

# Bullying and Harassment in the Schools

## The Prevalence, Parameters and Proactive Solutions

by Laura A. Athens

**B**ullying and harassment is pervasive in our schools and is becoming increasingly more difficult to address. The effects of bullying are devastating. Students subjected to bullying are more likely to experience depression, anxiety, lower academic performance and absenteeism.<sup>1</sup> Those who bully are more likely to drop out of school, engage in delinquent behavior and become involved in criminal activity as adults.<sup>2</sup> Bystanders frequently feel helpless and guilty for not confronting the bully and may become desensitized to aggressive behavior. Bullying negatively impacts the school climate by interfering with discipline and creating a hostile environment. Systematic and effective intervention strategies are crucial to combat the detrimental effects of bullying.

### *Prevalence of Bullying in the School Setting*

A National Center for Education Statistics survey of sixth- through 12th-grade students revealed that 27.8 percent reported being bullied and 9 percent reported cyberbullying during the 2010-2011 school year. The highest percentage of bullying incidents occurred in hallways or stairways, with the classroom being the second most frequent location.<sup>3</sup> A Center for Disease Control national survey published in 2011 indicated a similar overall percentage; 20.1 percent of ninth- through 12th-graders reported that they were bullied on school property and 16.2 percent reported cyberbullying.<sup>4</sup> Bullying is most prevalent during the middle school years and is more common in males. The type of bullying also differs by gender. Males are more likely to engage in physical aggression, whereas females tend to engage in verbal or social harassment.<sup>5</sup>

The suicide rate is higher among students who are bullied. A recent study found that victims of bullying are approximately 2.5 times more likely to commit suicide than their peers who have not been bullied.<sup>6</sup>

### *Types of Bullying Behavior*

Bullying today is far more complex than the physical altercations in the school yard of yesteryear. Bullying encompasses a wide variety of intentional aggressive, intimidating and antisocial behaviors beyond physical aggression. The behaviors may involve verbal harassment, teasing, name-calling, threatening and discriminatory comments. Unfortunately, sexual assault, harassment and rape may accompany bullying. Relational bullying includes gossiping, spreading rumors, social exclusion, ostracism and alienation. Demanding money, personal property or services is another form of bullying.

Widespread use of electronic media has exacerbated the problem. Cyber or virtual bullying involves the use of electronic media to send or distribute insulting or demeaning messages, photos or videos. Cyberbullying has an expansive reach and is more permanent. Groups of students may become involved in the harassment through social media websites that encourage others to post derogatory comments. Because cyberbullying is not face-to-face, and the harasser's identity can be hidden, it can be especially vicious. Cyberbullying outside of school hours often has a detrimental impact at school. Students who are targets of cyberbullying frequently experience heightened anxiety and find it difficult to concentrate at school, not knowing who is responsible for the behavior, how many are involved or when it will occur again.

A tragic example of the devastating effect of homophobic cyberbullying occurred in 2010 when a Rutgers University freshman committed suicide by jumping off a bridge after his roommate secretly videotaped him kissing another male and posted it on the Internet.<sup>7</sup> Although the roommate was convicted of 15 criminal charges and faced up to 10 years in prison, he was sentenced to only 30 days in jail and was released after 20 days for good behavior.<sup>8</sup> The prosecutor appealed the leniency of the sentence and the defendant

challenged the constitutionality of the bias intimidation conviction. The matter remains on appeal.<sup>9</sup>

### ***Characteristics Associated with Bullies***

The quintessential bully has been described as anti-social, lacking a moral compass and incapable of feeling empathy. However, many bullies don't fit this prototype. Popular students who like to decide who is accepted, and who is not, may engage in bullying. Those who are condescending with large egos may urge others to follow their example. Victims of bullying are more likely to bully others. Some bullies who appear sweet and compliant may be skilled manipulators who lie and inflict emotional pain on others when no one else is observing.

### ***Characteristics Associated with Targets of Bullying***

Students often are targets of bullying based on physical characteristics that make them appear different, such as being overweight or having large or unusual facial features. Students with disabilities are uniquely vulnerable and significantly more likely to be bullied. The bullying often occurs as a result of manifestations of their disabilities, such as speech impairments, social skill deficits or physical limitations. Challenges related to their disabilities make it more difficult for them to accurately and effectively report the bullying behavior.<sup>10</sup> Students who are perceived as weak, anxious or introverted are more likely to be targeted. Loners, who have few or no friends, are susceptible to coercion because they desperately want friends. Frequently, students are bullied based on actual or perceived sexual orientation and gender identity. Harassment based on race, religion and cultural beliefs also occurs. Paradoxically, students may be bullied because they excel in sports, are high academic achievers or are creative and talented. In a survey of academically gifted eighth-grade students, more than two-thirds reported being bullied.<sup>11</sup>

### ***Warning Signs and Negative Effects of Bullying***

Warning signs of physical bullying include unexplained bruises or other injuries, damaged clothing and missing or broken school supplies. Emotional outbursts, difficulty sleeping and loss of appetite are additional manifestations of victimization. Refusal or avoidance of school or extra-curricular events and withdrawal from family, friends or favorite activities may also occur. Somatic complaints and physical symptoms, without a medical cause, are another sign of potential bullying. In extreme cases, the target may express or act on a desire to run away, carry a weapon to school for protection or engage in self-injurious behavior. Both bullying and being bullied are associated with higher rates of carrying weapons to school.<sup>12</sup>

Victims often feel alone and ashamed. Students who are bullied experience anxiety, depression and low self-esteem. If the bullying is persistent and intense, it can result in suicidal ideation, self-injurious behavior or suicide. Being bullied may trigger aggressive, or even violent, behaviors.

A United States Secret Service and Department of Education study examining 37 incidents of school shootings uncovered a disturbing finding that 71 percent of the attackers felt persecuted, bullied or attacked by others prior to the shooting incident.<sup>13</sup>

### ***State Anti-Bullying Laws***

Anti-bullying statutes are designed to protect the right of all students to be educated in a secure learning environment and recognize that students must feel safe to reach their academic potential. Forty-nine states have anti-bullying legislation. The Michigan statute, known as Matt's Safe School Law, was enacted in 2011 in honor of Matt Epling, a Michigan teenager who committed suicide in the summer of 2002 after being bullied and assaulted as a part of a hazing incident. His father lobbied the Legislature for more than six years before the statute was enacted. Although Michigan was among the last four states to enact a statute, it was one of the first to adopt a state model anti-bullying policy. A State Board of Education policy has existed in Michigan since 2001.

### ***Provisions of the Michigan Anti-Bullying Statute***

The Michigan anti-bullying statute broadly defines "bullying" behavior as "any written, verbal or physical act, or

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any electronic communication," that is intended to directly or indirectly harm, or that a reasonable person would know is likely to harm, one or more students.<sup>14</sup> The statute recognizes that harm is demonstrated in four different ways. It occurs when the bullying substantially interferes with the student's ability to benefit from educational opportunities or programs. Harm is established when participation in school activities is adversely affected because the student reasonably fears physical harm or experiences "substantial emotional distress" and when there is an "actual and substantial detrimental effect" on the student's physical or mental health. In addition, harm is established when a "substantial disruption in, or substantial interference with, the orderly operation of the school" occurs.<sup>15</sup>

The statute expansively defines school environment to encompass the classroom, school premises, school buses and school-sponsored events or activities. It also includes telecommunications made away from school premises if the device or service provider is owned by or under the control of the school.<sup>16</sup>

Significantly, the statute requires each school district, intermediate school district and public school academy to develop a written policy prohibiting bullying. The policy must be publicized and must be submitted to the Michigan Department of Education. The policy must prohibit retalia-

tion against the target or witness reporting bullying. It must identify school officials responsible for implementation and include procedures for reporting bullying incidents and for notifying the parents of the involved students. The policy must require prompt investigation and documentation of any prohibited incident and the resulting consequences.<sup>17</sup>

The statute provides immunity for school employees, volunteers, students and parents who promptly report bullying in good faith and in compliance with the school district's policy.<sup>18</sup> Immunity does not, however, apply to the designated school official responsible for remedying bullying and certainly would not extend to any staff member who perpetrates bullying. While it is less common, harassment of students by school personnel does occur. It is particularly damaging because they are in a position of authority and are expected to protect student safety, not compromise it.

The Michigan anti-bullying statute encourages schools to include in their policies provisions for bullying prevention task forces, educational programs for students and parents, annual staff trainings and programs to specifically address cyberbullying.<sup>19</sup>

Although the anti-bullying statute is highly prescriptive and contains a number of mandatory provisions, it does not create a private cause of action and does not contain any explicit legal remedies for violations.

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#### **Michigan Board of Education Model Policy**

The State Board of Education has published a "Model Anti-Bullying Policy" that school districts may choose to adopt in full or in part.<sup>20</sup> The model policy prohibits harassment based on race, color, religion, national origin and gender, and goes beyond federal civil rights laws by also prohibiting bullying based on any actual or perceived characteristic concerning sexual orientation, gender identity or any other distinguishing characteristic. The policy addresses the key role of the bystander in reporting violations, not perpetuating bullying and cooperating in investigations.

#### **Federal and State Statutory Causes of Action**

Although the Michigan anti-bullying statute and state policy do not contain a private cause of action, federal and state statutes prohibiting discrimination and harassment may provide legal redress for bullying behavior. Bullying based on certain characteristics or traits are explicitly protected by federal civil rights statutes.

Title IV of the Civil Rights Act of 1964 prohibits discrimination based on race, color, sex, religion or national origin by public elementary and secondary schools, and public institutions of higher learning.<sup>21</sup> The United States Department of Justice enforces this statute and investigates Title IV complaints.

Title VI prohibits discrimination based on race, color or national origin.<sup>22</sup> Title IX prohibits sex discrimination<sup>23</sup> and Title II of the Americans with Disabilities Act (ADA)<sup>24</sup> and Section 504 of the Rehabilitation Act<sup>25</sup> prohibit disability discrimination. The United States Department of Education Office of Civil Rights (OCR)

investigates complaints filed under Titles VI, IX, the ADA and Section 504. The OCR has found violations when bullying or harassment is ignored, encouraged, tolerated or not adequately addressed by a school district when the district has actual knowledge or reasonably should have known about the harassment.<sup>26</sup>

The Michigan Elliott-Larsen Civil Rights Act prohibits discrimination based on religion, race, color, national origin, sex, age, marital status, familial status, height, weight and arrest record. It applies to educational institutions as well as to employers and places of public accommodation.<sup>27</sup> The Michigan Persons with Disabilities Civil Rights Act applies to schools and prohibits discrimination based on disability.<sup>28</sup>

### **Supreme Court and Sixth Circuit Precedent**

The United States Supreme Court has held that a school district can be liable for student-on-student harassment when the district has notice of the harassment and is deliberately indifferent to harassment that is so severe, pervasive and objectively offensive that it denies the student equal access to educational opportunities or benefits.<sup>29</sup> The Court concluded that a female student could pursue a Title IX action for damages against the school district because she had been subjected to repeated sexual harassment and offensive touching by a male student and school personnel made no effort to investigate the harassment despite their

actual knowledge of it. The Court pointed out that school officials retain flexibility and discretion regarding discipline; damages are not available for mere teasing and name calling. Whether the harassment is actionable depends on a “constellation of surrounding circumstances, expectations and relationships” including the ages of the bully and target, and the number of individuals involved.<sup>30</sup>

A school district can be held liable for failing to adequately address harassment. In *Patterson v. Hudson Area Schools*, a male student was called names, such as “gay,” “fag” and “queer,” and pushed and shoved in the hallways on a daily basis over a period of years. Due to the continuing harassment, which ultimately culminated in a sexual assault, the student claimed he was forced to withdraw from school because of psychological distress. The Sixth Circuit ruled the student could maintain a Title IX action against a school district to recover damages for the repeated verbal and physical bullying based on his perceived gender preference. Although the district imposed some discipline, including suspension, against the perpetrators, the Sixth Circuit found that school officials did not adequately address the continued harassment.<sup>31</sup>

### **Resolving Bullying Complaints**

Bullying complaints must be promptly and fully addressed by school administration. When appropriate,

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discipline or other sanctions should be imposed. School social workers, psychologists and counselors should actively intervene with all students who are involved in or witness bullying incidents. Any change in educational placement for the target should be exercised cautiously to avoid punishing the victim. As a practical matter, scheduling changes may be helpful to avoid placement of the bully and target in the same classes or lunch period. Social skills groups, assertiveness training, behavioral contracts and positive behavioral supports are additional interventions that can be employed in response to bullying incidents.

To promote a safe learning environment and decrease the incidence of bullying, schools must take a proactive approach. Effective strategies include developing a school-wide bullying prevention program, providing professional development and parent training, and forming anti-bullying task forces to review and revise policies. Surveys can be distributed to determine the nature, location and magnitude of the problem. Active adult supervision may be necessary in settings where bullying is more likely to occur. Wide dissemination of anti-bullying policies is essential. Clear and consistent behavioral expectations must be explicitly conveyed. Adults must model pro-social, respectful behavior and coach effective

responses to bullying. All children deserve to learn in a secure environment without fear of abuse or retaliation. Bullying is a complex issue requiring a multifaceted approach to effectively prevent and appropriately intervene when bullying occurs.

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### Footnotes

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- 2 Nansel, et al., "Bullying Behaviors Among U.S. Youth: Prevalence and Association with Psychosocial Adjustment," 285 J.A.M.A. 2094 (April 2001).
- 3 U.S. Department of Education, "Student Reports of Bullying and Cyber-Bullying: Results From the 2011 School Crime Supplement to the National Crime Victimization Survey" (August 2013), <http://nces.ed.gov/pubs2013/2013329.pdf> (accessed October 14, 2014).
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- 11 Boodman, "Gifted and Tormented: Academic Stars Often Bullied and More Likely to Suffer Emotionally as a Result," *The Washington Post* (May 16, 2006).
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- 13 U.S. Secret Service and U.S. Department of Education, "The Final Report and Findings of the Safe School Initiative: Implications for the Prevention of School Attacks in the United States" (July 2004).
- 14 MCL 380.1310b(10)(b).
- 15 MCL 380.1310b(10)(b)(i)-(iv).
- 16 MCL 380.1310b(10)(a).
- 17 MCL 380.1310b(5).
- 18 MCL 380.1310b(7).
- 19 MCL 380.1310b(6). In 2013, the Michigan Senate and House introduced bills SB 74 and HB 4727, which would have required schools to include a prohibition against cyberbullying in their policies and annual reporting to the Department of Education; however, these proposed amendments were not enacted.
- 20 Michigan State Board of Education Model Anti-Bullying Policy, updated and approved November 9, 2010.
- 21 42 U.S.C. § 2000c et seq.
- 22 42 U.S.C. § 2000d et seq.
- 23 20 U.S.C. §1681 et seq.
- 24 42 U.S.C. §12131 et seq.
- 25 29 U.S.C. §794.
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- 27 MCL 37.1101-37.1607.
- 28 *Davis v. Monroe Co. Bd. of Educ.*, 526 U.S. 629, 633; 119 S. Ct. 1661 (1999). The Supreme Court previously held that school districts could be liable for deliberate indifference to known acts of sexual harassment by a teacher. *Gebser v. Lago Vista Independent School Dist.*, 524 U.S. 274, 290, 118 S.Ct. 1989 (1998).
- 29 *Id.*, quoting *Oncale v. Sundowner Offshore Services, Inc.*, 523 U.S. 75, 82 (1998).
- 30 *Patterson v. Hudson Area Schools*, 551 F.3d 438 (6th Cir. 2009).

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