

Bullying and Students with Disabilities

A Briefing Paper from the National Council on Disability

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Like bullying in general, bullying of students with disabilities represents both a civil rights and public health challenge. Amongst the possible effects of bullying the U.S. Department of Education (DOE, 2010) includes lowered academic achievement and aspirations, increased anxiety, loss of self-esteem and confidence, depression and post-traumatic stress, deterioration in physical health, self-harm and suicidal thinking, suicide, feelings of alienation, absenteeism and other negative impacts, both educational and health related. While both students with and without disabilities face significant negative emotional, educational and physical results from bullying, students with disabilities are both uniquely vulnerable and disproportionately impacted by the bullying phenomena. Despite this, there exists a dearth of both research and policy focusing on eliminating the bullying of students with disabilities. Furthermore, evidence suggests that existing legal and policy tools available to address bullying against students with disabilities remain significantly under-utilized. Additional focus is needed on the bullying of students with disabilities, both as part of a general strategy of bullying prevention efforts and as a specific area of focus in policy and practice.

Background

In 1970, only one in every five children with disabilities received a public education and many states had laws specifically excluding particular disability categories (i.e., children who were deaf, blind, with intellectual disabilities, or emotional disturbance) from public education (DOE). As a result of landmark court cases such as *PARC v. Pennsylvania (1971)*, it was established that the 14th Amendment's equal protection clause required that students with disabilities have the same opportunity to receive a free and appropriate public education as students without disabilities and that, wherever possible, placement in a regular public school class should be the preference. Public Law 94-142 (1975), known then as the Education for All Handicapped Children Act and today Public Law 108-446, the Individuals with Disabilities Education Improvement Act (IDEA) of 2004, created both a legal and funding infrastructure to help ensure that students with disabilities would enjoy the right to a "free and appropriate public education" in the "least restrictive environment." As a result, many more students with disabilities began to attend and be educated in general education schools and classrooms and thus interacted more with students without disabilities.

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Research confirms that students with disabilities benefit from being included in the same school settings as their non-disabled peers and that segregated programs fail to demonstrate greater effectiveness (Lipsky, 1997; Buckley, 2000; and Sailor, 2002). Furthermore, research suggests that students without disabilities may also benefit from inclusion and that, when properly implemented, inclusion of students with disabilities does not negatively impact student test scores, grades, the amount of allocated and engaged instructional time or the rate of interruption to planned activities (York, Vandercook, MacDonald, Heise-Neff, and Caughey, 1992). Despite this, the increased inclusion of students with disabilities, while the right policy and legal decision, necessitates additional efforts to ensure welcoming school environments for students with disabilities. As demonstrated by both the all too frequent bullying experiences students with disabilities continue to face and the slow progress in fully integrating students with disabilities in public schools (NCD, 2008) across the country, such welcoming environments have not always been forthcoming.

Literature Review

Studies show that students with visible and non-visible disabilities are subject to more bullying than non-disabled peers (Carter and Spencer, 2006). Bullying is frequently a direct result of a student's disability (Whitney, Smith & Thompson, 1994). Students with disabilities are disproportionately likely to face peer rejection, a significant risk factor for victimization (Martlew & Hodson, 1991; Whitney, et al, 1994; and Hodges and Perry, 1996). Many students with disabilities have significant social skills challenges, either as a core trait of their disability or as a result of social isolation due to segregated environments and/or peer rejection. Such students may be at particular risk for bullying and victimization. For example, Little's (2002) study of U.S. mothers found that 94% of children with a diagnosis of Asperger's Syndrome faced peer victimization, with a broad swatch of different types of victimization including emotional bullying (75%), gang attacks (10%) and nonsexual assaults to the genitals (15%).

Other research (Siebeker, Swearer, and Lieske, 2005; and Regional Education Laboratory, 2010) has indicated that students with a wide range of disabilities face increased bullying victimization, including students with visible and invisible disabilities, students with physical, developmental, intellectual, emotional and sensory disabilities and others. A 2003 study found that 34% of students who report taking medication for ADHD face bullying victimization at least 2-3 times a month, a substantial increase over the rate of bullying victimization from other students surveyed (Unnever and Cornell, 2003). Wiener and Mak (2009) also found high rates of victims among girls with Attention Deficit and Hypertension Disabilities. Langevin, Bortnick, Hammer and Wiebe's (1998), a Canadian study examining the relationship between stuttering and selection as a target for bullying, found that at least 59% of students studied were bullied about their stuttering, 69% of students who stutter were also bullied about other things and that said bullying very frequently takes place on at least a weekly basis.

Evidence suggests that the response of policymakers, educators and researchers to the bullying of students with disabilities has not been nearly sufficient to address the breadth or gravity of the problem. For example, Massachusetts Advocates for Children's (2009) survey of families of children on the autism spectrum found that almost 40% of said children experienced bullying for in excess of a year and that while 92% of parents discussed the bullying with school officials, 68% of families found the response of the school district to be inadequate. Only 21.5% of parents

surveyed heard about the bullying from the school, with 80.6% hearing from the student him or herself. Given that many students with disabilities face significant communication barriers and are thus unable to report bullying and victimization themselves, protecting the rights of parents to be informed when their children face incidents of bullying or victimization may be a critical area for future law and practice around bullying. Increased research in this area is also necessary. While the existing literature has clearly established that students with disabilities face higher rates of bullying and victimization than the general student population, very little research on bullying prevention has focused on students with disabilities either in isolation or as an identified sub-category in broader bullying prevention initiatives.

Who Qualifies as a Student with a Disability?

One of the first and most important legal questions with respect to bullying and students with disabilities is: who qualifies as a student with a disability? The answer to this question varies depending on the law under question. There are two major definitions of disability that are relevant in the educational context: students with disabilities under Section 504 of the Rehabilitation Act and students with disabilities under IDEA. To be a student with a disability under Section 504, a student must, (1) have a physical or mental impairment that substantially limits one or more major life activities; (2) have a record of such an impairment; or (3) be regarded as having such an impairment (DOE, 2010).” While there does not exist a comprehensive list of what constitutes a physical or mental impairment, the term is intended to be construed broadly. Recently, in the ADA Amendments Act of 2008, Congress provided a non-exhaustive list of major life activities, including but not limited to, “caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working (ADA, 2008). The ADA Amendments Act makes clear that the ADA’s, and as a result Section 504’s, definition of disability is intended to be construed very broadly. IDEA’s definition of a child with a disability is narrower, in part because of the broader legal rights and educational entitlements available to eligible students under IDEA. Under IDEA, a child with a disability must be evaluated and determined to fall within one of a series of specific, defined disability categories, such as intellectual disability, deafness, blindness, emotional disturbance, autism, specific learning disability and others, and need special education and related services by reason thereof (ADA, 2008).

Bullying and Existing Disability and Special Education Laws

Bullying prevention efforts interact in various ways with disability non-discrimination laws, some of which are similar to dynamics around laws protecting other minority groups while others remain unique. In 2000, the Department of Education’s Office of Special Education and Rehabilitative Services and Office on Civil Rights issued a joint, “Dear Colleague” letter highlighting the issue of disability harassment, a category within which bullying of students with disabilities is included (DOE, 2000). The letter noted that several laws were relevant to the issue of disability harassment. It notes that educational institutions, including both K-12 schools and institutions of higher education, have a responsibility to ensure equal educational opportunity for all students and that disability harassment denies that right and as a result is a form of discrimination prohibited by Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act. The DOE (2000) letter defines disability harassment as “intimidation or abusive behavior toward a student based on disability that creates a hostile environment by

interfering with or denying a student's participation in or receipt of benefits, services, or opportunities in the institution's program...When harassing conduct is sufficiently severe, persistent, or pervasive that it creates a hostile environment, it can violate a student's rights under the Section 504 and Title II regulations...even if there are no tangible effects on the student (DOE, 2000, p. 3)." The letter also notes that failure to address disability harassment may constitute a violation of the Individuals with Disabilities Education Act's (IDEA) guarantee of a Free and Appropriate Public Education (FAPE) for students with disabilities when harassment prevents or diminishes the ability of a student to benefit from his or her education (DOE, 2000, p.4). Although the letter does not say so specifically, bullying of students with disabilities may also constitute a violation of IDEA when it forces a student with a disability into a more restrictive educational setting such as a self-contained classroom or out of district placement in order to benefit from their educational experience, given IDEA's legal right for students with disabilities to receive a Free and Appropriate Public Education (FAPE) in the Least Restrictive Environment (LRE).

More recently, the DOE's (2010) "Dear Colleague" letter included disability in a list of protected classes (e.g., race, gender, disability) from which schools must respond to bullying and harassment on the basis of. The DOE (2010) letter spelled out the legal obligations schools possess under existing civil rights laws, including Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act and provided examples of various types of harassment and bullying against protected classes as well as potential school responses. Among the responses mentioned in the context of disability include "disciplinary action against the harassers, consultation with the district's Section 504/Title II coordinator to ensure a comprehensive and effective response, special training for staff on recognizing and effectively responding to harassment of students with disabilities, and monitoring to ensure that the harassment did not resume (DOE, 2010)."

It should be noted that while DOE 2010 speaks primarily of harassment on the basis of protected class status, IDEA's FAPE and LRE provisions may impose upon school districts a legal responsibility to act to protect students with disabilities eligible under IDEA from more general bullying and harassment as well. IDEA does not simply require districts to protect students with disabilities from bullying, harassment and overt discrimination on the basis of disability, but also creates an entitlement to a "free and appropriate public education in the least restrictive environment" which frequently requires funding related services, making educational accommodations and modifications as well as working to address issues such as school climate, access needs and other factors that might hinder a student's ability to fully benefit from their education in the least restrictive environment possible. For example, when bullying of a student with a disability results in a student being transferred into a self-contained classroom or a special education school serving only students with disabilities as opposed to receiving an education in a general classroom setting, a student's IDEA LRE rights may have been violated regardless of the type of bullying that precipitated the change in placement. As research shows that students with disabilities are not only subject to bullying and harassment on the basis of disability, but also are frequently more vulnerable to bullying and harassment of a more general nature as well, it is important that the potentially broader protections of IDEA are made use of for this population.

IDEA is relevant to the issue of bullying of students with disabilities in at least two additional respects. First, the Individualized Education Plan process represents a potentially useful avenue to address bullying through both pro-active and reactive measures. Under IDEA, students with disabilities receive an Individualized Education Plan (IEP) as a result of a deliberative process involving educators, administrators, child study team members, parents and, where appropriate, the student. The IEP outlines the student's educational plan, accommodations, related services and goals for the year. The IEP can be useful both for helping students develop useful self-advocacy skills to avoid or effectively respond to bullying and harassment from peers or adults. It can also be a useful way of planning for how educators can intervene in the classroom, during extracurricular activities or in other school settings to help protect students from bullying behaviors. The utility of the IEP as a tool to address bullying has been recognized at the state level. Massachusetts (2010) recently passed into law a requirement that IEPs "address the skills and proficiencies needed to avoid and respond to bullying, harassment or teasing" for students with social skills related disabilities and whenever a student with a disability is vulnerable to disability-based bullying, harassment or teasing.

Secondly, IDEA's provisions around discipline state that a student with a disability may not have their educational placement changed in response to behavior that was a manifestation of a student's disability or the result of a school's failure to implement the student's IEP (34 C.F.R. § 300.530). In an instance in which a child with a disability under IDEA is engaged in bullying behavior, it is important that anti-bullying measures not come into conflict with or serve to restrict existing rights under IDEA. State anti-bullying laws have in many instances attempted to address this with language indicating that anti-bullying laws are not intended to infringe upon IDEA rights. Such language must be carefully constructed to ensure that it does not serve to exclude students with disabilities from anti-bullying efforts and protections. For example, an early proposed draft of a New Jersey (2010) anti-bullying law had attempted to address the potential conflict with IDEA by excluding bullying and harassment which occurred "exclusively among or between special education students or students with developmental disabilities". Such an approach would have deprived students with disabilities of the same civil rights protections other groups would benefit from in the anti-bullying legislation, and would have been extremely inadvisable. Instead, the legislation was modified before it passed the legislature to simply clarify that, "nothing contained in the "Anti-Bullying Bill of Rights Act," shall alter or reduce the rights of a student with a disability with regard to disciplinary actions or to general or special educational services and supports

Policy Recommendations

Effectively addressing bullying of students with disabilities will require undertaking action as part of both general and special education policy. Students with disabilities must be included on an equal basis with other protected classes in bullying prevention efforts undertaken as part of general education laws and policy initiatives such as the upcoming re-authorization of the Elementary and Secondary Education Act and bullying prevention efforts from the Health Resources and Services Administration (HRSA) and the Department of Education Office for Civil Rights. In addition, it is also necessary to strengthen and increase the use of anti-bullying tools unique to students with disabilities, such as IEP process and IDEA's guarantee of a Free and Appropriate Public Education (FAPE) in the Least Restrictive Environment (LRE). We recommend the following policy actions:

1. **Collaborating in Federal Research Program on Bullying Prevention:** Given that bullying prevention has implications for educational practice, civil rights and public health, research will play a crucial role in shaping anti-bullying efforts in the coming years. The executive branch should ensure that disability is included in federal research efforts on bullying through encouraging the involvement of disability-oriented agencies with mandated broad research and policy missions, like the National Institute for Disability and Rehabilitation Research (NIDRR) and the National Council on Disability (NCD), in broader federal bullying prevention efforts such as the Federal Partners in Bullying Prevention Task Force.
2. **Requiring Parental Notification:** Families frequently learn of incidents of bullying and harassment only well after they occur, if at all. As Congress considers means by which to incorporate bullying prevention into the re-authorization of the Elementary and Secondary Education Act (ESEA) and other relevant education policy laws, a requirement that parents be notified when their child is involved as either victim or perpetrator in an incident of bullying or harassment may be a useful tool to consider. This may be particularly important for students with communication related disabilities whose families may not otherwise become aware of incidents.
3. **Expanding the Role of the IEP:** For students with disabilities, the IEP is a natural tool for bullying prevention and elimination. The DOE Office on Special Education and Rehabilitation Services should expand technical assistance on how to utilize the IEP to protect students with disabilities from bullying and harassment and effective ways to address bullying behaviors that may be linked to a disability. Consideration should be given to incorporating bullying prevention as a priority within the IEP in the next re-authorization of the Individuals with Disabilities Education Act (IDEA).
4. **Broadening Data Collection:** Disability must be included in all federal data collection around bullying, victimization, violence, harassment and hate crimes.
5. **Eliminating Workplace Bullying:** Bullying is not limited to educational settings. Many youth and adults continue to face bullying, harassment and other forms of victimization during transition and within the workplace. The Employment Equal Opportunity Commission (EEOC) should be recognized and invited as a critical stakeholder in federal bullying prevention efforts and issues surrounding workplace bullying should be incorporated into our evolving national conversation on bullying.
6. **Fighting Hate Crimes:** The Department of Justice and the Federal Bureau of Investigation should work collaboratively with civil rights and community groups, including those in the disability community, to ensure effective and comprehensive implementation and enforcement of the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act for both adults and youth.
7. **Private Right of Action:** Congress should consider supplementing existing non-discrimination laws such as the Americans with Disabilities Act, Title IX, the Civil Rights Act of 1964 and others, with an explicit private right of action aimed at holding schools accountable for severe, persistent and pervasive bullying and harassment.

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