

The Legal Status of Bullying: **Peer Mediation vs. Safe, Responsive Adults**

Part Two of a Three Part Series

By Mary Jo McGrath, Attorney at Law

Our Nation's quest is to eradicate bullying in our schools. In making that vision a reality, 32 states have enacted anti-bullying statutes and many others have similar legislation pending. These statutes most often require that the school districts adopt local policies and set out comprehensive training plans to accomplish the result.

What about Conflict Resolution and Peer Mediation Training Programs?

Almost all student-centered anti-bullying programs include conflict resolution or mediation practices. Unfortunately, the mindset that there is a "conflict" involved reveals a misunderstanding about the fundamental nature of bullying and harassment. Bullying is not a conflict but a domination of another, an abuse of power.

The U.S. Department of Health and Human Services (USDHHS, 2004) puts it this way:

Bullying is a form of victimization. It is no more a "conflict" than are child abuse or domestic violence. Mediating a bullying incident may send inappropriate messages to the students who are involved...

The appropriate message to the child who is bullied should be, "No one deserves to be bullied and we are going to do everything we can to stop it."

The message for children who bully should be, "Your behavior is inappropriate and must be stopped."

Mediation may further victimize a child who has been bullied. It may be very upsetting for a child who has been bullied to face his or her tormenter in mediation.

There is no evidence to indicate that conflict resolution or peer mediation is effective in stopping bullying (USDHHS, 2004). Furthermore, conflict resolution and peer mediation are not legally fit responses to bullying behavior. In cases of actionable harassment, the Office for Civil Rights (2001) has stated that a victim has the right to not confront the perpetrator. Encouraging such action may heighten the risk of liability.

A Better Approach: Training and Developing Safe, Responsive Adults

Many different programs and intervention strategies designed to "bully proof" students are being used throughout the United States. The surprise is that according to leading researchers Smith, Pepler and Rigby, none have been proven effective over time and across multiple settings*.

Regardless of the lack of proven results, those with the best practices and research behind them are likely worth implementing. While student centered socio-emotional programs are necessary and important, standing alone they may not be sufficient to protect you in a court of law.

Students—and the courts—want the adults in the school system to intervene in bullying and harassment behavior. **However, the dilemma is that most students do not feel safe telling an adult that the behavior is occurring.** The code of silence among the students is strong and too many have had poor experiences once they have reported to an adult.

Training the students in how and when to report what they observe and experience is an important part of a legally fit approach to bullying, but you should not expect them to report. Regardless of extensive training, it is unlikely that the students will report situations to the adults. The adults must take the initiative in combating bullying. It is the adult in the school system who must be watchful for the warning signs that bullying is occurring. **Every employee in the school, from the front office staff to the school crossing guards, must be trained in awareness and effective response.**

The key to defending against legal claims is demonstrating that the adults in the schools are trained, aware and have taken clear and appropriate action to stop bullying and harassment in the schools. If the school district cannot demonstrate that it has responded appropriately, the cost to your district, and the harm to the students and yourself can be devastating, both financially and emotionally.

**Note: See "Bullying in Schools: How Effective Can Interventions Be?" Smith, Pepler and Rigby, Eds. 2004*

Next Issue: 360 Degree Bullying Prevention Training - What To Look For

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- General Policy Statement
- Definition of Bullying
- Examples of Bullying
- Duty to Act
- Sanctions for Bullying
- Retaliation
- False Reporting

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- Get the latest research on the "new" bullying - girls, cyberbullying, and more
- Learn the legal basis for bullying and lawsuits
- Tools for daily intervention and cultural transformation
- Step-by-Step investigation approach.

[Purchase the book](#) for additional tools and resources on Complaint Management including: Sample Complaint Intake Forms, Decision Trees outlining the Initial Processing of a Complaint and Determining Who Investigates.

McGrath Bullying and Harassment: Minimize the Risk Curriculum

- **Bullying and Harassment: Fundamentals of Detection, Identification, and Intervention** (for faculty and staff)
- **Bullying and Harassment Complaint Intake and Investigation** (for school administrators)
- **Bullying and Harassment - Proactive Awareness for Students and Parents** (K-12)
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