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DECEMBER 2018 • \$5

A Publication of the San Fernando Valley Bar Association

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Bringing Bullies to Court

By Shep A. Zebberman



BULLYING IS AGGRESSIVE behavior that is intentional and involves an imbalance of power or strength. Bullying can occur in the form of physical violence, verbal bullying such as intimidation by threats or on the web through social media known as cyberbullying. Children with disabilities are often targets of bullying.

According to Marini, Fairbairn & Zuber, 2001, there are five characteristics of bullying:

1. Bullies demonstrate greater physical strength, higher cognitive abilities, or knowledge of psychological vulnerabilities.
2. Acts of bullying are rarely isolated. Repetition distinguishes bullying and has a devastating impact. The anticipation and expectation of future abuse inflicts great harm on victims.
3. Bullies act purposefully, seeking to injure their peers physically and/or psychologically.

4. Bullying victims live with constant fear and a feeling of powerlessness.
5. Bullies go to considerable lengths to keep their acts hidden from parents and teachers.¹

While bullying can and often does involve overt physical behavior or verbal, emotional, or social behaviors—such as excluding someone from social activities, making threats, withdrawing attention, destroying someone's reputation, etc.—it can also involve subtle and covert behaviors. Cyberbullying, or bullying through electronic technology (e.g., cell phones, computers, online/social media), can include offensive text messages or emails, rumors or embarrassing photos posted on social networking sites, or fake online profiles.

Addressing and reporting bullying is critical. Students who are targets of bullying behavior are more likely to experience lower academic achievement and aspirations, higher truancy rates, feelings of alienation from school, poor relationships with peers, loneliness, or

depression. Bystanders, or those who only see or hear about bullying, also may be negatively affected as bullying tends to have harmful effects on overall school climate. Bullying can foster fear and disrespect and negatively affect the school experience, norms, and relationships of all students, families, and school personnel.

Consequences include students changing their patterns of school participation or schools eliminating school activities (e.g., dances, sporting events) where bullying has occurred. Teachers, school personnel, parents, and students should report bullying when they become aware of it.

Can Bullying Be Illegal?

Bullying behavior may cross the line to become “disability harassment,” which is illegal under Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, and the Individuals with Disabilities Education Act (IDEA).^{2 3 4}

It may also rise to the level of a criminal threat in violation of P.C. §422.⁵



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California Education Code §200 et seq.⁶ also sets for a student's right to be free from harassment at school. Should bullying be treated as a crime? What is the appropriate course of action when a child becomes the victim of bullying?

The bulk of the bullying taking place on school grounds is believed to be peer-to-peer bullying. Often, teachers and other school staff may be parties to school bullying and disability harassment. This can occur by being active participants in bullying or by observing such activity without taking appropriate action to address the behavior.

Do's and Don'ts

In the past, Stopbullying.gov has suggested that when adults respond quickly and consistently to bullying behavior they send the message that it is not acceptable. Research shows this can stop bullying behavior over time.

There are simple steps adults can take to stop bullying on the spot and keep kids safe—intervene immediately; separate the kids involved; make sure everyone is safe; meet any immediate medical or mental health needs; stay calm; reassure the kids involved, including bystanders; and model respectful behavior when you intervene.

There are also common mistakes to be avoided—don't ignore it or think kids can work it out without adult help; don't immediately try to sort out the facts or force other kids to say publicly what they saw; don't question the children involved in front of other kids; don't talk to the kids involved together, only separately; and don't make the kids involved apologize or patch up relations on the spot.

Get police help or medical attention immediately if a weapon is involved; there are threats of serious physical injury or of hate-motivated violence, such as racism or homophobia; there is serious bodily harm or sexual abuse; and anyone

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involved is accused of an illegal act, such as robbery, extortion, or using force to get money, property, or services.

Why Not Create a Bully Court?

Currently, numerous specialty courts within the juvenile justice system are intended to offer an alternative to traditional juvenile justice and school disciplinary proceedings.

These specialty courts operate under the common assumption that there are some cases where it is more beneficial to society and to the accused to resolve the problem through voluntary treatment rather than through the penal system.

Benefits include more successful outcomes, reduced cost, reduced recidivism and a lessening of a burden on an overcrowded penal system. Some examples of these courts include Drug Court, Teen Court, Mental Health Court and Domestic Violence Court. Adult Courts have a similar concept which includes Veteran's Court, Homeless Court and Sex Trafficking Victim's Court. These courts are for the most part diversion programs and may be administered and operated by law enforcement agencies, probation departments, courts, schools, and/or nonprofit organizations.

Why not create a bullying court after the model of the closely related Teen Court? Teen Court programs offer an avenue for engaging the community in a partnership with the juvenile justice system to respond to the problem of juvenile crime by increasing awareness of the delinquency issues within the local community, and by mobilizing community members (including youth) to take an active role in addressing the problem within the community with minimal or no court intervention.

In most Teen Court programs, the accused is judged by peers, i.e., other teens. If appropriate, the teens also recommend to the probation



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department (agency operating the program) a recommended sentence. Such courts offer communities an opportunity to provide immediate consequences and appropriate treatment for youthful offenders.

Teen Courts function as actual courts for young people who commit non-serious crimes for which they are questioned, judged and sentenced by a jury of their peers. Teen Court provides an alternative to Juvenile Court, and is based on the philosophy that a young person who engages in criminal activity for the first time should have the opportunity to correct his or her behavior with support from the justice system in the hope that the offender will not commit more serious crimes later.

Teen Court jurors are selected from the high school's student body and offer the young person who is found guilty the opportunity, upon successful completion of his or her sentence within six months, to have no record of a criminal conviction.

Further, Teen Court protects a young person from unnecessary involvement in the juvenile justice system. For students who participate as jurors, clerks and bailiffs, Teen Court offers valuable lessons about how courts operate and what it is like to be a part of the justice system. Many Teen Court jurors later express an interest in studying law. The court and the public also benefit because it enables the juvenile justice system to focus its resources on higher risk offenders. The Los Angeles Superior Court currently operates 38 Teen Courts in high schools throughout Los Angeles County. More than 70 judicial officers preside over Teen Courts and typically hear trials one to two afternoons each month.


A Similar Model

A similar model could be instituted as a subset of Teen Court or as its own specialty court based on the same model. Staff could receive specialized training and education in all aspects

and dynamics of bullying. Appropriate educational and counselling programs could be required as a part of a "convicted" bully's "sentence."

Participation in the program would be voluntary but like most specialty courts, is in lieu of actual charges being brought against the teen. Of course, punishment can be a component of the rehabilitation process, but not necessarily incarceration. The program can also require parental education in such areas as how to recognize signs of bullying and tools to monitor children's use of social media.

A bully court may have other value in addition to potentially reducing the frequency of bullying that occurs. The program could presumably foster volunteerism since these programs are typically run by volunteers. Youths participation in the program could also improve participants' communication, negotiating and analytical skills. It would also encourage and promote community involvement.

In October 2014, as part of National Bullying Prevention Awareness Month, the U.S. Education Department's Office for Civil Rights (OCR) issued guidance to schools reminding them that bullying is unacceptable and must not be tolerated. However, incidents of bullying occur both on and off campus, as well as in cyberspace, so the problem cannot be laid solely on the shoulders of schools to fix. When a school, parents, friends, clergy, coaches or caretakers learn an incident of bullying may have occurred, it should be investigated promptly and responded to appropriately. A specialty bullying court may just be the appropriate response. 

¹ Marini, Z., Fairbairn, L. & Zuber, R., "Peer Harassment in Individuals with Developmental Disabilities: Towards the Development of a Multi-Dimensional Bullying Identification Model," *Developmental Disabilities Bulletin*, 29, 170-195 (2001).

² Section 504, Rehabilitation Act of 1973.

³ Title II, Americans with Disabilities Act (ADA) of 1990.

⁴ Individuals with Disabilities Education Act (IDEA).

⁵ P.C. §422.

⁶ California Education Code §200 et seq.