

Beyond Bullying: Protected Class Bullying

Bullying Defined:

- Unwanted aggressive behavior(s)
- Observed or perceived power imbalance
- Repeated or likely to be repeated
- Inflict harm or distress

Source: Bullying Surveillance Among Youths, Uniform Definitions for Public Health and Recommended Data Elements Centers for Disease Control and Prevention.

Types of Bullying:

1. Direct Bullying:
2. Indirect Bullying:
3. Cyberbullying:

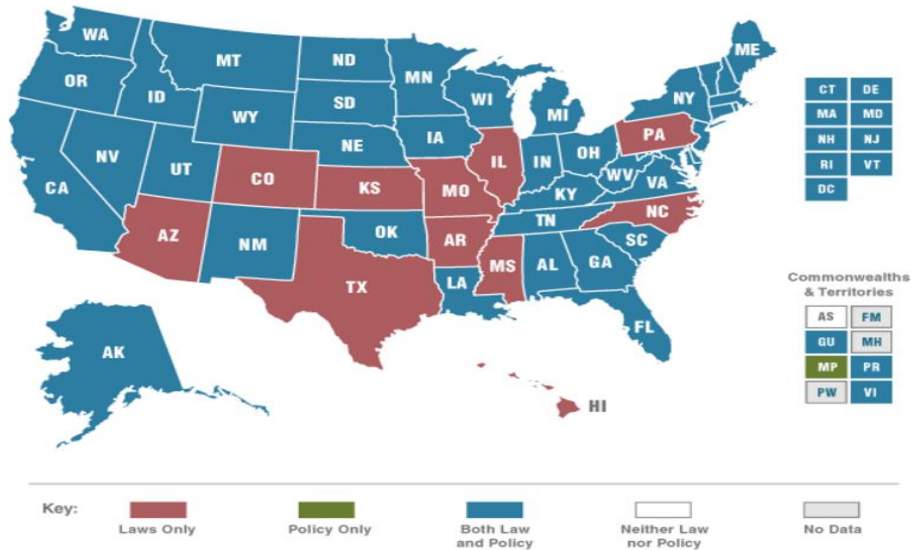
A child's role in bullying change, depending on group _____ or _____.

Consequences of Bullying/Cyberbullying:

1. Mental Health Consequences:
2. Physical Health Consequences:
3. Academic Consequences:

Typical School Policies:

- Anti-Bullying
- Anti-Discrimination
- Anti-Harassment
- Acceptable Use Policies



Tinker v. Des Moines Independent Community School Dist., 393 US 503 (1969):

Civil Laws:

- Slander
- Defamation of Character
- Harassment
- Libel
- Discrimination
- Sexual Harassment

Civil Litigation:

- Torts (Battery, Assault, Intentional Inflection of Emotional Distress)
- Duty to Protect from 3rd Party Harms
- Knew or Should Have Known
- Hostile Environment
- Deliberate Indifference

Duty to protect from 3rd Party harms:

- Severe, pervasive and offensive
- Denial of educational benefits
- Actual knowledge/ notice
- Deliberate indifference:
 - Failure to respond
 - Unreasonable response

Civil Rights Statutes:

- Federal Statutes:
 - Title VI of the Civil Rights Act of 1964
 - Title IX of the Education Amendments of 1972
 - Section 504 of the Rehabilitation Act of 1973
 - Title II of the Americans with Disabilities Act of 1990
- State Statutes (substantially equivalent to federal statutes)

Identity-based bullying is prohibited by federal and state civil rights statutes. What constitutes identity?

If a complaint is filed with ED-OCR, USDOJ or PHRC, what steps must a school take?

- Immediate and appropriate action to investigate or otherwise determine what happened.
- Inquiry must be prompt, thorough, and impartial.
- Interview targeted students, offending students, and witnesses, and maintain written documentation of investigation
- Communicate with targeted students regarding steps taken to end harassment
- Check in with targeted students to ensure that harassment has ceased
- When an investigation reveals that harassment has occurred, a school should take steps reasonably calculated to:
 - End the harassment,
 - Eliminate any hostile environment,
 - Prevent harassment from recurring, and
 - Prevent retaliation against the targeted student(s) or complainant(s).

What constitutes a reasonable response to protected-class bullying?

- Appropriate responses will depend on the facts of each case.
- School must be an active participant in responding to harassment and should take reasonable steps when crafting remedies to minimize burdens on the targeted students.
- Appropriate responses include the following:
 - Policies/procedures
 - Training
 - Monitor
 - Discipline
 - Counseling
 - Limit interactions
 - Provide benefits and services

Crimes Code Statutes:

- State Statutes
 - Terroristic Threats
 - Harassment
 - Stalking
- Federal Statutes (Limited coverage)
 - Assault (Simple and Aggravated)
 - Child Pornography
 - Hate Crimes

Juveniles and Hate Crimes:

- Most known hate crime offenders are male.
- Most known hate crime offenders are 18 or older.
- But, schools/colleges are the third most likely location for a hate crime to occur.

The lack of a strong, immediate response by a teacher or administrator who is aware of the harassment may be perceived as approval of the activity or as an indication that the victim deserves the harassment.

I swore never to be silent whenever and wherever human beings endure suffering and humiliation. We must always take sides. Neutrality helps the oppressor, never the victim. Silence encourages the tormentor, never the tormented.

Elie Wiesel

Effective Response Mechanisms:

- Immediate investigation of all reported incidents.
- Immediate referral to law enforcement authorities.
- Forthright announcements condemning act(s).
- Disciplinary action against all offenders.
- Ongoing remedial actions to prevent recurrence.
- Emotional and psychological support, as needed.
- Informal procedures for resolution.
- Teaching more acceptable behavior.

Why?

Create a Supportive Climate:

- Set clear expectations
- Monitor climate
- Identify concerns
- Train staff
- Utilize culturally responsive curriculum
- Create opportunities for student leadership
- Appoint a compliance coordinator

To prevent youth violence, begin with lower level offenses (put downs, insults, name-calling, bullying, etc.). Don't wait until the behaviors rise to the level of civil or criminal law violations to take action.

Resources:

- www.safeschools.info/bullying-prevention
- www.stopbullying.gov
- www.learningforjustice.org
- www.bullyingpreventioninstitute.org

For more information:

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