



## POSITIVE RESOLUTION OF BULLYING OR HARASSMENT SITUATIONS

### 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.<sup>1</sup> In states with more comprehensive bullying prevention statutes, there appears to have been an increase.<sup>2</sup> Recent meta-analyses of bullying prevention programs have documented low to no positive impact—with zero effectiveness at the secondary level.<sup>3</sup>

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.<sup>4</sup> 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.<sup>5</sup> A study focusing on YRBS data demonstrated that students who were bullied were more likely to miss school.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup>

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>9</sup>

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.<sup>10</sup> 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.<sup>11</sup>

The National Child Traumatic Stress Network describes two forms of traumatic distress.<sup>12</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 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.

### REASONS FOR LACK OF EFFECTIVENESS

Educators are overwhelmed by many other demands. Because most students do not report being bullied, it appears that better addressing bullying is not a high priority for schools.

What educators have been told about bullying behavior is inaccurate.<sup>13</sup> Some students who are hurtful in schools may have other challenges. However, those most frequently involved in bullying are socially skilled, competent, compliant students who are viewed by school staff as leaders. Bullying is an act of exerting “privilege.” These students engage in bullying to achieve social dominance. They denigrate those who are “different” and also battle with perceived rivals.

Schools are also ignoring the fact that staff are sometimes also hurtful. These hurtful acts are most often micro aggressions. When a staff member denigrates a student in front of his/her/their peer, this models that such hurtful behavior is acceptable.

Many schools try to manage student behavior by giving rewards to students who are compliant. This results in rewarding the students who do not have challenges, some of whom may be a source of bullying—and publicly shaming and excluding students who have greater challenges. The rewards approach also models bullying.

### 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.<sup>14</sup>

Most bullying is persistent hurtful behavior and does not meet the standard for suspension. Students who are hurtful to achieve social dominance do not cause a substantial disruption. They engage in persistent acts of hurt that do not rise to the level of staff detection. Principals are highly unlikely to discipline these students. So the principal tells the brave student who asked for help there is nothing that can be done. This increases the emotional harm to the bullied student, who now feels that things are hopeless.

The significant emotional harm is the result of the ongoing, persistent 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.”<sup>15</sup> 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.<sup>16</sup> 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.<sup>17</sup> 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.

If a student with disabilities is being harassed or accused of bullying, the school is required to address these concerns in a meeting with a, IEP or 504 team that is supporting that student. The outcome of this IEP or 504 meeting should be a comprehensive plan of action set forth in the context of Functional Skills objectives in an IEP, as well as actions 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 set forth in Supplemental Aids and Services or 504 Accommodations

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.<sup>18</sup>

## COMPLAINTS

If a school has not responded effectively to a bullying or harassment situation, it is possible to file a complaint at the district. The complaint is not against the students who are being hurtful. The complaint is against the principal who has failed to respond.

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 a complaint is filed based on the bullying statute, the district response will likely focus solely on an assessment of whether the principal did an investigation and should have punished the accused student.

Students who are covered under civil rights laws receive greater protections and complaints can be appealed to the state or filed with the U.S. Department of Education’s Office for Civil Rights. However,, most district complaint forms do not effectively explain this.

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.<sup>19</sup>
- 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.<sup>20</sup> It is not necessary that a student with a mental health disability currently be receiving special education services.<sup>21</sup> If a student with a disability is experiencing a hostile environment, on any basis, this is considered to be a violation of Section 504.

## DOCUMENTATION AND PRESENTATION

To file an effective complaint, it is essential to provide effective documentation and a demand for a resolution that goes beyond a determination of whether to suspend the accused students.

- What is happening, establishing that the hurtful acts have been serious and/or persistent and/or pervasive. This should include any situations where staff have been hurtful or ignored situations where students were hurtful.
- How the harmful impact is manifesting, establishing that this has resulted in a significant interference with your child’s right to receive an education and participate in school activities.
- That the principal’s response to reports of this situation has not effectively ended the hurtful conduct, prevented retaliation, remedied the harm to your child, and/or corrected aspects of the school climate that appear to be supporting such hurtful acts.
- What you want as a resolution, set forth in terms of the requirements under civil rights laws, which require prompt and effective steps reasonably calculated to end the hurtful conduct, prevent it from recurring, remedy its harmful effects on your child, and correct the hostile environment to reduce the potential the hurtful acts will continue.

## 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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- 21 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

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