limited language. The messages should be that

Plaintiff is not searching for character evidence to prove the bully was a "bad kid." Rather, Plaintiff seeks evidence showing what school employees knew about the type of danger that ultimately came to fruition.

Turn "everyone knew" into witnesses

Parents often say, "Everyone at the school knew this child was dangerous." That is not evidence in it of itself. It can, however, provide the roadmap to the evidence.

Convert "everyone knew" into specific witnesses:

> Ms. Smith knew because she broke up the October confrontation.
> Mr. Jones knew because the plaintiff showed him the threatening message.
> The counselor knew because the plaintiff reported being afraid.
> The assistant principal knew because the parent emailed him twice.
> The campus supervisor knew because he documented an earlier physical incident.
> Another teacher knew because she had previously separated the bully from another student.
> Another parent complained because the bully threatened her child.

Now "everyone knew" is no longer vague and uncompelling – it is a witness list.

Use the PMK deposition to connect the dots

The district's PMK deposition can be one of the most useful tools in the case. Categories should concern procedures for receiving and investigating bullying complaints; documentation of reports; communication among employees; repeated incidents involving the same student; supervision assignments; training; retention of surveillance and electronic communications; safety plans; escalation procedures; and the district's response to the Plaintiff's reports.

One particularly important subject is pattern recognition: Who is responsible for connecting the dots?

If Student A has an incident with Student B in September, Student C in October, and finally the Plaintiff in November, where is that information maintained? Who has access to it? Is anyone expected to identify the pattern? If the school's policy assigns that responsibility to someone, was that policy complied with?

Policies are evidence, not the cause of action

A district's policies should be looked at closely in discovery. Evidence Code section 669.1 states that a public agency's policy, manual, rule, or guideline generally is not treated as a statute, ordinance, or regulation for purposes of the negligence-per-se presumption in Evidence Code section 669 unless formally adopted in the manner specified by the statute. However, section 669.1 also expressly states that it does not otherwise determine admissibility.

E.I. applied that principle directly to a school-bullying case. The district argued that its anti-bullying policies could not be used to establish employee standards of conduct. The Court of Appeal rejected that argument, explaining that the policies could be considered in determining whether employees fell below the ordinary-care standard owed to students. (*Id.* at pp. 1294-1295.)

At trial, the argument is not: "You violated your policy; therefore you are liable." Instead, the argument is: "Your district identified these procedures as the way in which employees were to receive, investigate, document, escalate, and respond to student-safety concerns. Your employees were trained on those procedures. Now let's compare those procedures with what actually occurred."

Seth's Law can guide discovery

Seth's Law, Assembly Bill 9, strengthened California's Safe Place to Learn Act. The statutory framework states that students have the right to participate fully in the educational process free from discrimination and harassment. (See Ed. Code, § 201.) Education Code sections 234 and 234.1 require local educational agencies to adopt policies and complaint processes concerning discrimination, harassment, intimidation, and bullying based on actual or perceived protected characteristics, including disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or association with a person or group possessing one or more of those characteristics. (See Ed. Code, §§ 220, 234, 234.1.)

Section 234.1 requires, among other things, a process for receiving and investigating covered complaints, a timeline to investigate and resolve them, an appeal process, and immediate intervention by school personnel who witness covered conduct when it is safe to do so. (See Ed. Code, § 234.1.)

Seth's Law emphasizes why intake must go beyond the word "bullying." What was the purpose of the Plaintiff being the bully's target? Was the conduct based on disability, race, religion, sex, gender, gender identity or expression, sexual orientation, or another protected characteristic? Was the conduct sexual? Were slurs used? Were disability symptoms mocked? Those facts can alter the applicable statutory framework and, in turn, discoverable evidence.

Supervision evidence can make the case concrete

Determine where the incident occurred, where the assigned supervisor was located, what the supervisor could see, how many students were present, whether there were blind spots, whether prior incidents occurred in the same area, and whether the site was known as a location where bullying or fights occurred.

Photographs, a campus map, surveillance footage, and duty schedules can transform an abstract "failure to supervise" allegation into a demonstrable physical theory.

Also be prepared for the argument that the aggressor – not the district – caused the injury. California law has long recognized that student misconduct does not necessarily eliminate negligent-supervision liability. More recently, *E.I.* reaffirmed that the school's protective duty includes reasonable measures to protect students from foreseeable harm caused by other students. (*E.I. v. El Segundo Unified School Dist.* (2025) 111 Cal.App.5th 1267,

1281-1282.)

Use experts before discovery closes

A school-administration or school-safety expert can be valuable, but the expert should do more than just state that "the school was negligent." A qualified former administrator or school-safety professional may be able to address reasonable supervisory practices; how repeated threats are ordinarily documented and escalated; communication among staff; student-safety planning; implementation of district procedures; and whether the response was consistent with accepted school practices.

E.I. is also instructive here. The plaintiff presented an assistant superintendent as an expert. The expert addressed how school personnel should investigate and document bullying complaints, protect victims, discipline students who engage in bullying, and apply district safety plans. (*Id.* at pp. 1290-1292.) The district challenged portions of the testimony on appeal, and specifically, testimony concerning Education Code provisions, but failed to establish reversible prejudice.

It's not that experts should instruct juries on statutory interpretation. The better use of the expert is to explain the way in which the operations should be conducted: operations of the school administration, identify accepted practices, and connect those practices to the evidence.

Experts should be consulted early on. An experienced school administrator can help identify records that should exist, departments that may possess records outside the student's file, the employees who normally receive reports, and the categories that should be included in a PMK notice. Waiting until expert designation may mean learning after the discovery cutoff that an important category of records was never requested and testimony never received.

Other experts may be appropriate depending on the case. A human-factors expert may be useful where line-of-sight, staffing, physical layout, or surveillance is important for the case. Mental-health experts may be needed to address PTSD, anxiety, school avoidance, depression, or other claimed psychological injuries.

Causation should be discussed early

Before filing, the question that you should be able to answer is: What exactly should the school have done differently?

The theory of liability should be more than "they should have stopped the bullying." Theory of liability can be as simple as reasonable care required separating the students after repeated threats. It can also be a known location where the act occurred or was going to occur required closer supervision. Perhaps employees should have communicated known threats to the person responsible for campus safety. Perhaps a safety plan should have been implemented. Perhaps a supervisor positioned where the district said the supervisor should be would have seen and interrupted the confrontation.

The theory should work as follows: The school knew A, B, and C. Reasonable care under those circumstances required D. The responsible employee failed to do D. Had D occurred, the injury probably would have been prevented or materially reduced.

Discovery should be aimed towards establishing notice

Discovery should be focused on why the incident occurred. Identify the injury. Identify the danger that produced it. Identify every earlier implication of that danger. Identify every employee who saw it or was told about it. Identify every document created because of it. Identify what procedures applied, what intervention occurred, whether it worked, and what the school did when it did not.

If discovery establishes that school personnel received notice, understood the risk, and nevertheless failed to take reasonable steps to address it, the case is no longer simply about one student hurting another. It is about notice, foreseeability, and lack of supervision, which is necessary to ultimately put your case forward.

Discovery checklist

For the appropriate school-bullying case, consider whether discovery should include:

- A detailed notice chronology predating the injury.
- Parent-school emails, portal messages, and meeting notes.
- Prior incidents between plaintiff and aggressor.
- Prior similar conduct by the aggressor known to school personnel.
- Internal emails and messages among teachers, counselors, administrators, security, and district personnel.
- Incident, discipline, and investigation records relevant to the pattern, with privacy protections as necessary.
- Safety plans, behavioral plans, separation plans, or threat assessments.
- Supervision schedules, duty assignments, campus maps, and surveillance.
- Applicable anti-bullying, complaint, supervision, and safety policies.
- Employee training materials.
- PMK testimony concerning complaint handling, information flow, pattern recognition, supervision, and document retention.
- Authentication and foundation for digital evidence.
- Early consultation with a school-administration or school-safety expert.



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