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Bullying, the Law, and Safe Schools

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> One in three students reports hearing a peer threaten to kill someone as a result of bullying.

Few issues have generated more interest from educators in the last decade than bullying. And with good cause: various sources report that approximately 160,000 students avoid school every day for fear of being physically or emotionally abused by their peers.

According to the U. S. Department of Education (USDOE 2011b), "Bullying is unwanted, aggressive behavior among school-aged children that involves a real or perceived power imbalance. The behavior is repeated, or has the potential to be repeated, over time. Bullying includes actions such as making threats, spreading rumors, attacking someone physically or verbally, and excluding someone from a group on purpose." Of course, bullying can manifest itself as physical acts of violence or aggression, verbal taunts, relational or social aggression, and cyberbullying.

Cyberbullying is bullying that takes place using electronic technology. Examples include sending threatening or mean text messages or emails; posting embarrassing pictures, videos, websites, or fake profiles on social networking sites; stealing personal information to break into someone's account; and sexting sexually suggestive pictures or messages about others.

Prevention strategies are difficult to develop without first understanding why bullies act as they do. Research suggests that bullies may be influenced by such factors as the personal characteristics and physical appearances of their victims, including their race, clothing, size, gender, sexual orientations (actual or perceived), general "look," and family socioeconomic status. Some bullies, who typically lack social skills and have often been abused, need to act out by dominating others (Craig and Pepler 2007).

To the extent that school board policies can address these underlying causes and develop programs to address these conditions, they are likely to help reduce bullying in and around schools.

Bullying Statistics

A brief look at selected data on bullying is startling. These statistics come from Stomp Out Bullying (www.stompoutbullying.com).

In-person bullying. One in four students is subjected to bullying and one in five admits to having engaged in bullying. Additionally, 43% of children say they are afraid they will be harassed in school bathrooms; 282,000 students are physically attacked in secondary schools each month; and 80% of arguments with bullies end in fights.

One in three students reports hearing a peer threaten to kill someone as a result of bullying, and 30% of those who reported being bullied said that they brought weapons to school on occasion. Male and female students are subjected to bullying in different ways.

In a particularly telling statistic, bullies are six times more likely to be incarcerated by the time they reach age 24 and are five times more likely to have serious criminal records when they grow up, according to Proactive Behavioral-Management (2011).

Cyberbullying. According to Stomp Out Bullying, 43% of students report having been bullied while online; 90% of LGBT (lesbian, gay, bisexual, and transgender) students have been harassed online and at school; and 97% of middle school students have been bullied online. Further, 35% of students have been threatened online, and 21% of respondents have received mean or threatening Emails or other messages.

With regard to the content of online messages, 58% of students admit that someone has said "mean" or "hurtful" things to them online, and 53% admit having said something mean or hurtful to another

person online; more than one in three respondents admit to having engaged in such behavior more than once.

Insofar as students who are accused of being bullied can claim that school rules are vague or over-broad, a difficulty with these data is that neither they nor many policies clearly define how such terms as *mean* or *hurtful* can be interpreted or applied in disciplining students for such (mis)behavior. Since it is difficult to monitor student behavior, policies must clearly stipulate that students should report all incidents of bullying to educational personnel.

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A final, unfortunate statistic is that 58% of students have not informed their parents or other adults when something inappropriate occurred on line. Accordingly, policies must encourage reporting of incidents in a timely manner.

State Bullying Laws

According to statistics from the U.S. Department of Education (USDOE 2011a), more than 120 bills were enacted by state legislatures nationally between 1999 and 2010 that introduced or amended education or criminal statutes to address bullying and related behaviors. In 2010, 21 new bills were passed, and 8 additional bills were signed into law through April 30, 2011.

Turning to specifics, a recent map published by the Department of Education shows that all states except Montana have bullying statutes in place; Montana does address bullying via a regulation (www.stopbullying.gov/laws/montana.html). Among the states, 36 forbid cyberbullying or the use of electronic media in acts of bullying. Also, 13

state laws specify that school officials have jurisdiction over off-campus bullying behavior if it creates a hostile school environment.

Forty-two states have laws that explicitly prohibit bullying, but three of those laws fail to define *bullying* (USDOE 2011a), leaving it up to local school boards to write their own definitions. As for content, state laws typically speak of *bullying*, *bullying and harassment*, or *bullying, harassment, or intimidation*, often using terms interchangeably (USDOE 2011a). Of those terms, "nine states distinguish between 'bullying' and 'harassment' and define them separately under the law. Two states only address 'harassment' as it pertains to behavior in schools, with no mention of 'bullying'" (USDOE 2011a, p. 15).

Policy Recommendations

To address bullying in their schools, school business officials should work with their boards, superintendents, and other education leaders to develop policies mindful of the following recommendations so they can take more proactive approaches to addressing this perplexing problem.

1. When developing policies, boards should ensure that policy teams involve representatives of key constituencies in crafting and reviewing guidelines. At a minimum, committees should include board members, the board attorney, administrators, teachers, staff, parents, and students.

2. Policies, which should be incorporated into student and faculty handbooks, must include clear definitions of *bullying*, *intimidation*, *harassment*, and other unacceptable behaviors such as being *mean* or *hurtful*. Doing so puts students on notice regarding the types of acts that will not be tolerated.

    Policies should make it clear what behaviors are unacceptable in schools, on school grounds,

on property adjacent to schools, at school-sponsored and school-related events and activities (regardless of whether they occur on or off school grounds), at school bus stops, and on school buses. Defining policies as carefully as possible is crucial so boards and education leaders can avoid challenges based on claims that their rules are vague or overbroad.

3. Policies should specify that off-campus behaviors may be punishable if they create hostile environments for others at or away from schools, infringe on their rights, or create material and substantial disruptions to the education process.

4. Boards should craft provisions that encompass verbal, written, and electronic communications that can lead to physical acts or gestures that cause physical or emotional harm, damage victims' property, place victims in fear of harm, create hostile environments, or infringe on the rights of others.

5. Policies should prohibit all forms of bullying, intimidation, and harassment on the basis of such characteristics as race, ethnicity, national origin, socioeconomic status, religion, gender, sexual orientation, and disability.

6. Policies must include adequate substantive and procedural due process protections:
   - Mandating that students and staff immediately report instances of bullying, harassment, and intimidation to designated school officials.
   - Identifying multiple individuals to whom students can report bullying incidents.
   - Requiring administrators to complete thorough investigations of reports within set time frames. As in litigation involving sexual harassment,

courts agree that educators are liable for deliberate indifference by failing to conduct proper investigations and by failing to respond to incidents of harassment and bullying.
   - Being mindful of the need to protect the due process rights of the accused since allegations are nothing more than that unless or until they are substantiated. More specifically, policies should set deadlines by which times investigations must occur and penalties meted out and time frames during which appeals can be filed and resolved. Of course, proceedings must be kept confidential.
   - Specifying a range of penalties, consistent with disciplinary procedures in student handbooks, for first, second, and repeat offenders. Penalties should range from short-term suspensions to expulsions while adding that students can receive significant sanctions even on first offenses if their actions warrant such discipline.
   - Mandating the reporting of incidents to law enforcement authorities if there is evidence that bullies may have committed crimes.

7. Boards should provide regular professional development opportunities for teachers and staff to learn about bullying and how to prevent it.

8. Boards should offer programs for parents and community members to help them better understand and respond to bullying.

9. Boards should build instruction on how to deal with bullying into school curricula at all levels of schooling.

10. Boards should offer counseling to victims and their families to

help overcome the effects of being bullied.

11. Boards should develop peer-intervention programs to help students deal with bullying in their lives.

12. As with all other policies, boards should review their guidelines annually, typically between school years, not during or immediately after controversies, to ensure that they are up-to-date with developments in state and federal law.

Conclusion

In the past, bullying was often dismissed as "kids just being kids." However, given the harm that bullying causes, it is evident that what happened in the past cannot be permitted to continue.

To the extent that school business officials, their boards, superintendents, and other education leaders develop policies to protect children, they will help maintain safe and orderly learning environments in which all students can be safe to learn free from the threat of bullying.

References

Craig, W. M., and D. J. Pepler. 2007. Understanding bullying: From research to practice. *Canadian Psychology* 48 (2): 86-93.

Proactive Behavioral-Management. 2011. Bullying statistics. http://behavioral-management.com/bullying-statistics.

USDOE (U.S. Department of Education). 2011a. Analysis of state bullying laws and policies. http://www2.ed.gov/rschstat/eval/bullying/state-bullying-laws/state-bullying-laws.pdf.

———. 2011b. Policies and laws. Stop bullying.gov. http://www.stopbullying.gov/laws/index.html.

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