



GUIDANCE FOR MENTAL HEALTH AND MEDICAL PROFESSIONALS ON STUDENTS WHO ARE BEING PERSISTENTLY HARASSED AT SCHOOL

WHAT SCHOOLS ARE DOING TO ADDRESS BULLYING OR HARASSMENT IS NOT WORKING

On the Youth Risk Behavior Survey (YRBS), there has not been a decline of student reports of being bullied since 2009, when the question was first asked.¹ In states with more comprehensive bullying prevention statutes, there appears to have been an increase.² Recent meta-analyses of bullying prevention programs have documented low to no positive impact—with zero effectiveness at the secondary level.³

A recent commentary in *Pediatrics*, outlined that bullying can have life-long health consequences and has been associated with stress-related physical and mental health symptoms, including depression, anxiety, post traumatic stress, and suicidal ideation.⁴ When bullying is motivated by discrimination or an attack on someone's core identity, it can have especially harmful health consequences.

A recent study in *Pediatrics* found that youth suicides are most prevalent during the school year.⁵ A study focusing on YRBS data demonstrated that students who were bullied were more likely to miss school.⁶ A 2004 comprehensive study of school shootings by the Secret Service, demonstrated that 71% of the school shooters felt persecuted, bullied, threatened, attacked or injured by others prior to the incident.⁷ Another recent *Pediatrics* study reported that students who were bullied were twice as likely to bring weapons to school and that if bullied students had also been in a fight, been threatened or injured at school, or skipped school out of fear for their safety, each additional risk factor increased the likelihood of bringing a weapon to school.⁸

ANTI-BULLYING STATUTES AND DISTRICT POLICIES

All 50 states have enacted statutes governing bullying. These statutes require schools to establish rules against bullying, set up a student reporting system, investigate upon a report, and make a determination of whether the accused student committed acts that warrant a disciplinary consequence, generally a suspension. This is at the same time that schools are under significant pressure to reduce suspensions because they are entirely ineffective in reducing misbehavior and are applied in a discriminatory manner.

There is no evidence that any of these anti-bullying statutes are having any positive impact in reducing bullying or supporting a more effective response to bullying by the school. The protections under the statute are only present if the bullied student reports. The vast majority of bullied students do not report because this does not often resolve the situation and very often makes things worse.⁹

Because the focus is on the creation of a disciplinary policy, the primary emphasis of principal has been directed to a determination of whether the accused student has committed an act that has caused such a significant disruption at school to warrant a suspension.

The vast majority of bullying incidents do not meet the standards of "substantial disruption." Most bullied students are experiencing persistent hurtful acts from other students and staff that are of a more minor nature. The significant emotional harm is the result of the ongoing, chronic nature of the hurtful behavior—as well as the failure of school staff to get this hurtful situation to stop.

CIVIL RIGHTS PROTECTIONS

It is important to distinguish between "bullying" and "discriminatory harassment." Several federal laws, as well as state laws, govern discriminatory harassment based on "protected class."¹⁰ At the national level this includes race and national origin, sex and sex role stereotyping, and disabilities. At the state level, religion is generally also specifically included. The laws also protect students who are being treated badly because of the perspective they are a member of a "protected class."

These laws are enforced by the U. S. Department of Education's (USDOE) Office for Civil Rights (OCR) or the state departments of education. Filing a complaint will start what is called an "agency action" to determine whether the district's actions are in accord with the laws and regulations. Withholding funds is the outcome of a negative finding. Districts are normally responsive if a well-documented complaint is filed.

Harassment creates a hostile environment when the conduct is sufficiently severe, pervasive, or persistent so as to interfere with or limit a student's ability to participate in or benefit from the services, activities, or opportunities offered by a school.¹¹ Note that the concepts of "pervasive" and "persistent" go beyond the concept of behavior that is a "substantial disruption."

What the school is required to do under civil rights laws and regulations if a hostile environment is suspected is conduct a prompt, thorough, and unbiased investigation.¹² If a hostile environment is found to be present, the school must take prompt and effective steps reasonably calculated to end the hurtful conduct, prevent it from recurring, remedy its harmful effects on the target, and correct the hostile environment to reduce the potential the hurtful acts will continue. OCR has specifically stated that it is essential for schools to do more than simply punish the aggressive student, which is the sole focus of most anti-bullying statutes.

These civil rights requirements provide the basis for knowing what schools should do—but most often do not do—in response to a report of bullying under a state statute. Students who learn that principals will not respond to the persistent or pervasive hurtful acts that are frequently occurring to them and so they stop reporting.

By way of example, one district that conducts a local survey on bullying found that 6.4% of its secondary students reported being bullied and 5.5% reported being harassed (based on minority status) once a week or more, for a total of 8.3% (eliminating duplications). But 63% of bullied students and 68% of harassed students said they would not ask school staff for help.¹³

It is far better when a parent files a complaint with a district if it can be argued that the situation involved discriminatory harassment under civil rights laws, rather than simply a violation of the bullying statute. In doing so, this will place the school and district leadership on notice that the intervention actions expected must be greater than merely deciding whether disciplinary action against the accused student is warranted—and that failure to respond with due diligence could lead to a complaint for violation of civil rights laws to be made.

If the student who is being treated badly is not immediately identifiable as a member of a “protected class” there are two possible strategies can be used to characterize the situation as discriminatory harassment under civil rights laws.

- The student does not have to actually be a member of the protected class. Rather, the hurtful acts must be somehow tied to a perception that the student is in a protected class.¹⁴
- If a student has been diagnosed by a mental health or medical professional as experiencing a mental health challenge, this student is considered to have a “disability” under Section 504.¹⁵ It is not necessary that a student with a mental health disability currently be receiving special education services, such as being on a Section 504 Plan.¹⁶ If a student with a disability is experiencing serious, persistent, or pervasive hurtful treatment, on any basis, and this is interfering with that student’s learning or participation, then this is a hostile environment and is considered to be discriminatory harassment and a violation of Section 504.

BULLYING AND TRAUMA

It is necessary to “connect the dots” between bullying and traumatic stress disorders. One recent study revealed a high incidence of Post Traumatic Stress Disorder (PTSD) symptoms among students who reported they were bullied and a strong association between frequency of exposure to bullying and such symptoms.¹⁷

Researchers have outlined how the experience of being bullied by peers becomes biologically embedded in the physiology of the developing child, which in turn has a harmful impact on their health and behavior.¹⁸ A recent study has documented that the brains of high school students who experienced persistent bullying appeared to have actually shrunk in size in a manner similar to adults who experienced early life stress, such as childhood maltreatment.¹⁹

The National Child Traumatic Stress Network describes two forms of traumatic distress.²⁰ Acute traumatic events involve experiencing, witnessing, or a threat of a serious injury to yourself or another. Chronic traumatic situations that occur repeatedly over periods of time and result in feelings of fear, loss of trust in others, decreased sense of safety, guilt, and shame. Bullying situations could involve acute trauma, chronic trauma, or both. However, normally the situation is more chronic—pervasive or persistent.

In these situations, it is exceptionally important to focus on two concerns. The first is that these pervasive or persistent hurtful incidents are occurring. The second is that students are unable to obtain help from school staff in getting these incidents to stop—which significantly increases their feelings of helplessness and hopelessness because they are required to come to these hostile environments every day.

The standards for PTSD under the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* (DSM-5) focuses on major traumatic events (Criterion A), not chronic or complex traumatic situations.²¹

However, another category in *DSM-5* Stress Disorders appears to be highly relevant. This is Specified Trauma-and Stressor-Related Disorder, where clinically significant distress or impairment in functioning predominate, but full criteria for another disorder in this category is not met.

The following are the additional key Criterion for PTSD, not including the acute traumatic event, along with suggestions of how these Criterion may manifest when a student is being persistently bullied.

- **Criterion B: Re-experiencing Symptoms.** Students who experience bullying frequently demonstrate intrusive memories of what is happening to them, as well as dreams of people being hurtful to them. They may experience distress when getting ready for school or being taken to school.

- **Criterion C: Avoidance Symptoms.** Students who experience bullying which is chronic will demonstrate significant signs of avoidance. However, while this may be avoidance of situations that bring up memories, this is also likely real-time avoidance of going to school.
- **Criterion D: Negative Cognitions and Moods.** Students who experience bullying often have persistent negative evaluations of themselves, others, and the world. They will often blame themselves or others. Negative emotional states are pervasive, as well as loss of interest in activities, feeling detached, and inability to experience positive emotions.
- **Criterion E: Arousal Symptoms.** Students who experience bullying often experience most or all of these symptoms. Sometimes they are the ones who are disciplined because they have overreacted with aggressive behavior. The hyper vigilance, feeling constantly on guard, and startle response is ongoing, because the situation may very well be such that danger may be around any corner in the school. They often have difficulties concentrating and learning and problems sleeping.
- **Criterion E Symptoms last more than a month.** Students who experience persistent bullying will be experiencing these symptoms for more than a month.
- **Criterion F: Symptoms cause distress and/or interference.** Students who experience bullying could manifest distress symptoms that could also include psychosomatic illness, including headaches and stomach aches. They experience interference in their ability to concentrate and learn. They also engage in avoidance of school, rest rooms, or cafeteria. and decline to participate in school activities.

Students who are experiencing serious, persistent, or pervasive hurtful treatment may also meet the criterion for other mental health disorders. From a legal perspective, if the student’s symptoms will also meet the criterion for Specified Trauma-and Stressor-Related Disorder, it would exceptionally helpful to have this diagnosis.

The reason for this is that the diagnosis itself indicates that the reason this student is experiencing mental health challenges is because of how this student is being treated by students and possibly staff and the failure of the school to respond effectively. This should create a more powerful influence on school leaders to respond effectively.

STOPPING THE HARMFUL SITUATION AND ENHANCING RESILIENCE

There appear to be two critical components of an effort to address the concerns of students who are experiencing a hostile environment:

- Insisting that the school take appropriate steps to effectively investigate and intervention actions that are reasonably calculated to stop the harmful conduct, prevent retaliation, and correct the hostile environment—including stopping the micro-aggressions by staff and the failure of staff to effectively intervene.
- If the parent successfully documents the pervasive or persistent hurtful behavior by students and potentially also by staff, the lack of effective staff response when witnessing such situations, the lack of an effective response when such incidents are reported, and the harmful impact on their child’s ability to learn and participate in school activities, together with a medical or mental health diagnosis of Specified Trauma- and Stressor-Related Disorder that specifically notes that the chronic trauma the student is experiencing is the hostile environment at school and lack of responsiveness of the school in responding, this could significantly increase the potential of a more positive response by the school or district leadership.

- Increasing the resilience of the targeted students. Resilience is the capacity of individuals to sustain their well-being despite the adversities they are facing. It can unfortunately be anticipated that many “protected class” students will experience hurtful incidents throughout their lives. Ensuring they have a high level of personal resilience must be considered essential.

ABOUT THE AUTHOR

I have a M.S. in Special Education from the University of Oregon and a J.D. from Willamette University College of Law. I entered the field of bullying prevention by writing the first book ever published on cyberbullying, *Cyberbullying and Cyberthreats: Responding to the Challenge of Online Social Cruelty, Threats, and Distress* (2007, Research Press). I am also author *Cyber-Safe Kids, Cyber-Savvy Teens, Helping Young People Use the Internet Safely and Responsibly* (2007, Jossey Bass). *Cyber Savvy: Embracing Digital Safety and Civility* (2011, Corwin Press). I write frequently for the publication *District Administration*, as well as other publications for the education community.

I am the author of a new book for school leaders, *Engage Students to Embrace Civility*. This book is available on Amazon.

Of frustration and concern to the national experts I regularly communicate with, none of us are having any success in convincing school leaders of a need for a change in their approach.

The new approach I am launching to seek to address these concerns, of which this document is included, is four-fold:

- *Be Positively Powerful: An Empowerment Plan for Teens Who Are Bullied or Harassed* is a book for teens that outlines for them the situation, insight into neuroplasticity, seven positive strategies they can use to become more empowered, approaches they can take to respond to hurtful incidents that incorporate these strategies. This insight is grounded in positive psychology and trauma informed practices. This book is available on Amazon.
- I am setting up practice to work as an expert witness or a trial consultant for attorneys who are suing school districts based on discriminatory harassment. I can also assist school district counsel in evaluating a situation where a case has been filed or is threatened and can assist in the development of a plan of action to promptly resolve the situation through an effective settlement agreement/consent decree. In addition, I can assist school district counsel on matters related to challenges related to free speech, hate speech, and off-campus speech.
- *Positive Resolutions: How to Insist on a Positive Response by the School to the Bullying or Harassment of Your Child* is a forthcoming book that provides guidance to parents on how to document and insist on a more positive response by the school. This document has been provided to parents in conjunction with Positive Resolutions. In addition, a Documentation Guide and template for writing a description of what is happening is provided to parents, along with a template setting forth how to prepare a complaint. This book will be available on Amazon. Publication data is anticipated fall 2019.
- In my local community, I am setting up Bullying Resolution Services to seek to offer support for parents to file a complaint against their district for ineffective response to bullying or harassment situations or to conduct an Independent Educational Evaluations for students with disabilities who are being harassed and the school’s response is not working. If this approach demonstrates effectiveness, I will create training to offer to professionals nationwide on how to do this.

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