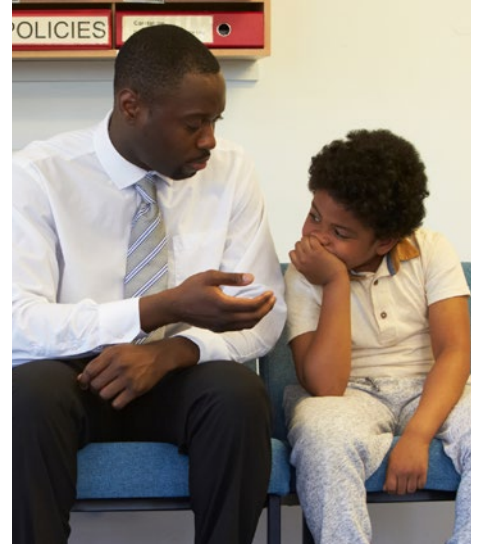


An Educators' Ethical Duty to Intervene in Bullying: The Importance of the Teacher's Role in Bullying Prevention

Introduction

This white paper posits that Pennsylvania educators have an ethical responsibility to maintain a safe, respectful learning environment where all children have an equal opportunity to succeed academically, behaviorally and emotionally. This white paper also reminds educators of the

requirements of the Pennsylvania Code of Professional Practice and Conduct for Educators (Code).¹ It provides recommendations for educators to intervene in acts of bullying and harassment and prevent recurrences of these behaviors.



A Case Study: Legal and Ethical Implications

Over the course of nine months in 2008, two sisters, Brittany and Emily Morrow, were targeted by a classmate at their Pennsylvania high school.² The sisters were verbally threatened, cyberbullied, harassed and physically assaulted on numerous occasions by the classmate.² In addition to physical attacks in the school cafeteria, the aggressor attempted to throw one of the sisters down a flight of stairs in the school and physically attacked both sisters on a school bus.² During at least one of these attacks, the aggressor allegedly called the sisters racially charged epithets.² While the local police department arrested their attacker for her actions and the county juvenile court adjudicated her delinquent and ordered her to have no contact with Brittany; the local school district was less responsive.³ In fact, the school district: failed to follow its own policies; advised the Morrows that school officials could not ensure the safety of their daughters; and recommended that the girls would be safer at a different school.⁴

Given the ongoing pattern of peer abuse endured by the sisters, their parents filed a federal suit against the school district pursuant to 42 U.S.C. § 1983, alleging violations of their daughters' substantive due process rights as provided by the Fourteenth Amendment of the U.S. Constitution.⁵ The Court dismissed the case and the family appealed to the United States Court of Appeals, Third Circuit. The Third Circuit held that: "(1) school officials did not have a constitutional duty to protect the bullied students from the bully; and (2) school officials did not create or enhance a danger to the bullied students in violation of those students' due process rights."⁶ The family then appealed to the U.S. Supreme Court, which on December 16, 2013, denied the family's petition to hear their case.⁷ By so doing, the sisters' efforts to find legal relief ended. As the dissenting judges in this case opined, "While turning away the Morrows may be convenient as a matter of management of judicial resources or as a matter of school policy,

it is neither expedient, nor sound as a matter of law. The majority avers that students and concerned parents may seek redress from their legislatures, but concedes that the law, as it exists today, at least in Pennsylvania, immunizes schools from such suits."⁸

This Morrow decision not only affects the sisters and their family, but also sets binding precedent for all students who are bullied by their peers in Pennsylvania schools. As such, this white paper was created to provide schools with information to underscore the importance of ethical considerations in the intervention and response to bullying.

Prevalence and Scope of Bullying

Stories of bullying, cyberbullying and harassment such as the Morrows endured are all too common. In fact, according to the 2011 Indicators of School Crime and Safety report issued by the National Center for Education Statistics, more than one-fourth of U.S. students ages 12-18 (approximately 28 percent) were bullied on school property.⁹ Although bullying behaviors can be observed throughout most of the life cycle, bullying is most common during middle school years (i.e., grades 6-8).¹⁰ By its nature, bullying is repetitive with approximately 18 percent of targeted students in grades 3-12 experiencing bullying as frequently as two to three times per month or more.¹¹ While the frequency with which students are bullied is cause for concern, even more

disturbing is the fact that students witness other students being bullied even more frequently. One study reports that 70.6 percent of students and 70.4 percent of educators observe bullying in their schools.¹²

Cyberbullying is a specific form of bullying that involves technology. Cyberbullying is “willful and repeated harm inflicted through the use of computers, cell phones, and other electronic devices.”¹³ Controversy exists with regard to the prevalence rate of cyberbullying.¹⁴ While current research indicates that cyberbullying occurs most frequently among high school students (i.e., grades 9-12), the rates with which high school students report bullying varies greatly across formal and informal surveys and studies.

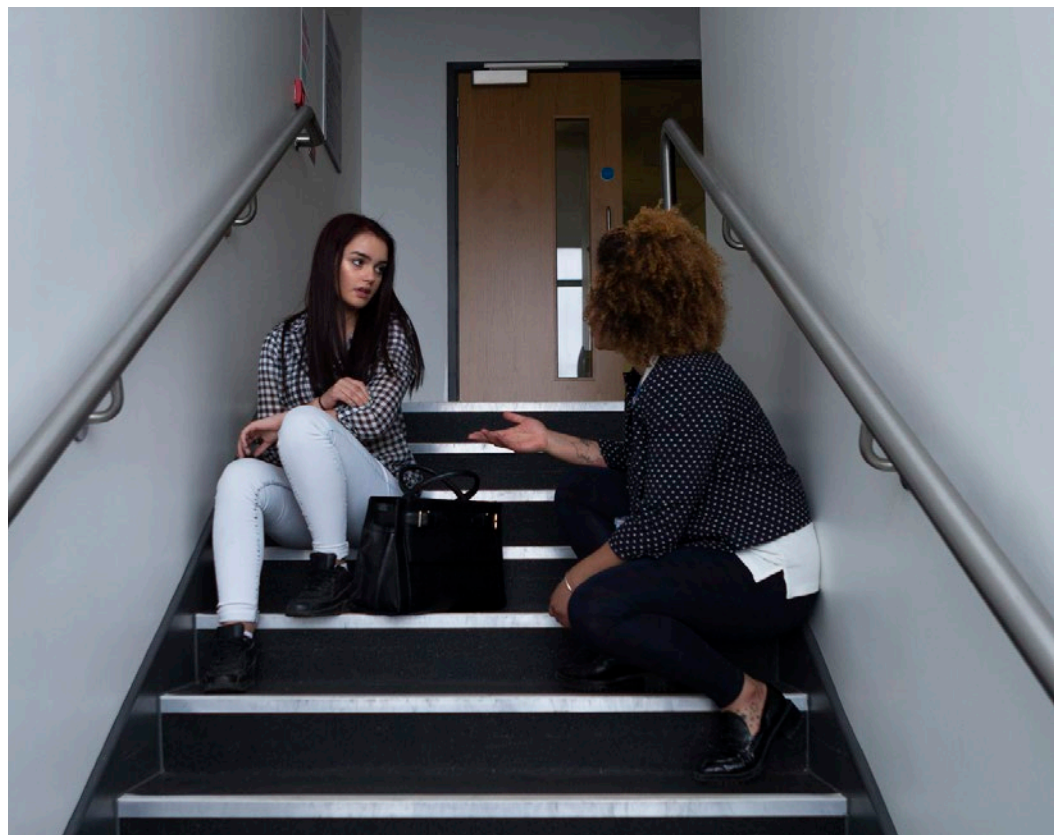
One study reports that 15 percent of high school students (grades 9-12) were electronically bullied in the past year,¹⁵ while another study suggests that 72 percent of youth were bullied online within the last year.¹⁶

While any student can be targeted for bullying, recent studies indicate that some students are more likely to be bullied than others. Students have an increased risk when falling under one (or more) of the following demographic minorities:

Race and ethnicity

- More than 1/3 of the students of color report being targeted¹⁷
- Students of color suffer significant negative physical and emotional health effects from bullying experiences¹⁸

The U.S. Department of Education and the Centers for Disease Control and Prevention (CDC) define bullying as “any unwanted aggressive behavior(s) by another youth or group of youths who are not siblings or current dating partners that involves an observed or perceived power imbalance and is repeated multiple times or is highly likely to be repeated.”¹⁹ Bullying may be physical, verbal or relational and may occur directly in the presence of the targeted youth, or indirectly through electronic devices or other methods of communication.¹⁹



Disability and autism spectrum disorders

- Students with disabilities are two to three times more likely to be targeted²⁰
- Students diagnosed with an autism spectrum disorder report being targeted at a rate of 40-60 percent²¹

Actual or perceived sexual orientation

- 82 percent of the LGBTQ students report being targeted²²

- LGBTQ Students are three times more likely to be bullied and four times more likely to be cyberbullied²²

During fiscal year 2013-14, the United States Department of Education, Office for Civil Rights, received record-high complaints of school-based bullying and/or harassment as follows: 1,172 complaints based on race, color and national origin; 854 complaints based on sex; and 1,112 complaints based on disability.²³

As the preceding datasets show, students who are not in the demographic majority are at higher risk for bullying. This bullying often implicates federal and state civil rights statutes in that the bullying targets a student's protected class (e.g., race, disability, sex, etc.), thereby negatively impacting the school's climate and interfering with the targeted student's educational process.

Impacts of Bullying

Students who are bullied are at increased risk for a variety of negative outcomes, some of which are serious and potentially life threatening. Students who are bullied experience a greater incidence rate of negative physical (e.g., headaches, stomachaches, sleeplessness, etc.), emotional (e.g., anxiety, depression, suicidal thoughts, etc.) and academic (e.g., failing grades, truancy, dropping out, etc.) outcomes than their non-bullied peers.²⁴ **In fact, students who are targeted by bullying behaviors are twice as likely as non-bullied students to experience headaches and stomachaches.**²⁵ "The effects of being bullied are direct, pleiotropic and long-lasting, with the worst effects for those who are both victims and bullies."²⁶

Much media attention in recent years has focused on students who engaged in suicidal activity in response to bullying. However, it is not clear if bullying and suicide are causally linked. According to the CDC, "bullying behavior and



suicide-related behavior are closely related.²⁷ This means youth who report any involvement with bullying behavior are more likely to report higher levels of suicide-related behavior than youth who do not report any involvement with

bullying behavior."²⁷ **Further, students who were bullied were 2.4 times more likely to report suicidal ideations and 3.3 times more likely to report a suicide attempt than their non-bullied peers.**²⁸

The Importance of the Teacher's Role in Bullying Prevention

According to the National Association of School Psychologists, “1 in 4 teachers see nothing wrong with bullying and will only intervene 4 percent of the time.”²⁹

Students subjected to bullying and harassment experience negative mental, physical and psychological harms. These harms are compounded when educators fail to intervene. Students form a special bond with their teachers and may rightfully expect that they will be protected from negative experiences by these caring adults in their schools. However, when teachers fail to intervene in bullying and harassment, the student loses trust in his/her teacher and in the school system. This further exacerbates the negative physical, emotional and psychological harms suffered by the student as these harms are delivered not only by his/her peer aggressor(s), but also compounded by the lack of intervention from a trusted adult.

When teachers fail to respond to bullying and harassment, the overall climate of the school suffers. Specifically, student rates



of victimization rise when teachers avoid intervening in student-on-student acts of violence including bullying and harassment.³⁰ “Educators are so critical that even their lack of response influences bullying.³¹ Their failure to intervene could be seen as reinforcing students’ bullying behaviours [sic] and, therefore, contribute

to increased rates of aggression in the school setting.”³¹ As a result, negative outcomes at both the individual student and schoolwide levels occur. Teacher inaction erodes the very fabric of a safe and supportive school.

Teachers demonstrate that they care about their students when they listen to them, encourage their efforts and provide a warm atmosphere that enables them to feel safe and secure. Another way that teachers support students is by being fair in their dealings with them. Students, especially adolescents, have a keen sense of fairness. They judge their teachers by the way the teachers implement school rules and policies. When teachers follow norms of equity and treat everyone fairly and compassionately, students feel respected. If students perceive that their teachers are being unfair to them or their peers and are violating norms of equity, they feel that their teachers have low regard for them.³²

Educators Have an Ethical Duty to Respond to Bullying

Some professions are held to higher standards than others. Individuals charged with protecting and shaping young lives are among those professions held to higher ethical standards. To be considered “ethical” one must “be in accordance with the rules or standards for right conduct or practice, especially the standards of a profession.”³³

When viewed against the backdrop of trauma and harms caused by bullying and harassment, educators are ethically and morally duty-bound to prevent and intervene in acts of bullying. Educators have long been held to a higher moral and ethical standard than those not engaged in the education of our young. The U.S. Supreme Court addressed the importance of teachers’ possessing high moral character in *Alder*, opining: “A teacher

works in a sensitive area in a schoolroom. There he shapes the attitude of young minds towards the society in which they live. In this, the state has a vital concern. It must preserve the integrity of the schools. That the school authorities have the right and the duty to screen the officials, teachers, and employees as to their fitness to maintain the integrity of the schools as a part of ordered society, cannot be doubted.”³⁴

It is not surprising then, that 34 states have governmentally-sanctioned codes of ethical conduct for educators, 26 of which, including Pennsylvania’s, are considered to be binding law.³⁵ Pennsylvania’s Code sets forth the duties and obligations educators must undertake in order to remain in good standing with the Pennsylvania Department of Education. The

Code “makes explicit the values of the educational profession. When individuals become educators in this Commonwealth, they make a moral commitment to uphold these values.”³⁶ Educators in Pennsylvania are expected to hold themselves to a stringent moral and ethical standard. They are to “provide services and to conduct themselves in a manner which places the highest esteem on human rights and dignity.”³⁷ They are to “valu[e] the worth and dignity of every person, student and colleague alike.”³⁷

The Code sets forth ten practices by which Pennsylvania educators are expected to abide. These “professional practices are behaviors and attitudes that are based on a set of values that the professional education community believes and accepts.”³⁸



Code of Professional Practice and Conduct for Educators

Professional practices are behaviors and attitudes that are based on a set of values that the professional education community believes and accepts. These values are evidenced by the professional educator's conduct toward students and colleagues, and the educator's employer and community. When teacher candidates become professional educators in this commonwealth, they are expected to abide by this section.

1. Professional educators shall abide by the Public School Code of 1949...and other school laws of the commonwealth....
2. Professional educators shall be prepared, and legally certified, in their areas of assignment....
3. Professional educators shall maintain high levels of competence throughout their careers.
4. Professional educators shall exhibit consistent and equitable treatment of students, fellow educators and parents. They shall respect the civil rights of all and not discriminate on the basis of race, national or ethnic origin, culture, religion, sex or sexual orientation, marital status, age, political beliefs, socioeconomic status, disabling condition or vocational interest. This list of bases or discrimination is not all-inclusive.
5. Professional educators shall accept the value of diversity in educational practice. Diversity requires educators to have a range of methodologies and to request the necessary tools for effective teaching and learning.
6. Professional educators shall impart to their students principles of good citizenship and societal responsibility.
7. Professional educators shall exhibit acceptable and professional language and communication skills. Their verbal and written communications with parents, students and staff shall reflect sensitivity to the fundamental human rights of dignity, privacy and respect.
8. Professional educators shall be open-minded, knowledgeable and use appropriate judgment and communication skills when responding to an issue within the educational environment.
9. Professional educators shall keep in confidence information obtained in confidence in the course of professional service unless required to be disclosed by law or by clear and compelling professional necessity as determined by the professional educator.
10. Professional educators shall exert reasonable effort to protect the student from conditions which interfere with learning or are harmful to the student's health and safety.³⁸

While bullying – or more to the point, prevention and intervention of bullying – is not specifically covered in the Code, it does fall within practice number ten, which explicitly requires educators to “exert reasonable effort to protect the student from conditions which interfere with learning or are harmful to the student's health or safety.”³⁸ Research has clearly established that bullying negatively impacts students' academic success in addition to causing a host of mental, physical and emotional harms as discussed earlier in this white paper. Further, the impacts of bullying may be life-long.³⁹ It can easily be argued that failing to prevent or intervene in acts of bullying or peer abuse contradicts the mandate to

protect students from interferences in the learning process and things that cause harm, as specified by practice number ten contained in the Code.

Although the Pennsylvania School Code requires school districts to adopt a policy relating to bullying that “shall delineate disciplinary consequences for bullying [by students] and may provide for prevention, intervention and education programs,” it does not require specific staff action beyond that of appointing a person to receive complaints of bullying and requiring school superintendents to report the total number of bullying incidents to the Pennsylvania Department of Education annually.⁴⁰ There is no legislated or

regulatory mandate requiring that reports of bullying and harassment be investigated or that schools take steps to end these forms of peer abuse. By enhancing bullying prevention efforts to incorporate best practices, school districts increase the likelihood that acts of bullying and harassment will be responded to in a swift and appropriate manner. The U.S. Department of Education identified the following effective evidence-based practices for preventing and addressing bullying in an enclosure to the August 20, 2013 OSERS Dear Colleague Letter:

- Use a comprehensive multi-tiered behavioral framework
- Teach appropriate behaviors and how to respond

- Provide active adult supervision
- Train and provide ongoing support for staff and students
- Develop and implement clear policies to address bullying
- Monitor and track bullying behaviors
- Notify parents when bullying occurs
- Address ongoing concerns

- Sustain bullying prevention efforts over time⁴¹

As Pennsylvania is a commonwealth, local authority rule provides school districts with a great deal of latitude with regard to their student codes of conduct and teacher contracts outlining educator

duties, responsibilities and conduct. Because the Pennsylvania School Code does not define teacher expectations with regard to the handling of bullying incidents, districts are encouraged to respond in an ethical manner when incidents of bullying occur.

Conclusion

As it currently stands, Pennsylvania students may be vulnerable to bullying, harassment and other forms of peer abuse because there is no legal or regulatory mechanism to require educators to stop these negative behaviors. As this white paper argues, educators are duty-bound to protect their students from situations that threaten their health or safety.

Bullying and harassment result in mental, physical and emotional harms to students who are targeted by their peers. These negative impacts can lead to decreased academic achievement, a diminished sense of self-worth and loss of social status. As this white paper describes, educators have an ethical obligation to provide a safe, harassment-free environment for their students, as evidenced by the ten practices found in the Code. By upholding these ten practices, they would prevent and intervene in acts of bullying and harassment simply because it is the right or ethical thing to do.

Ethical Responses to Bullying and Harassment

- **Respond to reports of bullying and harassment in a quick, thorough manner, abiding by school board policies and procedures developed by school administrators.**
- **Intervene every time bullying or harassment is observed.**
- **Support students who have been bullied in the past: check in with them to see how they are doing.**
- **Help students who have engaged in bullying in the past: encourage them to interact in more positive ways with their peers.**
- **Create a harassment-free classroom where all students feel safe, supported and respected.**
- **Give students time to get to know more about their classmates: help them find similarities in each other.**
- **Provide opportunities to highlight each student's strengths.**
- **Encourage students to stand up for each other and not support bullying.**
- **Incorporate social-emotional learning skills in lesson plans, particularly highlighting strategies to engage emotional self-regulation and empathy skills.**

Acknowledgement

This white paper was produced through the generous support of the Highmark Foundation. Since 2006, the Highmark Foundation has invested over twenty-five million dollars in bullying prevention in Pennsylvania. The Foundation continues to support bullying prevention as a thought leader by linking bullying prevention strategies with other best practices in school climate and youth violence prevention.

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