



## GUIDANCE FOR MENTAL HEALTH PROFESSIONALS ON STUDENTS WHO ARE BEING PERSISTENTLY BULLIED OR HARASSED AT SCHOOL

### THE PROBLEM: WHAT SCHOOLS ARE DOING TO ADDRESS BULLYING OR HARASSMENT IS NOT WORKING

On the *Youth Risk Behavior Survey*, there has not been a decline of student reports of being bullied from 2009, when the question was first asked, to 2017.<sup>1</sup> In some states with more comprehensive bullying prevention statutes, there appears to have been an increase. For example, in New York, which enacted a very comprehensive statute called the Dignity Act, in 2011, has seen an increase in student reports of being bullied from 18% in 2011 to 21% in 2017.<sup>2</sup>

Emerging evidence indicates there is a recent increase in bullying and harassment, especially in regions that supported Mr. Trump in 2016. In an evaluation of the 2017 responses to a state survey in Virginia, researchers found an 18% higher rate of bullying where voters favored Mr. Trump in the 2016 election. In the 2015 data there were no meaningful differences.<sup>3</sup>

In 2013, on the National Crime Victimization Survey—School Crimes Supplement (NCVS), there was a drop in the percentage of students reporting they had been bullied. However, there was not an equivalent drop on the 2013 YRBS, as should have been expected if this was a meaningful drop. There have been no declines on this question in any other years.<sup>4</sup>

A study evaluating U.S. data from the 2005-2006 *Health Behavior in School-Aged Children* survey, determined that 65% of schools had bullying prevention programs. Schools with such programs had significantly higher levels of reported bullying.<sup>5</sup>

Recent meta-analyses have raised attention to significant concerns associated with the current approaches to bullying prevention. As recently noted by Cohen and colleagues:

*There have been five meta-analytic studies published in peer-review publications that have focused on the efficacy of school-based bully prevention programs. These review studies indicate that the efficacy of school bullying prevention programs have varied (from no effects to low effect sizes) across countries and contexts.*<sup>6</sup>

A recent meta analysis conducted by Yeager and colleagues found that there was zero effectiveness of bullying prevention programs at the secondary level.<sup>7</sup>

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1 Center for Disease Control (2015) Youth Risk Behavior Survey: Data Summary and Trends Report 2007-2017.. <https://www.cdc.gov/healthyyouth/data/yrbs/pdf/trendsreport.pdf>.

2 Youth Risk Behavior data for New York state. <http://apps.nccd.cdc.gov/youthonline/App/Results.aspx?LID=NY>.

3 Huang, F & Cornell, D. (2019) School Teasing and Bullying After the Presidential Election. *Educational Researcher*. <https://www.aera.net/Newsroom/School-Teasing-and-Bullying-After-the-Presidential-Election>

4 U.S Department of Education (December 2016) Student Reports of Bullying and Cyberbullying From the 2015 School Crimes Supplement to the National Crimes Victimization Survey. <https://nces.ed.gov/pubs2017/2017015.pdf> ation Survey. <http://nces.ed.gov/pubs2015/2015056.pdf>.

5 Jeong S. and Lee, B.N (2013) A Multilevel Examination of Peer Victimization and Bullying Preventions in Schools, *Journal of Criminology*, vol. 2013, Article ID 735397, <http://www.hindawi.com/journals/jcrim/2013/735397/>. Of concern in interpreting these results is there is insufficient insight into the nature of the prevention programs or other conditions at the schools.

6 Cohen, et. al., *supra*.

7 Yeager, D.S., Fong, C.J., Lee, H.Y., and Espelage, D. (2015). Declines in Efficacy of Anti-Bullying Programs Among Older Adolescents: A Developmental Theory and a Three-Level Meta-Analysis, *Journal of Applied Developmental Psychology*. Volume 37, Pages 36–51.

## OF CONCERN TO NATIONAL EXPERTS

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

The new approach I am launching to seek to address is three-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.
- ***Positive Resolutions: How to Insist on a Positive Response by the School to the Bullying or Harassment of Your Child*** is a pdf book on my site at <http://embracecivility.org> 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.
- In my local community, I am setting up Bullying Resolution Services to seek to offer Independent Educational Evaluations to students with disabilities who are being bullied or 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.

## ACKNOWLEDGING THE HARMS AND RISKS

A recent commentary in *Pediatrics*, outlined the harms associated with being bullying:

*Bullying can have life-long health consequences. It has been associated with stress-related physical and mental health symptoms, including depression, anxiety, post traumatic stress, and suicidal ideation. When bullying is motivated by discrimination or an attack on someone's core identity (eg, their sexual orientation), it can have especially harmful health consequences. The effects of bullying are not limited to the bullied. Bystanders who witness bullying may experience mental health consequences (eg, distress) as well.*<sup>8</sup>

A report by the American Educational Research Association, entitled *Prevention of Bullying in Schools, Colleges, and Universities: Research Report and Recommendations*, also provided an overview of concerns:

1. *Bullied students experience higher rates of anxiety, depression, physical health problems, and social adjustment problems. These problems can persist into adulthood.*
2. *Bullying students become less engaged in school, and their grades and test scores decline.*
3. *In high schools where bullying and teasing are prevalent, the student body is less involved in school activities, performs lower on standardized tests, and has a lower graduation rate.*
4. *Students who engage in bullying are at elevated risk for poor school adjustment and delinquency. They are at increased risk for higher rates of criminal behavior and social maladjustment in adulthood.*
5. *Students who are bullied but also engage in bullying have more negative outcomes than students in bully-only or victim-only groups. ...*
6. *Cyberbullied students experience negative outcomes similar to those experienced by their traditional counterparts, including depression, poor academic performance, and problem behavior. ...*<sup>9</sup>

According to the Centers for Disease Control and Prevention, outcomes of bullying can include depression, anxiety, participating in interpersonal or sexual violence, substance use, poor social functioning, and low school

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<sup>8</sup> Schuster MA, & Bogart LM. (2013) Did the ugly duckling have PTSD? Bullying, its effects, and the role of pediatricians. *Pediatrics*. 2013 Jan;131(1):e288-91.

<sup>9</sup> American Educational Research Association. (2013). *Prevention of Bullying in Schools, Colleges, and Universities: Research Report and Recommendations*. Washington, DC: <http://www.aera.net/newsroom/news/preventionofbullyingresearchreportandrecomm/tabid/14865/default.aspx>. pp. 9-10.

performance and attendance. Those who engage in bullying, those who are bullied and those who witness bullying are all at higher risk of suicide. Bullying contributes to vulnerability when present with other risk factors. Risk is especially acute among lesbian, gay, bisexual, transgender and questioning (LGBTQ ) youth.

There is an association between bullying and suicide.<sup>10</sup> It is known that suicide is multidimensional, involving many factors at many levels of influence. A recent study released in *Pediatrics* found that youth suicides are most prevalent during the school year.<sup>11</sup> A news story announcing these findings was sobering:

*It's no secret the school year can bring students plenty of stress and other problems. But a study published Wednesday in the journal Pediatrics indicates the school year also corresponds with an increase in hospital visits for suicide attempts and serious suicidal thoughts among America's youth.*

*"We noticed that anecdotally here in our own hospital over the last several years, we would have a fairly quiet summer as far as kids coming in for mental health issues, then right about four to six weeks after school started, we became inundated," says Dr. Greg Plemmons, the study's lead author ... "We found it really is consistent across all regions of the country."<sup>12</sup>*

This was the first study that looked directly at the link between school year and incidents of suicide. Given the significant increased rate of youth suicide and now the clear understanding that such suicide is associated with what is happening in school, more proactive attention by educators to the emotional well-being of students is essential.

Persistent absenteeism is also a major concern associated with student success. A recent study focusing on YRBS data that compared the responses on being bullied in-person and electronically and missing school because of feeling of lack of safety demonstrated that students who were bullied in either venue were more likely to miss school, with those who were bullied in both venues at the highest risk of missing school.<sup>13</sup>

There are significant concerns regarding the association of bullying and school violence.

## **BULLYING LAWS AND CIVIL RIGHTS LAWS**

### **ANTI-BULLYING STATUTES AND DISTRICT POLICIES**

There is no federal law addressing bullying. All 50 states have enacted statutes governing bullying. These statutes were enacted or revised based on guidance that was provided in 2010 by USDOE. USDOE issued a document and maintains a page on the Stopbullying.gov web site entitled *Key Components in State Anti-Bullying Laws*.<sup>14</sup>

What the state statutes have done has been to reduce the focus of schools in situations of bullying to the establishment of rules, setting up a student reporting system, investigating upon a report, and making 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.

There are several concerns about bullying prevention statutes that are important to understand:

- There is no evidence that any of these laws are having any positive impact in reducing bullying or supporting a more effective response to bullying by the school. In some states with more comprehensive statutes, the rates of reporting bullying are increasing.
- 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.

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10 Suicide Prevention Resource Center (2011) Suicide and bullying: Issue Brief. [http://www.sprc.org/library\\_resources/items/suicide-and-bullying-issue-brief](http://www.sprc.org/library_resources/items/suicide-and-bullying-issue-brief).

11 Plemmons, G., Hall, M., Douppnik, S., Gay, J., Brown, C., Browning, W., Casey, R., Freundlich, K., Johnson, D.P., Lind, C., Rehm, K., Thomas, S., & Williams, D. (2018) Hospitalization for Suicide Ideation or Attempt: 2008–2015. *Pediatrics*. <http://pediatrics.aappublications.org/content/early/2018/05/14/peds.2017-2426>.

12 Newman, K. (2018) For Kids, Suicide-Related Hospital Visits Increase During School Months. U.S. News and World Report. <https://www.usnews.com/news/healthiest-communities/articles/2018-05-16/study-suicide-related-hospital-visits-double-among-youth-increase-during-school-months>.

13 Steiner RJ, Rasberry CN. Brief Report: Associations between in-person and electronic bullying victimization and missing school because of safety concerns among U.S. high school students. *J Adolesc*.2015; 43:1- 4.

14 <https://www.stopbullying.gov/laws/key-components/index.html>.

- 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 students who are experiencing persistent bullying are experiencing ongoing 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.
- In states that require annual public reports of bullying the situation is far worse, because the principal is highly motivated to not considered any report to be “bullying.”
- Many statutes use the term “harassment” in the acts to be prohibited. The inclusion of “Enumeration of Specific Characteristics,” essentially the identification of classes of students who receive protection under civil rights statutes, has created significant confusion for principals—causing them to think that all reported incidents or situations should be addressed under the policy, which only calls for an assessment of whether the accused student should be punished. As will be evident in the following, if a student is a member of a protected class, the civil rights regulations call for a significantly more comprehensive response.
- The statutes rarely call for more extensive measures to reduce bullying behavior. Sometimes the statutes call for training of staff. However, most often, such training is limited to a focus on what bullying is under the statute, what the policy and rules are, and how to enforce the rules. There is no focus on proactive efforts to reduce bullying or to assist staff in the steps necessary to establish a more positive climate and respond to a wide range of hurtful incidents.

Essentially, the state anti-bullying statutes are a huge part of the problem. This is why when a student or that student’s parent reports bullying, the school’s response most often is not effective.

## CIVIL RIGHTS PROTECTIONS

It is important to distinguish between bullying and harassment. Several federal laws, as well as state laws, govern discriminatory harassment based on “protected class.” “Protected classes” are those minority groups that have traditionally been discriminated against. 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. It is not necessary that the student be a member of the “protected class.” 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 through agency actions by the U. S. Department of Education’s Office for Civil Rights OCR or the state department of education. Filing a complaint in this manner 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. As this would have a negative impact, districts are normally responsive if a well-documented action is commenced to address such concerns.

The federal civil rights statutes are these:

- **Title VI of the Civil Rights Act of 1964.**<sup>15</sup> Prohibits discrimination on the basis of race, color, or national origin in any educational program or activity receiving federal funds. Title VI includes discrimination based on religion, if grounded in national origin.
- **Title IX of the Education Amendments of 1972.**<sup>16</sup> Prohibits discrimination on the basis of sex by an educational program or activity receiving federal funds. Title IX also prohibits gender-based discrimination, including sex-role stereotyping based on sexual orientation or identity.
- **Section 504 of the Rehabilitation Act of 1973 (Section 504).**<sup>17</sup> Prohibits discrimination on the basis of disability in programs or activities receiving federal funds.

<sup>15</sup> Title VI of the Civil Rights Act of 1964. 42 U.S.C. §§ 2000d-2000d-7.

<sup>16</sup> Title IX of the Education Amendments of 1972. 20 U.S.C. §§ 1681-1688.

<sup>17</sup> Section 504 of the Rehabilitation Act of 1973. 29 U.S.C § 794.

- **The Americans with Disabilities Act of 1990 (ADA).**<sup>18</sup> Prohibits discrimination on the basis of disability.

## WHAT CONSTITUTES DISCRIMINATORY HARASSMENT

OCR issued what is called a *Dear Colleague Letter* in 2010. *Dear Colleague Letters* provide guidance to school districts about what OCR thinks the laws and regulations require. This *Dear Colleague Letter* outlined what constitutes discriminatory harassment as follows:

*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. When such harassment is based on race, color, national origin, sex, or disability, it violates the civil rights laws that OCR enforces.*<sup>19</sup>

**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. 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.**<sup>20</sup>

The reason the prior paragraph is bold is that these requirements provide the basis for knowing what schools should do—but often do not do in response to a report of bullying or harassment. Normally what principals do is investigate to determine whether the accused student’s actions created a sufficient disruption to constitute a violation of the disciplinary code and therefore sanctions should be imposed. This is the primary reason that the way schools are responding to reports of bullying or harassment is not effective.

Let’s break this down to questions:

- Was a student seriously, persistently, or pervasively being harassed by one or more students or staff member based on the student’s membership or perceived membership in a “protected class?”
- Was the harassment sufficiently serious to significantly interfere with the student’s learning or activities at school? If this is the case, it is considered that the hurtful behavior has created a “hostile environment.”
- Did a staff member who had authority to take corrective action, which includes teachers, know of the hurtful conduct or should a staff member have known of the hurtful conduct?
- Did the school fail to take prompt and effective steps reasonably calculated to end the hurtful conduct, correct the hostile environment, prevent it from recurring, and remedy its effects?

If a school is deliberately indifferent to a hostile environment it knows or should have known about, this can warrant an adverse agency action. If the school is deliberately indifferent to a hostile environment it knows about, this supports liability in a law suit.

## CRITICALLY IMPORTANT WORDS

There are three critically important words to note: “*serious, persistent, or pervasive.*” The hurtful behavior or incidents may be considered *serious*—that is has involved physical violence, threats, or other serious incidents that have caused a substantial disruption.

However, these civil rights statutes also apply if the student is being *persistently* being treated badly by one or a small a group of students or if the hurtful treatment is more *pervasive*—that is many different students are being hurtful. The persistent or pervasive language may or may not be incorporated into state statute. Even if it is, the principal may be more inclined to ignore this because in the thinking of the principal, a student should not be subjected to disciplinary action for behavior that has not been *serious* and caused a substantial disruption in the school.

<sup>18</sup> The Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131-12134.

<sup>19</sup>U.S. Department of Education, Office for Civil Rights (October 26, 2010) Dear Colleague Letter on Harassment and Bullying. <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.html>.

<sup>20</sup> Id.

Note also the language “*interfere with or limit a student’s ability to participate in or benefit from the services, activities, or opportunities offered by a school.*” If this situation is present, this is called a “hostile environment.” This language is most often incorporated into state statutes.

This is the component of the situation that is vitally important to address. Too often a student or parent will complain, “these hurtful acts are occurring” but have not outline the harmful impact of these hurtful acts. Too often, the principal focuses solely on an investigation into what hurtful acts are occurring and ignores the harmful impact on the targeted student—this is because the principal’s sole focus is on determining whether to sanction the accused hurtful student.

Documenting a hurtful situation must follow a 2-part approach: “These hurtful acts are occurring **and** this is how the harmful impact is significantly interfering with my child’s right to receive an education and participate in school activities.”

## **INTERVENTION IN DISCRIMINATORY HARASSMENT**

Another webpage, also on the StopBullying.Gov web site, describes the difference between the bullying prevention statutes and actions schools are supposed to take if there are concerns of discriminatory harassment under civil rights laws.<sup>21</sup> The most important text on this page is this:

### ***What are a school’s obligations regarding harassment based on protected classes?***

*Anyone can report harassing conduct to a school. When a school receives a complaint they must take certain steps to investigate and resolve the situation.*

- *Immediate and appropriate action to investigate or otherwise determine what happened.*
- *Inquiry must be prompt, thorough, and impartial.*
- *Interview targeted students, offending students, and witnesses, and maintain written documentation of investigation*
- *Communicate with targeted students regarding steps taken to end harassment*
- *Check in with targeted students to ensure that harassment has ceased*
- *When an investigation reveals that harassment has occurred, a school should take steps reasonably calculated to:*
  - *End the harassment,*
  - *Eliminate any hostile environment,*
  - *Prevent harassment from recurring, and*
  - *Prevent retaliation against the targeted student(s) or complainant(s).*

### ***What should a school do to resolve a harassment complaint?***

- *Appropriate responses will depend on the facts of each case.*
- *School must be an active participant in responding to harassment and should take reasonable steps when crafting remedies to minimize burdens on the targeted students.*
- *Possible responses include:*
  - *Develop, revise, and publicize:*
    - *Policy prohibiting harassment and discrimination*
    - *Grievance procedures for students to file harassment complaints*

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<sup>21</sup> <https://www.stopbullying.gov/laws/federal/index.html>.

- *Contact information for Title IX/Section 504/Title VI coordinators*
- *Implement training for staff and administration on identifying and addressing harassment*
- *Provide monitors or additional adult supervision in areas where harassment occurs*
- *Determine consequences and services for harassers, including whether discipline is appropriate*
- *Limit interactions between harassers and targets*
- *Provide harassed student an additional opportunity to obtain a benefit that was denied (e.g., retaking a test/class).*
- *Provide services to a student who was denied a benefit (e.g., academic support services).*

The *Dear Colleague Letter* from OCR in 2010 informed schools that they must respond to situations of discriminatory harassment that they know or reasonably should know about.<sup>22</sup> The examples included make clear that to avoid an adverse agency action, schools must not only intervene in reported incidents, they must engage in comprehensive efforts to change the school culture that underlies such incidents. The need to address the school culture was thoroughly addressed throughout the *Dear Colleague Letter*. The requirements set forth included:

*When responding to harassment, a school must take immediate and appropriate action to investigate or otherwise determine what occurred. The specific steps in a school's investigation will vary depending upon the nature of the allegations, the source of the complaint, the age of the student or students involved, the size and administrative structure of the school, and other factors. In all cases, however, the inquiry should be prompt, thorough, and impartial.*

*If an investigation reveals that discriminatory harassment has occurred, a school must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring. These duties are a school's responsibility even if the misconduct also is covered by an anti-bullying policy, and regardless of whether a student has complained, asked the school to take action, or identified the harassment as a form of discrimination. ...*

***When the behavior implicates the civil rights laws, school administrators should look beyond simply disciplining the perpetrators. While disciplining the perpetrators is likely a necessary step, it often is insufficient. A school's responsibility is to eliminate the hostile environment created by the harassment, address its effects, and take steps to ensure that harassment does not recur. Put differently, the unique effects of discriminatory harassment may demand a different response than would other types of bullying.***<sup>23</sup>

The action steps that were outlined in this *Dear Colleague Letter* included:

- Separate the accused harasser and the target, provide counseling for the target and/or harasser, or take disciplinary action against the harasser.
- Provide training or other interventions not only for the perpetrators, but also for the larger school community, to ensure that all students, their families, and school staff can recognize harassment if it recurs and know how to respond.
- Provide additional services to the student who was harassed in order to address the effects of the harassment, particularly if the school initially delays in responding or responds inappropriately or inadequately to information about harassment.
- Take steps to stop further harassment and prevent any retaliation against the harassed student, the person who made the complaint or against those who provided information as witnesses.
- Make sure that the harassed students and their families know how to report any subsequent problems, conduct follow-up inquiries to see if there have been any new incidents or any instances of retaliation, and respond promptly and appropriately to address continuing or new problems.

<sup>22</sup> USDOE, *Dear Colleague Letter*, supra.

<sup>23</sup> Id., pp. 3-4.

Correcting a hostile environment requires more actions than simply investigating to determine whether the hurtful student violated the disciplinary code, deciding on a punishment, and then telling the targeted student that the situation has been handled.

**The author’s opinion is that any bullied student, regardless of membership in a protected class or not, deserves an investigation and intervention in accord with the civil rights regulations.**

#### **PROCEEDING UNDER CIVIL RIGHTS DISCRIMINATORY HARASSMENT COMPLAINT**

As should be apparent from this discussion, **if at all possible**, it will be far better when filing 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 should 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 sufficient to resolve the situation.

Another reason for this is that if the district does not handle this situation effectively, if this is a situation of discriminatory harassment, it is possible to file an appeal at the state department of education and/or simply start with a complaint at OCR. Under some state bullying prevention statutes, if the district decides the situation is not bullying and there is nothing they will do, so it is may not be possible to appeal this decision any further.

If the young person who is being treated badly is not immediately identifiable as a member of a “protected class” there are three possible strategies can be used to characterize the situation as discriminatory harassment under civil rights laws, rather than “bullying.”

- The young person does not have to actually be a member of the protected class, rather, the hurtful acts must be somehow tied to a perception that your child is in a protected class.<sup>24</sup> For example, if a student is not gay, but is being treated badly based on the perception of being gay—being called names that are denigrating the student on the basis of a perception of being gay, this counts as discriminatory harassment. Or if a student is being persistently denigrated by being called disparaging names associated with having a disability, this counts as discriminatory harassment. Both of these are situations that occur frequently.
- If the young person has been diagnosed by a mental health or medical professional as experiencing depression, anxiety, or a traumatic stress disorder, the fact that the student has such a “mental illness” the student is considered to be have “disability.”<sup>25</sup>
  - If the situation is such that the hurtful acts have been serious, persistent, or pervasive and this is significantly interfering with a young person’s ability to learn and participate at school, the question is whether this young person’s mental status may be characterized a traumatic stress disorder.
  - With such a professional diagnosis, under Section 504, this is a student who has a disability. Therefore, a complaint can proceed under the civil rights laws Section 504.
  - It is not necessary that a student with a mental health disability currently be receiving special education services to file a complaint pursuant to Section 504.<sup>26</sup> However, it may be helpful to request this young person be designated as receiving support under a Section 504 Plan as part of resolving this situation. In this way, the resolution will be incorporated into the Section 504 Plan. This may provide greater ability to ensure compliance.
  - Below is insight that appears to be relevant to a determination of whether the young person being bullied could be diagnosed in accord with the standards included in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-V) for the condition known as “Other specified trauma- and stressor-related disorder.”<sup>27</sup>

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<sup>24</sup> USDOE, Dear Colleague Letter, *supra*.

<sup>25</sup> USDOE, OCR, (2016) Parent and Educator Resource Guide to Section 504. <https://www2.ed.gov/about/offices/list/ocr/docs/504-resource-guide-201612.pdf>.

<sup>26</sup> From the Parent and Educator Resource Guide to Section 504, *supra*, page 7. A student who has a record of a disability may or may not need special education or related aids and services. ... But, even if a student with a disability does not need services, the student is protected from disability-based discrimination under Section 504’s general non-discrimination requirements

<sup>27</sup> American Psychiatric Association (2013) Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition. <https://dsm.psychiatryonline.org/doi/book/10.1176/appi.books.9780890425596>.

- While it is important to understand that the author is not a mental health professional, this is the mental health diagnosis that the author thinks is likely going to be most relevant in bullying situations. It is this author's opinion that if the hurtful situation in a school 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, this is a situation that almost certainly will also meet the standards for a diagnosis as a trauma- and stressor-related disorder.
- Thus, any student who is experiencing what under civil rights regulations is called a hostile environment in school can and should be determined to be within a protected class as having a mental health disability—and thus the situation should be considered to be a violation of Section 504.
- Parents may not want their child to be diagnosed with a condition known as a “mental illness,” “disorder,” or “disability.” It likely will be important to communicate to both the parent and the young person that he/she/they are experiencing challenges that could be diagnosed as a traumatic stress disorder as the result of being treated badly.

## 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.<sup>28</sup> Further, those students with the worst PTSD symptoms were the students who both engaged in and were bullied.

The association between bullying and PTSD was described:

*People who have experienced events of an interpersonal nature show significantly higher levels of PTSD symptoms than those who have experienced other types of events. Bullying is an interpersonal event, and there are many salient aspects of children's development that may make repeated bullying experiences especially harmful. Bullying happens at a time when the brain is undergoing development in several bio-psycho-social systems that regulate behavior. During childhood and adolescence there is a gradual development and strengthening of brain systems involving a variety of cognitive, emotional and behavioral systems, from self-regulation and emotional processing to executive functions, from social connectivity to perception of threat. In adolescence, bullying might affect the development of executive functioning, including attention, response inhibition, organization and planning. The effects of bullying on the development of these biopsychosocial systems are not known, but a developmental perspective on trauma is needed both for understanding how the diagnosis of PTSD can be applied to this population, as well as for how potential traumatic effects can be reduced.<sup>29</sup>*

Additional research is increasing the understanding of the connections between bullying and trauma disorders. Vaillancourt and colleagues have outlined how the experience of being bullied by peers becomes biologically embedded in the physiology of the developing child, which in turn modifies health and behavior.<sup>30</sup>

A new 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.<sup>31</sup> This study clearly shows that unrelenting victimization appears to actually be reshaping the teens' brains in a manner that has profound implications for their mental health.

The National Child Traumatic Stress Network describes two forms of traumatic distress.<sup>32</sup> 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

28 Idsoe, T., Dyregrov, A. & Idsoe, E.C. (2012) Bullying and PTSD Symptoms. *J Abnorm Child Psychol* 40:901–911. <http://www.uis.no/news/being-bullied-can-cause-trauma-symptoms-article62673-8865.html>

29 Idsoe, supra at 902.

30 Vaillancourt, T., Hymel, S., & McDougall, P., (2013). The biological underpinnings of peer victimization: Understanding why and how the effects of bullying can last a lifetime. *Theory into Practice*, 52, 241-248.

31 Quinlan, E.B, Barker, E.D, et al, (2018) Peer victimization and its impact on adolescent brain development and psychopathology *Molecular Psychiatry* (2018)

32 National Child Traumatic Stress Network. Defining Trauma and Child Traumatic Stress. <http://www.nctsn.org/content/defining-trauma-and-child-traumatic-stress>.

sense of safety, guilt, and shame. Bullying situations could involve acute trauma, chronic trauma, or both. However, normally the situation is more chronic.

The standards for Post Traumatic Stress Disorder under the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* (DSM-5) focuses on major traumatic events, not chronic or complex traumatic situations.<sup>33</sup> The traumatic event, Criterion A is described as: Exposure to actual or threatened death, serious injury, or sexual violation through directly experiencing the traumatic events, witnessing the traumatic events in person, learning that the traumatic events occurred to a close family member or close friend (violent or accidental), or experiencing repeated or extreme exposure to aversive details of the traumatic events.

Clearly, this type of traumatic event is not present in situations of bullying. The trauma is chronic, not acute.

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. In other words, the trauma has not been actual or threatened death, serious injury, or sexual violation. In many situations of significant persistent bullying, it appears that there is a probability the other PTSD criterion can be met.

The following are the Criterion for PTSD minus Criterion A, the significant traumatic event, along with suggestions of how this may manifest when a student is being persistently bullied.

There will need to be some adjustment in thinking about some of these evidences of the criterion because this is a chronic, persistent situation. For example, hyper vigilance is likely present not because of past trauma, but because the student remains in a hostile environment.

- Criterion B: re-experiencing symptoms (1 required).
  - Unexpected/expected reoccurring, involuntary, intrusive upsetting memories of trauma.
  - Repeated upsetting dreams where the content of dreams related to the trauma.
  - Dissociation where person feels as though the trauma is happening again.
  - Strong/persistent distress upon exposure to cues inside or outside of person's body connected to trauma.
  - Strong bodily reaction upon exposure to a reminder of the trauma.
  - *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 (1 required).
  - Avoidance of thoughts, feelings, or physical sensations that bring up memories of trauma.
  - Avoidance of people, places, conversations, activities, objects, situations that bring up memories of trauma.
  - *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 (2 required).
  - The inability to remember an important aspect of the traumatic event.
  - Persistent, elevated negative evaluations about one's self, others, or the world.
  - Elevated self-blame or blame of others about the cause or consequence of a trauma.
  - A negative emotional state (for example, shame, anger, fear) that is pervasive.

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<sup>33</sup> American Psychiatric Publishing (2013) Posttraumatic Stress Disorder. <http://www.dsm5.org/Documents/PTSD%20Fact%20Sheet.pdf>.

- Loss of interest in activities that one used to enjoy.
- Feeling detached from others.
- The inability to experience positive emotions (for example, happiness, love, joy).
- *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 (2 required).
  - Irritability or aggressive behavior.
  - Impulsive or self-destructive behavior.
  - Hyper vigilance, feeling constantly "on guard" or like danger is lurking around every corner.
  - Heightened startle response.
  - Difficulty concentrating.
  - Problems sleeping.
  - *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.*
- Criterion G. Not due to a medical condition.

## CONCLUSION

As stated earlier, my new document, ***Positive Resolutions: How to Insist on a Positive Response by the School to the Bullying or Harassment of Your Child*** is available as a pdf book on my site at <http://embraceecivility.org>. This provides guidance to parents on how to document and insist on a more positive response by the school. 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.

The addition of a mental health diagnosis of Specified Trauma-and Stressor-Related Disorder, if warranted, thus both demonstrating the extent of emotional harm being suffered by the student and allowing the student to proceed as a member of a protected class under Section 504 will hopefully increase the focus of school leaders in achieving a more positive resolution of these situations.