



HOT TOPICS IN SPECIAL EDUCATION LAW

Loyola Education Law - Year in Review

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Agenda

1. Student Attendance and School Refusal
2. Bullying and School Discipline
3. Questions and Answers



Student
Attendance and
School Refusal



Recent News Stories

- **January 31, 2024, American Enterprise Institute, *Long COVID for Public Schools: Chronic Absenteeism Before and After the Pandemic***
- **February 9, 2024, National Public Radio, *K-12 students learned a lot last year, but they're still missing too much school***
- **March 29, 2024, New York Times, *What Students Are Saying About Why School Absences Have 'Exploded'***
- **May 7, 2024, Wall Street Journal, *The Post-Covid Truancy Epidemic***
 - *Schools closed, then reopened, but many students still don't attend regularly*



Student Attendance Data – Pre and Post Pandemic

- Consistent attendance is key to student success, but post-pandemic attendance has been far from consistent. Nationwide, chronic absenteeism—the percentage of students missing at least 10% of a school year—surged from 15 percent in 2019 to 29.7% percent in 2022 and 27.9% in 2023.
- Falling in 33 of 39 states reporting data, chronic absenteeism rates improved slightly in 2023, but still remained 75 percent higher than the pre-pandemic baseline.
- Chronic absenteeism increased for all district types, but rates were highest in districts with low achievement and higher poverty, affecting over one in three students.



Child Find Obligations

Each school district shall be responsible for actively seeking out and identifying all children from birth through age 21 within the district...

- *23 Ill.Adm.Code 226.100*

Child Find Triggers

Potential Child Find Triggers for Students with Attendance Issues

- Notice of hospitalizations
- Parent presentation of private evaluation
- Poor student attendance/significant tardiness
- Frequent nurse/social work/counselor visits
- Decline in classroom participation/work completion
- Marked change in attitude/behaviors of concern - including vaping/drug use
- Increase in somatic symptoms
- Withdrawal from school



School Attendance Considerations for Child Find

- Develop a system for tracking attendance consistently between schools, teachers, and classes, and have clear attendance markers that require a team to dive deeper to discern if increasing absences might be linked to a disability.
- Ensure that teachers collaborate and share their concerns about students to alert staff that a screener or ultimately a 504 or special education evaluation may be necessary.
- Create a MTSS screener to determine the function of the absences
 - Create a protocol to determine when students will be referred to be screened.
 - Determine the information the team needs to know to ascertain the function of the absences.
 - Establish how the district will utilize the data gathered.



Recent Court Cases



*J.H. v. Seattle
Public Schools*
(U.S. District
Court –
Washington)
March 1, 2024

- Prior to COVID, student with Autism was attending school regularly. Post COVID the student regressed and began attending partial days and having significant aggressive behaviors.
- An FBA/BIP was put in place in October 2021, however, student continued to have significant aggressive behaviors and began to complain about attending school. Parent began driving the student, but didn't share the school attendance complaints with the school.
- In March 2022, Student's school refusal behaviors increased, and he was showing aggression in the home when Parents tried to get him on bus or to school.
- IEP meeting was convened, and District increased behavior supports, including BCBA and behavioral technician support during day and in-home in the morning, different method of transportation, and development of a new FBA and BIP to address school refusal.
- Parents provided unilateral notice of residential placement and District convened another IEP Meeting in March 2022 to consider such and denied placement outside the District. Parents did sign consent for the FBA.
- FBA was completed and shared with Parents in May 2022. BIP included many new interventions for addressing school refusal.

*J.H. v. Seattle
Public Schools*
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- Court held that the public school district could address the student's school refusal within the public school setting, therefore, the student did not require a residential placement to receive FAPE.
- The Court noted that while it is obvious that parents would want the behavioral interventions of the school to have an immediate result, especially in cases of school refusal, school districts may take a reasonable amount of time to determine whether a new BIP can meet the student's needs.
- IEP is appropriate if at the time of its formation it is reasonably calculated to allow for meaningful progress ("snapshot rule"); BIP did that even though it didn't call for full-time school attendance from first day.
- Key Factor: Student was making some small initial steps to increase attendance in light of the BIP (i.e. getting dressed for school). Parents did not give the BIP and school enough time to see if the BIP would be effective.



Independent School District No. 283 v. E.D.M.H., a minor, (8th Cir. 2020)

The District erred in finding the student not eligible for special education, as the student's anxiety and depression prevented her from accessing the general education curriculum, even though she had above-average academic performance.

Independent School District No. 283 v. E.D.M.H., a minor, (8th Cir. 2020)

- An eligibility team may, and should, consider a student's academic ability when determining her need for specialized instruction, however, it cannot rely solely on that factor.
 - In this case, the school team should have also considered factors such as frequent absences and the student's ability to access the general education curriculum.
 - Not only was this District aware that the student's absences stemmed from her mental health issues (i.e. anxiety and depression), but it knew she had earned very few course credits.
 - The District's argument that the student's standardized test scores and exceptional performance on the days she attended school made her ineligible for special education was short sighted.

"The record demonstrates that the Student's intellect alone was insufficient for her to progress academically and that she was in need of special education and related services."

Key Take Aways

Attempt to intervene with school-based supports first, prior to utilizing outside programs and prior to initiating a special education evaluation.

- Consider developing and using a post-hospitalization transition program for students with short- and long-term attendance patterns.
- Make the students school experience smaller through connections and smaller environments.
- Utilize behavioral supports, medical documentation submissions for absences, home visits and nurse assessments.

Closely monitor the success of the in-school interventions and collect data so the team can return to the table promptly if the interventions are not successfully impacting attendance patterns.



Key Take Aways

1

Conduct a 504 or IDEA evaluation when trends in absence patterns are not improving. Do not rely on good grades and test scores to avoid evaluating.

2

Consider the need for outside supports—homebound services, therapeutic day school, in-home behavior support, supportive attendance.

3

Regularly Convene IEP meetings to make changes to the BIP and other supports and interventions to increase attendance. Allow time for such to work.



Bullying and School Discipline

Interconnected Problems



SB 100 Background

- Schools must limit the number and duration of expulsions and out of school suspensions to the greatest extent practicable
- Schools are encouraged to use non-exclusionary discipline measures prior to suspending students out of school.
- Out of school suspension and expulsion are to be used only for legitimate educational purposes and suspension and expulsion decisions must be made on a case-by-case basis.

Senate Bill 1400



Seeks to strengthen Senate Bill 100 while ensuring that student's behavioral health needs are being met without the use of exclusionary discipline.



In addressing bullying concerns, some school personnel reported that they could not remove students who were aggressive or engaged in serious bullying because of Senate Bill 100. The mental health needs of these students went unaddressed, and the bullying often escalated.

Intersection of Harassment and Disability



John Zimny v. Geneva Community School District (N.D. Illinois, February 21, 2024)

- The parents of a 12 year old boy with gross motor deficits could pursue disability discrimination claims against an Illinois district not only for unjust discipline, but also for mishandling peer harassment.
- Students who harassed the student were either not disciplined or were given less punishment than the disabled student.
- BZ, the disabled student, was given a detention for reporting that another student threw a bag of chips in his face.
- Several weeks later B.Z. was given a two day suspension based on schoolmate's false report that B.Z. had threatened to shoot him.

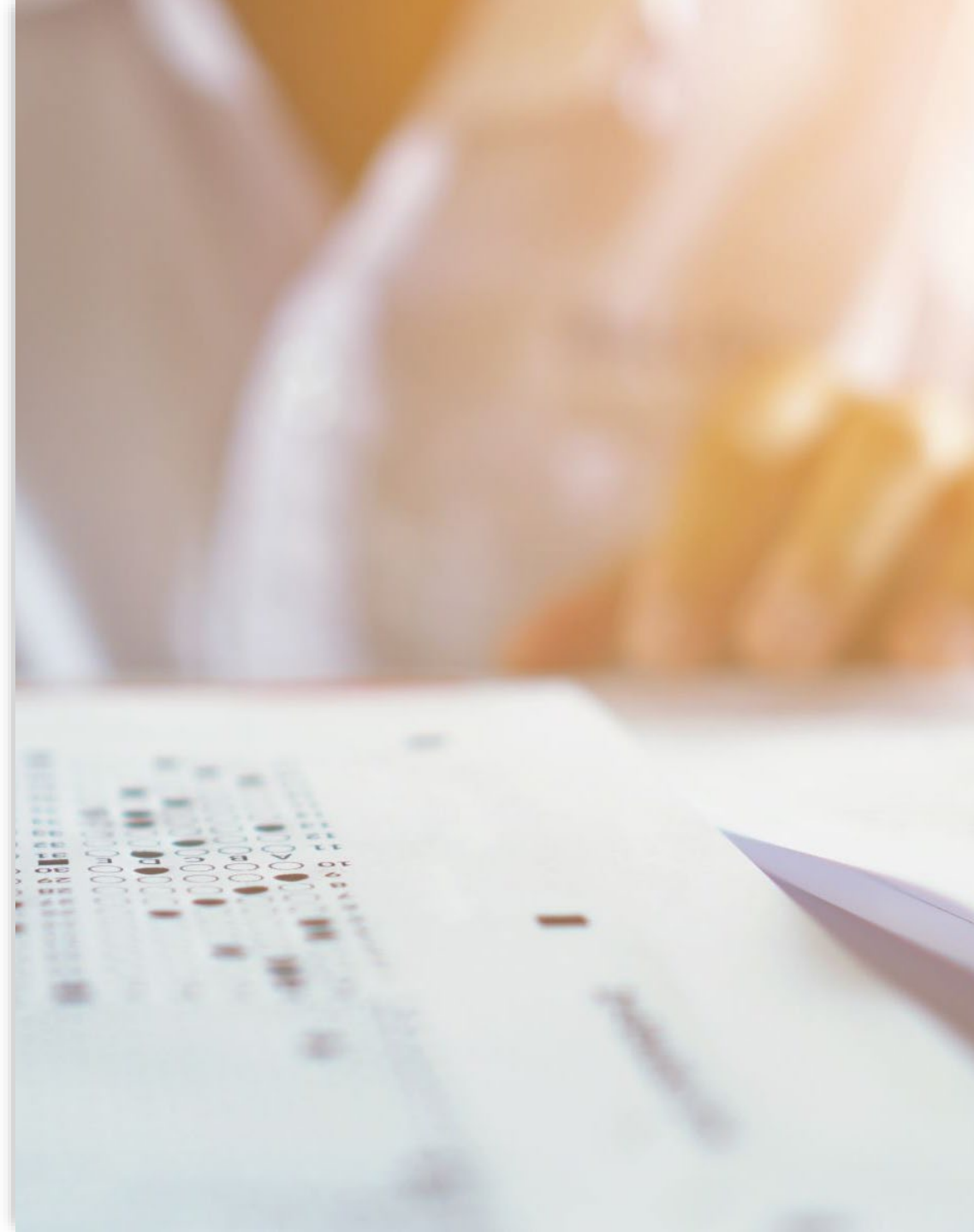
Zimny (cont.)

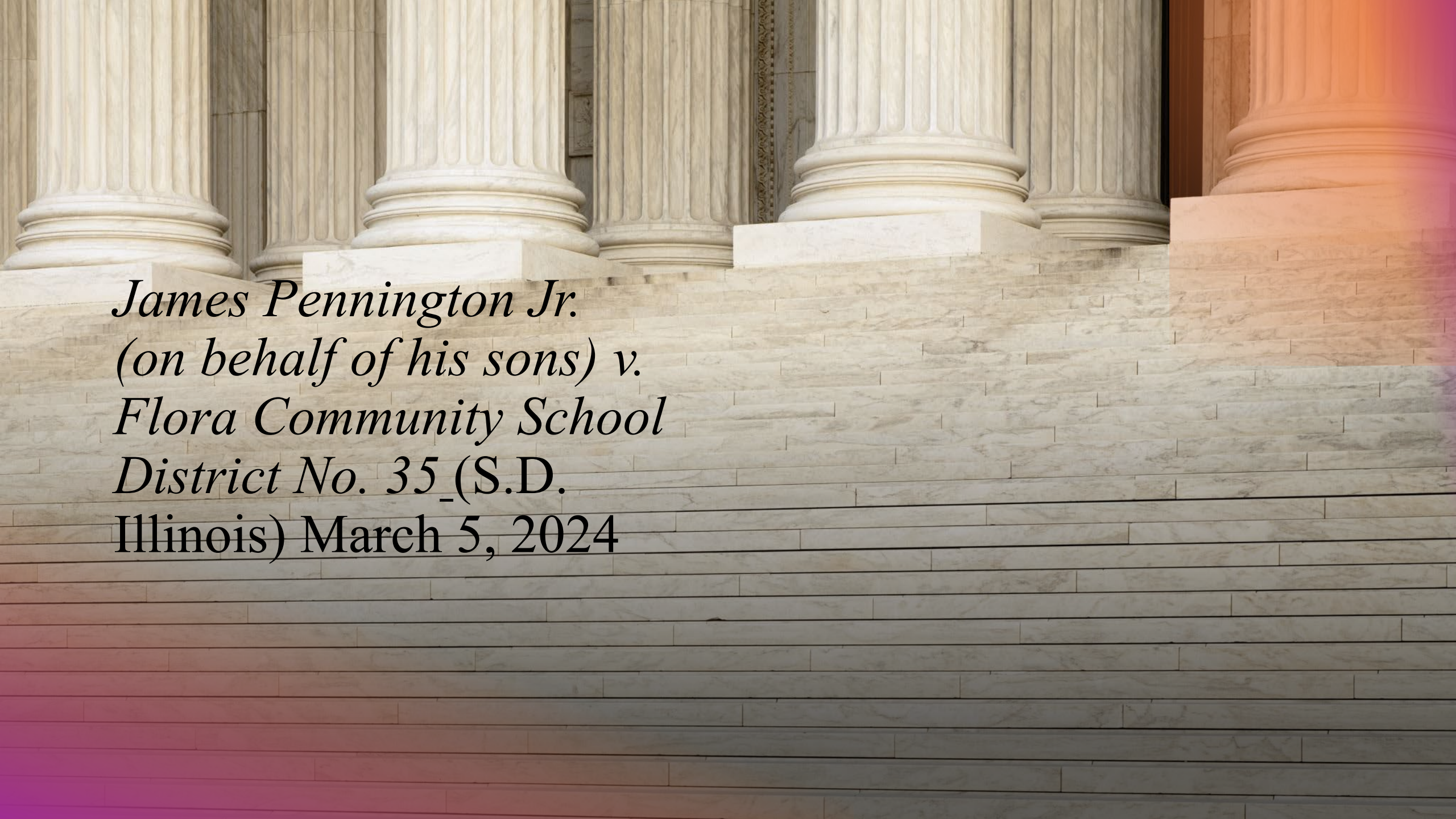
- Another student who hit BZ with a hockey stick causing significant injuries received only a one-day suspension. “In other words, a non-disabled peer received half the length of punishment that B.Z. received for something that he did not do.”
- Parents requested an evaluation of B.Z. and were denied.
- The parents requested a safety plan 37 times.
- Home schooling program was stopped without explanation when B.Z. could no longer attend school due to the harassment.



Zimny (cont).

- The Court found that not only had student's harassed B.Z. based upon his disability, but also that the District Administration discriminated against the student.



The background of the image shows a series of wide, light-colored marble steps leading up to a row of classical columns. The columns are fluted and have papyrus capitals. The lighting is warm, suggesting an indoor or shaded outdoor setting. The text is overlaid on the lower left portion of the steps.

*James Pennington Jr.
(on behalf of his sons) v.
Flora Community School
District No. 35 (S.D.
Illinois) March 5, 2024*

Pennington (cont.)

Parent alleged that the district discriminated against his twin sons based on their autism by allowing and failing to address bullying at school.

The harassment was sufficiently severe or pervasive that it altered their education and created an abusive environment.

The district must have known of the harassment and was deliberately indifferent to it.

District argued that only one incident of abuse wasn't motivated by disability and ignored all the others.

Pennington (cont.)

This explanation from the district didn't account for all the occasions when the boys were called names.

The boys were bullied almost every day for two years or longer.

They endured harassment, intimidation, public humiliation, beatings, stabbings, and were hospitalized, arrested, and became suicidal.

Many reported incidents where no action was taken.

Pennington (cont.)

Importantly, the district didn't provide any evidence of efforts made, any explanation of why efforts were unnecessary, or a legally compliant bullying policy.

It failed to show that its responses were reasonable, which constituted deliberate indifference.

A blurred background image of a classroom. Several students' hands are raised in the air, indicating an interactive session or a Q&A period. The focus is on the hands and arms, with the faces and bodies of the students being out of focus. The lighting is soft and natural, suggesting an indoor setting.

Question and Answer
