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**BULLYING IN SCHOOLS: A SEARCH FOR MEANING AND POLICY****Overview**

In recent years much has been said in the literature about students “bullying” other students. The subjects of bullying and bullies often are presented as emerging problems in maintaining discipline and control in public schools. Ironically, these subjects are not new to experienced teachers and administrators. For as many years as there have been schools and play yards, “bullies” have been the bane of many students, school staff, and parents.

In this writer’s opinion, *three* major factors exist for a resurgence of issues involving *bullying* in schools. *First*, the mandates in federal law (No Child Left Behind) and in state law on providing quality educational opportunities in schools that are *safe, secure, and disruption free*. *Second*, the ever-present potential of liability for student injury. *Third*, a clear definition of the term *bullying* is hard to find. This specific factor causes *bullying* to be mistaken for and confused with a variety of other student disciplinary infractions. Taken together, these three factors make it imperative but difficult for school administrators, teachers, and other staff (including school bus drivers) to make immediate, consistent, and appropriate disciplinary decisions. The purpose of this commentary is to clarify terminology and in doing so make recommendations for formulating workable local school system policy covering *bullying*.

**Emerging Issues**

When dealing with students (*i.e.*, children) in school-related situations how does *bullying behavior* differ from simple *immature behavior* (“*kids will be kids behavior*”? Does *bullying behavior* differ from *threatening*, or *abusive*, or *harassing behavior* (*physically, mentally*)? When does *bullying behavior* become *assault and battery*? Is it *bullying behavior* when student teams and organizations *haze* new members? The obvious answers to these questions demonstrate potential differences in type, character, and severity of student-on-student disciplinary matters. To put another way, such matters are very different and must be placed on a continuum with *immature* and nonviolent “*kids will be kids*” *behavior* on one end and serious *acts of violence* on the other. The seriousness of student disciplinary actions and degrees of punishment become more serious as one moves across the continuum.

*Immature Behavior.* As a general rule, school administrators realize that students do and say inappropriate things to each other. Students push each other, tease each other, taunt each other, call each other names, use inappropriate language, and engage in acts that seem senseless to adult observers. More often than not such activities are tolerated as expected incidents of “kids will be kids” behavior brought on by the mysteries of immaturity. It is clear, however, *immature behavior* is different from “bullying?”

*Bullying: What Is It?* Conn cautions us that “[b]ullying, is often not recognized for what it is and is often passed off as mere teasing or kidding around, a normal part of growing up....” And, what makes the matter more disconcerting is that bullying is not a legal term. What is more, she states, “bullying, in and of itself, is not a legally recognized as a cause of action for civil damages or as a criminal activity.” In other words, simple teasing, taunting, or name calling, without being linked to harm to another person, are not actionable in a court of law. Conn (2004)

More often than not, state statutes do not treat bullying. For example, bullying is not included as an offense under the Code of Virginia (Cum. Supp. 2004) However, a bill recently introduced during the current session of the General Assembly of Virginia would require that *bullying*, along with *harassment* and *intimidation*, be added to Section 22.1-279.6 covering guidelines for student conduct.

One reliable source defines *bullying* as “[r]epeated negative behaviors intended to frighten or cause harm. May include, but not limited to, verbal or written threats or physical harm.” Center for School Safety (2004) It is important to note the use of such words and phrases as “repeated negative behaviors,” “intended,” “cause harm,” “threats,” and “physical harm.” In this writer’s view where any one or combination of these elements are present in a student-on-student situation, *bullying* is no longer the case. In essence the acts committed have become so egregious that something far more serious is present.

*Bullying Behavior v True Threats.* Bullying behavior differs from threatening behavior. While some bullies might say or write things, or make forceful or frightening gestures that seem threatening to another student, not all “threatening sounding” or “threatening appearing” behaviors actually constitute a “true threat.” Students do use “threatening sounding” words.

*Threat* is defined as “[a] communicated intent to inflict harm or loss on another or another’s property....A communicated intent to commit violence.” BLACK’S LAW DICTIONARY (1999) The reader is reminded, “words alone do not constitute a threat.” Threats are “expressive acts (spoken, written, gestures) of one or more persons that either cause actual harm to another person or, at a minimum, place another person or persons in imminent fear of harm.” Vacca and Bosher (2003) Once again, as in the discussion above, the presence of *intent* to inflict harm or loss on another, or place another in *imminent fear of harm* must be emphasized.

To understand the difference between *bullying* and *true threat*, the legal researcher also must explore appropriate state law. For example, the Code of Virginia states, “Any person who communicates a threat in writing, including any electronically transmitted communication producing a visual or electronic message, to kill or do bodily harm (i) on the grounds or premises of any elementary, middle, or secondary school property, (ii) at any elementary, middle, or secondary school-sponsored event, or (iii) on a school bus..., and the threat places the person to whom it is directed in reasonable apprehension of death or bodily harm, is guilty of a Class 6 felony.” 18.2-60 Code of Virginia (Cum. Supp. 2004) Placing an individual to whom a communication is directed in *reasonable apprehension of death or bodily harm* separates simple *bullying* from *threatening* behavior.

*Bullying Behavior v Harassment.* In this writer's view, while there are some differences in *bullying* and *harassment* the two are much alike. *Harassment* can be defined as "words, conduct, or action (usually repeated or persistent) that, being directed at a specific person, annoys, alarms, or causes substantial emotional distress in that person and serves no legitimate purpose." BLACK'S LAW DICTIONARY (1999) In essence what might start as *annoying and intimidating bullying behavior* of one student changes to *harassment* where the repeated and persistent behavior of the bully is the proximate cause of substantial *emotional distress* in his/her victim.

*Bullying and Hazing.* In this writer's view *bullying* and *hazing* also are much alike. As a general rule, *hazing* involves "recklessly or intentionally endangering the health or safety of a student or students to inflict bodily injury on a student or students...." JUVENILE LAW HANDBOOK FOR SCHOOL ADMINISTRATORS (2004 Update) Unlike *bullying*, some state codes specifically prohibit *hazing* in schools. For example, the Code of Virginia states: "It shall be unlawful to haze so as to cause bodily injury, any student at any school, college or university....Any person receiving bodily injury by hazing shall have the right to sue, civilly, the person or persons guilty thereof, whether adults or infants." 18.2-56 Code of Virginia (2004 Cu. Supp.) Thus, what might start as experienced team or club members *bullying* new members (as a part of an initiation ritual) could become a matter for criminal prosecution?

*Assault and Battery.* Where an *assault* and/or *battery* exist *bullying* no longer exists. Assault and battery are criminal offenses punishable by law. An *assault* "is a threat to do bodily injury." It is "an attempt to offer, with force and violence, to do some bodily hurt to another by means calculated to produce the end if carried into execution." JUVENILE LAW HANDBOOK FOR SCHOOL ADMINISTRATORS (2004 Update) The Code of Virginia defines *assault* as any act "accompanied by circumstances denoting an intention coupled with a present ability of using actual violence against the person of another." 18.2-57 Code of Virginia (Cum. Supp. 2004)

According to one source, *battery* is defined as "an intentional and offensive touching of another without lawful justification." BLACK'S LAW DICTIONARY (1999) Another source states that battery is "any bodily hurt, however slight, done to another in an angry, rude, or vengeful manner." JUVENILE LAW HANDBOOK FOR SCHOOL ADMINISTRATORS (2004 Update)

As a general rule, where a person against whom an *assault* and/or *battery* are committed is intentionally selected by the perpetrator because of race, religious conviction, color, or national origin this is considered a *hate crime*. 18.2-57 Code of Virginia (Cum. Supp. 2004)

## **Case Law**

A search for court cases specifically involving *bullying* is a futile experience. However, one can find several cases where student-on-student harassment and threatening behavior are present. From these court decisions important information and suggestions for policy formulation and professional practice can be extracted in an effort to deal with incidents of *bullying* and other more serious disciplinary offenses. The common thread in the case law involves the concept of *deliberate indifference*. Sometimes referred to as *callous indifference*, *callous disregard*, and *gross negligence*, *deliberate indifference* has been the consistent judicial standard applied when determining liability of school officials for students who had been sexually harassed by other students. Some examples follow.

In Walton v Alexander (5th Cir. 1994), the Fifth Circuit gave the following definition of *deliberate indifference*: “Where a school official knows, or willfully avoids knowing about the possibility of serious harm to a student, fails to take appropriate action, and the student is harmed.”

Two years later, a federal district court in California opined, “to prevail a plaintiff must show that he/she was subjected to unwelcome harassment, it was so pervasive and severe as to create a hostile educational environment, school officials knew or should have known of the problem, and they failed to take prompt and appropriate action.” Doe v Petaluma City School District (N.D. Cal. 1996).

The court in Doe v Oyster River (D.N.H. 1997) added two more aspects to the concept of *deliberate indifference* when it said, “A school system may be liable for peer sexual harassment if (1) school officials knew or should have known of the matter but failed to correct the problem, (2) a special relationship or duty existed to protect students from harm, and (3) the harassment was severe and pervasive.

In Davis v Monroe City Board of Education (1999), the United States Supreme Court brought all aspects of *deliberate indifference* together when it held that “school officials may be liable where the harassment is so severe and pervasive that it limits the student victim’s ability to learn; where school officials show a deliberate indifference to the matter; and where school officials fail to take reasonable steps to remedy the situation.”

The emphasis on *limiting the student victim’s ability to learn* and, as such, *denying the student victim’s access to the benefits of his/her educational program* is significant. In other words school officials must do something immediately to remedy the situation as soon as the matter (whether *bullying* or something more serious) comes to their attention. In this writer’s opinion, *bullying behavior* more often than not leads to something more serious and harmful.

### **Policy Implications**

As the above discussion demonstrates, while student *bullying* is different from threat, assault, battery, and other more serious offenses, it is nonetheless a form of misbehavior that must not be tolerated. *Bullying* is a form of *intimidation* and *harassment* and cannot be treated as an expected form of immature “kids will be kids” behavior. As the above discussion also shows, *bullying*: (1) serves no legitimate purpose, (2) may, if unchecked, lead to or already involve more serious, even criminal, behavior, (3) will, if unchecked, interrupt and deprive a student victim of access to the benefits of her/his educational program, and (4) cause emotional and/or physical harm to the student victim. Thus, school administrators, classroom teachers, and other staff must immediately act when student *bullying* is discovered.

If a local school system does not have a policy covering *bullying* it must formulate and implement one as soon as possible. What follows are some suggestions for consideration as policy statements are drafted. The policy must make it clear that, in the school board’s effort to keep students safe from harm and to protect the learning environment,

- *Bullying* (as defined in this policy) is considered a form of intimidation and harassment and will not be tolerated in school buildings, on school property (including school buses), or at school-sponsored events and activities.
- Students are encouraged to immediately report *bullying* incidents to their principal, or teacher, or coach, or other school staff member.

- All *bullying* incident reports (including but not limited to those involving computers, cell phones, camera phones, and other technical devices) will be immediately investigated.
- Parents will be immediately informed and involved in each reported case.
- Students found to have committed *bullying* offenses against other students will be disciplined according to the provisions outlined in the school system's Code of Student Conduct.

It is also imperative that all administrators, classroom teachers, coaches, other professional staff, school bus drivers, playground attendants, and other support staff receive training in *bullying* identification and prevention.

### **Resources Cited**

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Note: The views expressed in this commentary are those of the author.