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### Bullying

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# Bullying

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victimization, aggression, social exclusion, school interventions, legal interventions, pupil harassment

## Abstract

The effects of bullying on the bully and the victim can be wide reaching, impacting schoolwork, familial and peer relationships, psychological well-being, and physical health. As such, schools work to implement different intervention and prevention programs. Additionally, a variety of both criminal and civil legal interventions have recently been used to prevent or punish bullying. Most US states have enacted antibullying legislation that prohibits bullying behaviors, but definitional issues that are present in the empirical research are also present in such statutes. For instance, some states focus only on physical forms of bullying or leave definitions entirely up to individual communities and schools. Bullying victims also have the option to bring civil suits for tortious acts related to the bullying; this review provides examples of the difficulties with bringing such cases.

## INTRODUCTION

By most accounts, youth-on-youth victimization or bullying empirical research began, or at the very least grew, with the focus of Norwegian researcher Dan Olweus in the late 1970s (Espelage & Swearer 2003). Much of the early research was conducted outside the United States and focused on overt bullying (Dake et al. 2003), but the research has expanded into a much broader scope. Bullying, as defined by Olweus (1996, p. 265), occurs when “a student . . . is exposed, repeatedly and over time, to negative actions on the part of one or more other students.” The relationship is characterized by an imbalance of power between the bully and the victim based on physical size, strength, age, or social status. Bullying is the intentional, repetitive harming or injury by one’s peers (Limber & Small 2003, Olweus 1996), and the victim is unable to avoid or stop the victimization (Butler et al. 2009).

Although such a definition has been quite useful in empirical settings, it may be less useful for legal implementation. For the general public, the official bullying definition has had less of an influence than the well-publicized cases involving tragic outcomes for victims and bullies. Clearly, the topic of bullying has become an all-too-common story in the popular media. Such attention has been particularly poignant in the tragic cases of extreme forms of bullying or in cases related to victims’ suicides or especially violent retaliations, such as school shootings. In each instance, the problem of bullying is brought into the public consciousness. Although bullying is just one of the many ills today’s youths encounter, empirical research findings demonstrate that it deserves special attention because of its far-reaching consequences and the way it is related to other problems youths face.

This review first describes the different types of bullying, including some definitional and measurement issues. Next, we outline the risk factors related to being a bully or a victim and the effects of that involvement. In the remaining sections, we describe some of the known

insulating factors that seem to protect children from bullying and its effects and, lastly, educational and legal interventions with specific attention to statutory and court interventions.

## DEFINING AND MEASURING BULLYING

Researchers have identified four main types of bullying: physical, verbal, relational, and cyber (Wang et al. 2009). Physical bullying is characterized by physical acts of aggression, such as hitting, punching, or pushing. Relational bullying, also referred to as social exclusion bullying, is characterized by rumor spreading and purposefully leaving others out of activities or interactions, or friendship withholding (Crick & Grotpeter 1995). Verbal bullying is characterized by spoken aggressions, such as name calling and teasing (Bauman & Del Rio 2006). Cyberbullying is peer aggression committed using technology such as text messages, emails, or social networking sites (Butler et al. 2009).

Although the term bullying conjures up images of a playground and elementary school-aged children, the concepts of bullying extend beyond this very narrow picture. Recently, the term bullying has been used in the media to describe interactions between nursing home residents—older adults who behave very similarly to the bullies from elementary school, using relational bullying to ostracize and victimize fellow residents (Mapes 2011). Bullying between siblings is also a relatively new area of research. Although sibling aggression is a relatively common occurrence (Caspi 2012), researchers are now considering and referring to some of this aggression as bullying behavior (Duncan 1999, Menesini et al. 2010; see also sidebar entitled “Sibling Bullying”). Even adults at work are experiencing bullying (Magnuson & Norem 2009); workplace bullies use tactics such as spreading rumors or taking credit for their victims’ work product (Fogg 2008). Despite the expanded use of the term bullying, most past empirical research, as well as our attention to the topic in this article, focuses on in-school, childhood bullying.

Most researchers employ the standard Olweus definition of bullying, but measuring the presence and occurrence of bullying can still be problematic due to the different perspectives of those doing the reporting and the inevitable subjectivity of that reporting. As a case in point, estimations of peer victimization cover a wide margin, usually ranging from 10% (Storch et al. 2002, Wang et al. 2009) up to 75% (Demaray & Malecki 2003). Bullying is most often measured by collecting data through self-reports, peer nominations, or teacher nominations (Espelage & Swearer 2003). Self-report studies focus on each participant completing a battery of questions that relate to their own experiences with bullying (Storch et al. 2002, Tani et al. 2003). Peer nominations involve students designating whom they see as bullies and victims in the class (Graham & Juvonen 2002). Similarly, teacher nominations involve teachers designating whom they perceive to be bullies and victims (Juvonen et al. 2003). Combinations of these data collection techniques are popular; they reduce the problem of subjectivity because different perspectives can be combined to formulate a more complete picture (Coleman & Byrd 2003, Salmivalli 2002, Schwartz et al. 2001). For each reporter—self, peer, or teacher—the questions ask about specific events that have happened in the past year (Demaray & Malecki 2003) or some other length of time (Vernberg et al. 1999). Another technique involves asking students whether they view hypothetical situations as involving bullying (Boulton et al. 2002, Bradshaw & Waasdrop 2009). Clear definitions are essential in all of these types of studies; otherwise, respondents' race, gender, and age can influence interpretations of the words bully and bullying (Bradshaw & Waasdrop 2009).

In fact, simply using the word bully in research studies can decrease self-reporting rates (Kert et al. 2010). This may occur because of the negative connotations associated with bullying and the resulting social desirability effects, or simply because people have different notions of what the word means. Naylor et al. (2006) demonstrated not only that teachers

## SIBLING BULLYING

In addition to bullying in a school setting, bullying may also occur among siblings. Similar to school bullying, sibling bullying may be physical, verbal, or relational in type; may be intentional in nature; may be repeated over time; and may include an imbalance of power (Menesini et al. 2010). Research has shown that 16.2% of adolescents report being bullied by siblings; more than half of the sibling victims were also involved in school bullying behaviors (Wolke & Samara 2004). Thus, there may be a link between negative sibling and peer relationships. Sibling bullying may have negative effects similar to those of school bullying, such as an increased risk for depression and loneliness (Duncan 1999); however, the unique negative effects of sibling bullying have yet to be fully explored. In one study, Graham-Bermann et al. (1994) tentatively found that the negative emotional effects of sibling bullying, such as depression and anxiety, were more profound for female than male participants.

and students define bullying differently, but also that different measurement styles have an effect. For instance, when Naylor's team asked students and teachers, "Please say what you think bullying is," they found that 33.5% of students and 10% of teachers restricted their definitions to direct bullying behaviors, such as punching and teasing, with no mention of social exclusion, power imbalance, intention, or repetition. Only 5.3% of students included social exclusion in their definitions. Approximately one-third of the students mentioned the possible effects of bullying, but 76% of teachers mentioned the effects. These results suggest that students' ideas about bullying may be different from the research definitions and that teachers may be more concerned than students about the possible effects of bullying.

In addition to the way the questions are asked, another potential reason for the rate of bullying inconsistencies lies in the measurement of bullying. Once the data are collected, researchers have to determine which students fit into the different categories (i.e., bully, victim, or bully/victim), yet that is not always a clear decision. As described above, the Olweus definition is general and does not

include specific cutoff scores. There has been little standardization in determining what scores on different measures are indicative of each status (Solberg & Olweus 2003).

In trying to examine analysis consistency and validity, Solberg & Olweus (2003) considered several different frequencies of being bullied or bullying others to determine the most appropriate cutoff score for labeling students as bullies, victims, or uninvolved parties. They examined the relationships between two global bullying items and a number of scales measuring internalized and externalized problems in order to determine the construct validity of the global measures. The global items asked participants to rate on a five-point scale “How often have you been bullied at school in the past couple months?” and “How often have you taken part in bullying another student at school in the past couple months?” The response options were “I haven’t been bullied/bullied other students at school in the past couple of months,” “only once or twice,” “two or three times a month,” “about once a week,” and “several times a week.” Solberg & Olweus (2003) found the expected correlation between the global items and externalized and internalized problems scales, such that participants who bullied other students scored higher on the externalizing scales and those who were bullied scored higher on the internalizing scales. Based on these findings, the researchers concluded that the two key global items are functional. The authors contend that using the “two or three times a month” response as the lower-bound cutoff is appropriate based on the mean differences of externalized and internalized problems among bullies, victims, non-bullies, and non-victims. This cutoff ensures that the duration of the behavior and the seriousness of the harm inflicted are consistent with past research and more easily replicated by future researchers. According to the authors’ analyses, choosing “only once or twice” or “about once a week” as opposed to “I haven’t been bullied/bullied other students,” “two or three times a month” (the recommended lower bound cutoff), or “several times a week,” would

include either too many students or too few, respectively, allowing for overinclusion and underinclusion of bullying behaviors (Solberg & Olweus 2003).

Wang et al. (2009) found that approximately 30% of students report being involved in bullying over the past two months, as a bully, a victim, or a bully/victim. Their study examined age, race, and gender differences in prevalence using data collected during the Health Behavior in School-Aged Children 2005/2006 study. A survey consisting of demographic items, a form of the Olweus Bully/Victim Questionnaire, and two additional bullying items created for the study was given to 7,508 students from the United States in grades 6–10. The type of bullying students reported varied, with approximately half of the sample reporting experiences with verbal (53.6%) and relational (51.4%) bullying as the bully, victim, or bully/victim. Fewer students reported experiences with physical bullying (20.8%) and cyberbullying (13.6%) (Wang et al. 2009). Similar to other studies (Card et al. 2008), boys were more likely than girls to be involved in physical bullying either as the bully or the victim; girls were more likely than boys to be involved in relational bullying (Powell & Jenson 2010, Wang et al. 2009).

Another potential problem in bullying research is determining which variables are predecessors, correlates, or outcomes of participation in bullying. Researchers must decide whether they are attempting to measure variables that can lead to later involvement in bullying or whether they are attempting to determine outcomes of involvement in bullying. For example, Perren & Alsaker (2006) measured participation in bullying and students’ social behavior at the same experimental session. This research can certainly tell us about the relationship between bullying and social behavior, but we cannot know whether the difference in social behavior preceded involvement in bullying or whether bullying then led to the differences in social behavior. We turn next to research that has identified which factors may lead to increased involvement in bullying.

## **RISK FACTORS RELATED TO BULLYING INVOLVEMENT**

Social science research has attempted to determine which variables impact whether a child becomes a bully, victim, or bully/victim. Researchers have focused on a variety of factors, including social-cognitive, behavioral, family, and environmental variables that can make a child more likely to be involved in bullying. We first outline those factors related to being a bully, and we then examine those factors related to being a victim.

### **Factors Related to Being a Bully**

Research has demonstrated that children who are high on hyperactivity and impulsiveness are more likely to become bullies (Farrington & Baldry 2010). The same study found that children who lack empathy are also more likely to bully other children. Additionally, children who have lower IQs, especially nonverbal, are more likely to be bullies. It is believed that these factors may contribute to bullying because children who are impulsive and hyperactive, but also low on empathy, might not be able to understand that their actions hurt others. Additionally, children who are high on defensive egotism (Salmivalli et al. 1999) and children who report that they believe society is tolerant of antisocial behavior (Marini et al. 2006) are more likely to be bullies. Some seemingly positive factors also make a child more likely to engage in bullying; research has shown that children who are high in leadership skills are more likely to bully and that bullies have larger social circles (Perren & Alsaker 2006).

There are particular behavioral tendencies that are related to students being bullies. Children who act out or exhibit higher levels of externalizing behaviors are more likely to bully other students (Bollmer et al. 2005). Children who cause more trouble in school and are more dishonest are also more likely to bully (Farrington & Baldry 2010). Similarly, children who are bullies are more likely to have

poor self-regulation of their emotions (Garner & Hinton 2010).

Family variables also seem to contribute to a child's participation in bullying. If a student's parent has been convicted of a crime, that child is more likely to be a bully (Farrington & Baldry 2010). Children who witness domestic violence between their parents are also more likely to bully at school (Bowes et al. 2009). Additionally, a history of family involvement with Child Protective Services can make a child more likely to be a bully (Mohapatra et al. 2010). Bullies also report that their parents know less about their daily activities (Marini et al. 2006).

### **Factors Related to Being a Victim**

Certain cognitive and emotional factors may make children more likely to become victims of bullying. Garner & Hinton (2010) found that children are more likely to be bullied if they are less competent in understanding social norms related to displaying sadness. Additionally, students who are more socially anxious (Kärnä et al. 2010) or submissive and withdrawn (Perren & Alsaker 2006) are more likely to be victimized. Children who are low in social competence are at greater risk of being victimized (Cook et al. 2010). Children who internalize behaviors more than they externalize them and who have fewer high-quality friendships are also more likely to be victimized (Bollmer et al. 2005). In fact, having a best friend is related to decreases in victimization (Hodges et al. 1999). Similarly, family support serves as a predictor for victimization, with victims having less social support from their parents than nonvictims (Demaray & Malecki 2004, Khatri & Kupersmidt 2003). It seems that secure parental relationships are negatively correlated with some forms of peer victimization (Coleman 2003, Veenstra et al. 2005); in particular, a father's involvement in his child's life appears to protect the child from extreme forms of victimization (Flouri & Buchanan 2002).

Environmental factors may also play a role in the likelihood that children will be victims.

Victimization as a result of a child's race or ethnicity certainly occurs, but the precise way in which that demographic variable plays a role is less clear (Boulton 1995, Nansel et al. 2001, Seals & Young 2003). Research suggests that the relationship may be less about race per se and more about whether a child is part of the racial minority at his or her school. Graham & Juvonen (2002) found that being part of a racial group that is in the numerical minority at school may lead to more victimization; however, victims may feel more loneliness and social anxiety when they are in a classroom where most students are of the same ethnicity as the victims (Bellmore et al. 2004). General school size may also play a role; Bowes et al. (2009) found that children in large schools were more likely to be victimized than those in smaller schools. Not surprisingly, the amount of time spent on computer-based activities is related to cybervictimization (Twyman et al. 2010).

## EFFECTS OF BULLYING

Despite the different methods for measuring bullying and the reasons behind bullying involvement, the negative effects of being bullied and being a bully are clear. Experiencing and even witnessing bullying can lead to serious short- and long-term negative effects for all involved parties. Bullies are characterized as antisocial, aggressive, and impulsive. They exhibit unusually low anxiety and insecurity and lack empathy (Olweus 1996). Bullies are likely to have higher acceptance of violent and aggressive behaviors, exhibit more problem behaviors, and have lower overall psychosocial functioning (Haynie et al. 2001).

Olweus (1983) describes victims as socially weak, shy, and anxious. They are more emotionally distressed and socially marginalized than their nonvictim peers (Juvonen et al. 2003). Victims may also perform more poorly in school (Andreou 2000, Brown & Taylor 2008, Schwartz et al. 2001) and avoid school in order to avoid victimization (Peterson & Rigby 1999, Rethon et al. 2010).

Being the victim of bullying can lead to a heightened risk of psychological side effects (Swearer et al. 2001), such as depression, suicidal attempts and ideation (Klomek et al. 2007), and poor self-esteem (Nation et al. 2008). Skapinakis et al. (2011) found that victims were significantly more likely to report suicidal ideations than were bullies. These negative psychological effects have been found to persist into adulthood (Graham-Bermann et al. 1994).

Experiencing victimization can lead to poor academic performance and attachment to school, leading to truancy and bad test scores (Brown & Taylor 2008, Rethon et al. 2010). Students may avoid school to escape victimization, although this option of avoidance is less helpful with cyberbullying, which takes place through social networking and text messaging (Butler et al. 2009).

Bully/victims—those students who both participate in bullying and are themselves bullied—are the most at-risk group (Cunningham 2007, Stein et al. 2007). They are not bonded to school, display the most behavior problems, have the highest acceptance of deviance, and have more deviant friends (Haynie et al. 2001). They also have a greater likelihood of experiencing low familial warmth and support at home (Baldry & Farrington 2005). The key difference between bullies and those students involved as both bullies and victims is the bully/victims' inability to bond to school. Bully/victims are less committed to school and exhibit the poorest attachment to school (Cunningham 2007), resulting in behavior problems.

Peer victimization can also negatively affect students who witness the bullying interaction. Approximately 63% of students report having witnessed bullying at least once in the preceding nine weeks (Rivers et al. 2009). Students who witness bullying can experience covictimization, experiencing the abuse for or with the victim, or revictimization, recalling their own experiences with victimization. They can also experience anxiety produced by the contrasting desires to stop the victimization but to avoid

becoming a target themselves. Rivers & Noret (2010) found that bystanders were also likely to suffer from psychological effects, such as suicidal ideation.

Although newer research focused on cyberbullying has found that this form of bullying is somewhat different from traditional bullying because it occurs outside of school (Smith et al. 2008) and allows victimization by strangers (Wolak et al. 2007), cyberbullying seems to have similar negative effects for cybervictims and cyberbully/victims as compared to the effects on traditional victims (Sourander et al. 2010). In some ways, however, cyberbullying may be more harmful. Specifically, newer research suggests cyberbullying can have even more negative impacts on levels of depression than traditional bullying does (Wang et al. 2011), partly because of the accessibility of victims and the ability to victimize anonymously (Drogin & Young 2008).

In general, it is clear that youths involved in bullying suffer negative consequences in the short and long terms. Some studies, such as Garner & Hinton (2010), focus primarily on the more immediate effects, measuring outcome variables at the same time or within a few years of the negative bullying experience, or stopping measurement once children reach adulthood (Farrington & Baldry 2010). Studies that have the resources and sample to follow children into adulthood to determine whether the negative effects of bullying continue are rare, but one such study first interviewed males between the ages of 8 and 9 and most recently interviewed them approximately 40 years later (Farrington & Ttofi 2011). Across the years of interviews and reviews of criminal records, bullying behaviors at age 14 predicted negative behaviors such as self-reported violence, violent convictions, low job status, and a generally “unsuccessful life.”

## **INSULATING FACTORS**

Although bullying behaviors are predictive of a number of negative outcomes, not all youths involved in bullying suffer the same level of

harmful consequences. One potential explanation is the presence of insulating or protective factors that buffer children from the deleterious effects of being victimized (Rigby 2000). Although we know a great deal about the effects of bullying on victims, we know less about what can be done to protect children from those effects when bullying does occur (Graham & Juvonen 2002).

Research suggests that support from friends and family is important in buffering the effects of victimization. Storch et al. (2003) demonstrated that the deleterious effects of victimization can be partially moderated by prosocial behaviors of the victim’s friends (see also Masia-Warner & Storch 2004, Rothon et al. 2010). As mentioned above, having a best friend is related to decreases in victimization; it also decreases the negative effects of victimization (Bollmer et al. 2005, Hodges et al. 1999). Furthermore, having a best friend who exhibited protective factors (i.e., operationalized by sticking up for a friend) eliminated the relationship between victimization and negative internalizing behaviors (Hodges et al. 1999). In fact, these positive insulating friendship effects were similar for girls and boys (Schwartz et al. 2001). Rothon et al. (2010) reported that the well-established negative effects of victimization on academic performance were lessened when the student had peer social support and also that family support decreased the depressive symptoms attributed to victimization. In fact, Stadler et al. (2010) found that middle school-aged females who were bullied, but had parental support, were less likely to exhibit harms from being bullied. Warm and positive family relationships and environments seem to protect children from the negative effects of being bullied (Bowes et al. 2010). Teachers too can have a positive effect. The positive support of teachers and friends lessens the negative effects of bullying on quality-of-life ratings (Flaspohter et al. 2009). Unfortunately, those students involved in bullying (as victims, bullies, or bully/victims) often have less overall social support than those not involved in bullying (Holt & Espelage 2007).



Some research has suggested that genetics may play a role in how children are affected by bullying. Sugden et al. (2010) hypothesized that the polymorphic region of the promoter of the serotonin transporter gene, which controls the brain's recycling of serotonin in neurosynapses, may moderate the negative effects of bullying. Serotonin, a neurotransmitter that influences a variety of psychological and physical functions, has been shown to be related to depression and may play a role in moderating the harmful effects on bullying victims. Sugden et al. (2010) obtained DNA from 2,232 children as part of the Medical Research Council-funded Environmental Risk (E-Risk) Longitudinal Twin Study and measured bullying victimization and emotional problems at ages 5 and 12. The researchers found a significant relationship between a specific genotype of the serotonin transporter gene and the effect of childhood bullying on development of subsequent emotional problems. Although victimization was significantly associated with more emotional problems overall, this effect was moderated by the genotype of the children's serotonin transporter gene. Children who had two short alleles of this gene, a genotype that leads to decreased synaptic recycling of serotonin, exhibited the strongest negative effects of victimization on emotional problems. Children who had a short-long gene or two long alleles were less susceptible to the negative effects.

Global self-worth seems to influence the relationship between peer victimization and anxiety, although for girls it mediated the relationship, and for boys it was a moderator (Flaspohter et al. 2009, Grills & Ollendick 2002). Holt & Espelage (2007) found that those students who were victims, including bully/victims, reported the highest level of anxiety/depression when they perceived peer support as high; bullies, however, had the highest anxiety/depression when they had low perceived peer support. The authors speculated that this result occurred because the victims who reported the high peer support may have been inaccurate in this assessment, the victims may not have been able to effectively use the

support (if there actually was support), or the friendships the victims did have were wrought with strife and therefore unable to provide buffering against the negative emotional consequences of being victimized.

Some interventions meant to address bullying have focused on insulating factors as a way to protect children when they are victimized; others attempt to stop bullying from occurring through education or punishment. We turn next to both educational and legal interventions.

## **BULLYING INTERVENTIONS**

### **Educational Interventions**

A popular way to address bullying is through school and teacher intervention programs. Such interventions may be applied at the individual, classroom, or school level and can be employed as a way to prevent or address bullying. In general, these programs focus on educating the members of a school on how to recognize bullying and what to do when bullying is present. Many of these programs are based on the Olweus (1983) model.

For instance, Olweus et al. (1999) developed the Bullying Prevention Program, the goal of which is to prevent and reduce bullying by providing school children with age-appropriate information and interventions. There are school-, classroom-, and individual-level focuses in the program. For instance, at the school level, the program involves first determining the current status of bullying at a particular school. Through a questionnaire, information is gleaned about the kinds and times of bullying occurrences. Additional teacher supervision might then be implemented during particular time periods and at particular locations that appear problematic based on the answers to the questionnaire. At the classroom level, students are engaged in activities, such as role-playing, that allow the students to address the harms related to bullying and to explore ways to decrease bullying. At the individual level, the program focuses on providing both support for victims

and interventions for students exhibiting bullying behaviors. Empirical studies examining this intervention program have shown decreases in self-reported bullying (Melton et al. 1998) and observed bullying incidents (Black & Jackson 2007). Both relational and physical forms of bullying were reduced (Bauer et al. 2007).

KiVa is another antibullying program that has been implemented nationwide in Finland. The program rests on the theory that bullies are engaging in bullying activities as a way to exert their power over lower-status victims and that bystanders effectively reinforce bullying behavior by not getting involved. Thus, KiVa focuses on engaging bystanders by, among other things, increasing their antibullying attitudes. Employing a quasi-experimental approach, Kärnä et al. (2011) determined that the nationwide implementation of KiVa did have some positive, although relatively small, success in reducing bullying.

Another empirically supported intervention program is Bully Busters (Newman et al. 2000), which focuses at the classroom level on teacher awareness and develops teachers' intervention skills. Based on the theory that bullying occurs within a child's larger context of home, peers, and community, the program develops teachers' skills related to increasing awareness of bullying, recognizing bullying, intervening when there is bullying, and preventing bullying. The program has garnered positive empirical support; teachers who have participated in the program have higher levels of knowledge and use of intervention skills, and its implementation is related to reductions in bullying behaviors (Newman-Carlson & Horne 2004). In fact, even the abbreviated form of the Bully Busters program had a similarly positive effect on teachers' ability to intervene in bullying behaviors (Bell et al. 2010).

Although implementations of bullying intervention programs are frequent, empirical evaluations of them are less common; however, Farrington & Ttofi (2009) recently conducted a large-scale meta-analysis to examine the effectiveness of bullying programs. The authors conducted a fairly exhaustive search for

experimental evaluations of programs meant to reduce incidences of bullying. For the 44 studies that fit the authors' criteria, school-based antibullying programs reduced bullying and victimization by approximately 20%.

Sherer & Nickerson (2010) asked school psychologists which antibullying practices they believed to be the most effective. The most commonly endorsed practice was that of school-wide positive-behavior support plans, but most respondents felt that staff education and training concerning bullying was most in need of improvement in their schools. US middle school students surveyed indicated that they prefer bullying to be dealt with before it starts (Crothers et al. 2006). These students felt that ensuring that bullying does not happen in classrooms is the most helpful way for schools to curb bullying. These same students saw school rules and safety pledges about "no bullying" as not particularly helpful. Similarly, they did not view it as helpful to pair victims and bullies as study partners. Despite these middle school students' views about rules against bullying, a common response to the problem of bullying is a legal, rule-oriented response.

## Legal Interventions

Recent media and research attention on bullying has resulted in a proliferation of antibullying legislation designed to protect students. According to the Web site Bully Police USA (<http://www.bullypolice.org>), 49 states in the United States have implemented laws that prohibit bullying behaviors or that require faculty or staff to report any bullying to appropriate authorities. Although the legal system may be one way to reduce the prevalence and harms of bullying in schools, this approach does not come without problems. Legal interventions, including legislation and criminal and civil penalties, can serve to punish offenders, deter instances of bullying, and encourage schools and parents to privately control instances of bullying. Commentators have noted, however, that federal and state remedies for bullying may be inadequate because the remedies come after the

harm has already been completed, after the student has already changed schools, or when the child is well past 18 years old (Sacks & Salem 2009). Additionally, simply saying that bullying should not occur does not address the myriad causes and consequences of bullying.

After analyzing 15 state statutes, Limber & Small (2003) recommended that state legislatures precisely define bullying, as opposed to leaving the definition up to individual school boards. They suggested that states require all local school boards to develop bullying policies and recommended that such policies promote research-based bullying prevention programs and training for employees. Limber & Small (2003) also recommended that legislatures avoid focusing on reporting and removal of bullies from schools as their primary bullying interventions. The authors noted that, as with any legal mandate, states must ensure adequate funding for schools to combat and prevent bullying.

**Legal definitions of bullying.** The definitional issues present in the research have spilled into the legal arena, resulting in varying legal definitions from state to state, with some statutes including all types of bullying behaviors and others including only physical bullying. Legal definitions generally include intent and harm components but leave out the necessary imbalance of power. It seems, however, that the laws are changing. For example, in 2001, Georgia's antibullying statute prohibited physical acts of aggression that caused harm to other students. This statute prohibited only one type of bullying, ignoring the other three forms and the relationship component required by researchers (Limber & Small 2003). However, in 2010, Georgia updated its statute to include a clear definition of bullying, covering multiple types of bullying. Whereas the statute previously defined bullying as "any willful attempt or threat to inflict injury on another person . . . or any intentional display of force such as would give the victim reason to fear or expect immediate bodily harm" (Limber & Small 2003, p. 447), it now states:

the term "bullying" means an act which occurs on school property, . . . or by use of data or software that is accessed through a computer, computer system, computer network, or other electronic technology of a local school system, that is: any willful attempt or threat to inflict injury on another person, when accompanied by an apparent present ability to do so; any intentional display of force such as would give the victim reason to fear or expect immediate bodily harm; or any intentional written, verbal, or physical act, which a reasonable person would perceive as being intended to threaten, harass, or intimidate, that: causes another person substantial physical harm within the meaning of Code Section 16-5-23.1 or visible bodily harm as such term is defined in Code Section 16-5-23.1; has the effect of substantially interfering with a student's education; is so severe, persistent, or pervasive that it creates an intimidating or threatening educational environment; or has the effect of substantially disrupting the orderly operation of the school. [Ga. Code Ann. § 20-2-751.4 (2011)]

The updated definition solves many of the issues inherent in the older statute by addressing more types of bullying; however, the new definition still does not directly mention the power imbalance required by research definitions.

Some state statutes do not clearly define what is considered bullying and leave it up to the school boards. For example, the Arkansas antibullying statute states, "The school board of directors in every school district shall adopt policies to prevent pupil harassment, also known as bullying. . . . The policies shall: clearly define conduct that constitutes bullying" [Ark. Code Ann. § 6-18-514 (2003)]. By not defining bullying, there are more opportunities for definitional inconsistency within the state.

**Statutory requirements of antibullying policies.** The primary way state legislatures attempt to control bullying is by mandating that schools create antibullying policies. Statutes

vary in how much discretion schools have in creating such policies. Some state legislatures are very specific in the provisions and protections that should be afforded to students. For example, Connecticut's antibullying statute requires each local and regional board of education to develop a safe school climate plan [Conn. Gen. Stat. § 10-222d (2008)]. Such a plan must include provisions for anonymous reporting of bullying, mandatory reporting to supervisors of any instances of bullying, notification of the parents of both the bullies and the victims involved, and documentation and maintenance of records of bullying. Some state statutes, such as the one in effect in Massachusetts, require protections against retaliation for any student or teacher who reports bullying [see, e.g., Mass. Gen. Laws ch. 71, § 370 (2010)]. Texas's antibullying statute prohibits schools from disciplining any student who uses reasonable self-defense when being bullied [Tex. Code Ann. § 37.0832 (2011)]. Although some state codes, such as Connecticut's, limit the definition of bullying to instances among students [see, e.g., Conn. Gen. Stat. § 10-222d (2008)], Iowa's requires schools to prohibit bullying by all school employees, volunteers, and students [Iowa Code Ann. § 280.28 (2007)]. In contrast, Pennsylvania provides much more discretion to individual schools—its statute requires only that each school adopt a policy to prevent and intervene in bullying [Pa. Cons. Stat. Ann. § 13-1303.1-A (2008)]. Utah, similarly, gives individual school districts discretion to adopt and amend a policy with input from students, teachers, parents, administrators, staff, and local law enforcement agencies [Utah Code Ann. §53-A-11a-301 (2008)].

As discussed above, there are several empirically tested bullying intervention programs. Currently, no state specifically requires a school district to institute one of these proven programs. In fact, statutes do not require the policies that schools adopt to be empirically tested or research based; instead, most legislatures defer to the experience of school administrators and allow them to craft the policy that is best suited for the individual school district. It is

largely up to school administrators, then, to decide whether or not to implement an empirically tested bullying intervention program.

#### **Court interventions: criminal sanctions.**

Legislation that mandates a school bullying policy is a more indirect regulation of bullying; state legislatures instruct schools to create policies, but it is still up to the school to implement and enforce these policies. More direct forms of legal intervention for bullying include criminal sanctions and civil lawsuits. If bullying rises to the level of assault—i.e., an act that purposely, knowingly, or recklessly causes bodily injury to another [Model Penal Code § 211.1 (1981)]—state prosecutors can file criminal charges against the bully, but such criminal prosecution would apply only to physical bullying.

Some relational bullying may amount to criminal harassment or fall under state prohibitions of hate speech. In *Virginia v. Black* (2003), the US Supreme Court held that speech that constitutes a true threat is not protected by the First Amendment, and, thus, states may punish or prohibit such speech. Kentucky, for instance, includes in their penal code a prohibition against students, while on school premises, damaging or stealing another student's property, substantially disrupting the operation of the school, or creating a hostile environment [Ky. Rev. Stat. Ann. § 525.070 (2012)]. Under Kentucky's statute, harassment is a violation, similar to a speeding ticket, and offenders receive a citation, but no criminal charges are brought.

#### **Court interventions: civil suits against bullies and parents.**

Students and their parents have also sought civil remedies in response to bullying. In some instances, the victims of bullying may be able to sue their bullies for tortious acts (*Finkel v. Dauber* 2010). Victims may be able to sue for assault if the bully places them in threat of bodily harm or battery if the bully causes intentional offensive contact. Additionally, if the victim can prove he or she was severely emotionally distressed by the bullying,

a lawsuit for intentional infliction of emotional distress or negligent infliction of emotional distress may be brought. If the bully publicizes statements that the bully knows or (at least) reasonably should have known are false, the victim may be able to recover for defamation or libel, but such cases are difficult to win. For example, in *Finkel v. Dauber* (2010), a student sued her classmates for defamation when they created a Facebook group focused on making fun of her. The students had posted various statements that referred to the plaintiff in derogatory ways, including that she received several sexually transmitted diseases from a horse, a baboon, and a male prostitute. The Supreme Court of New York determined there was no statement of fact, and thus no defamation, because no reasonable reader, given the context of the postings, would believe the statements to be true. This case illustrates the difficulties that victims may have in recovering damages from their bullies.

Victims may also try to hold the parents of bullies responsible for any harm caused by bullying. One potential cause of action may be negligent supervision—the parents negligently failed to prevent their children from causing some foreseeable harm. This cause of action is more likely to result when children bully others outside of the school setting, such as instances of cyberbullying. Some courts, however, have explicitly refused to recognize a cause of action for negligent supervision of a child and have limited the liability of parents to extreme circumstances (*Finkel v. Dauber* 2010). For example, the New York Supreme Court in *Finkel* reasoned that parents are only responsible for negligent supervision if they entrust their children with a dangerous instrument and fail to supervise the use of such instrument; the court determined that declaring a computer or the Internet a dangerous instrument would expand parental liability far beyond what is reasonable.

**Court interventions: civil suits against schools.** In addition to pursuing constitutional and statutory claims, victims may hold schools responsible, by way of a tort claim, for failing

to protect them from bullying. One such tort is negligent supervision. The Supreme Court of New York held that schools have an affirmative duty to adequately supervise students in their charge and that the schools will be held liable for foreseeable injuries that are proximately related to an absence of adequate supervision (*Johnson v. Ken-Ton Union Free Sch. Dist.* 2008). In such cases, the victim must show that the school had knowledge or notice of the dangerous conduct so that the school could have reasonably anticipated the acts of the bullying student. Similarly, victims may sue schools for negligent entrustment, if the school entrusts the care of the students to a third party whom the school actually and specifically knows is incapable of providing care to the students, as long as the harm is foreseeable and the incapacity is the proximate cause of the harm. This situation may arise when schools contract transportation to private companies and the companies fail to supervise. For example, in *Seiwert v. Spencer-Owen Community School Corp.* (2007), parents of a bullying victim sought to hold the school responsible for bullying that occurred on a school bus. The bus driver was a private employee and not a school employee, so the school was not directly in control of the driver's actions. However, the Southern District of Illinois held that because students are the intended beneficiaries of contracts between schools and private transportation companies, a duty of due care to ensure the students' safety arises out of these contracts. Tort claims, however, are not always easy for students to prove; additionally, some states may have statutes that provide their school districts with immunity from claims of negligence, preventing students from successfully bringing these types of claims.

**Constitutional and United Nations protections.** If bullying does occur in a school setting, there may be other ways for victims to hold the school responsible for any harm that results. The US Constitution may create an affirmative duty to protect students. The Due Process Clause of the Fourteenth Amendment guarantees that the government will not deprive

persons of life, liberty, or property without due process of law; this may, in some circumstances, require governments to protect citizens. The government is only required to affirmatively act to protect its citizens in a limited number of circumstances; the Eastern District of New York held that, because students are required to attend school, there may be a special relationship that creates an affirmative duty on the part of public schools (*T.K. v. New York City Department of Education* 2011). The Western District of Pennsylvania, however, refused to require governments to affirmatively protect students under the Due Process Clause unless there is a state-created danger (*Magwood v. French* 2007).

The Equal Protection Clause prohibits states from denying any person the equal protection of their laws. To prove an equal protection violation, a student must show that he or she was afforded a lower level of protection (for example, if the school deviated from its established antibullying policies) as a result of specific characteristics, such as the student's race, gender, or disability (*Seiwert v. Spencer-Owen Community School Corp.* 2007).

In addition to the provisions in the US Constitution, international law may address the issue of bullying. In 1989, the United Nations held a Convention on the Rights of the Child to discuss the special care and protection of individuals under the age of 18. The four core principles of the convention are (a) nondiscrimination; (b) best interests of the child; (c) the right to life, survival, and development; and (d) respect for the views of the child. Article 19 states that children have the right to be free from physical and mental violence. Nations that adopt the convention are due to uphold its requirements, which could be interpreted to require nations to protect children against bullying.

**Federal statutory protections.** Federal statutes may create a private cause of action against schools. Title VI of the Civil Rights Act prohibits any program receiving federal financial assistance from excluding someone from participation, denying someone benefits,

or subjecting someone to discrimination on the basis of race, color, or national origin; Title IX includes a similar prohibition against discrimination on the basis of sex (42 U.S.C. § 2000 et seq., 1964). In *Davis v. Monroe County Board of Education* (1999), a student was subjected to prolonged sexually suggestive comments and sexual harassment by another student. The victim's mother alleged that the school failed to take any action based on her complaints about the sexual harassment. The US Supreme Court held that a school that is the recipient of federal funding may be liable in damages if the harassment is sufficiently severe, pervasive, and objectively offensive to effectively bar the victim's access to educational opportunity. Additionally, schools will only be liable if officials were deliberately indifferent to the harassment. State legislatures may expand state civil rights acts to include additional protected characteristics, such as sexual orientation.

The Individuals with Disabilities Education Act requires all states to provide a free appropriate public education to all children with disabilities between ages 3 and 21 [20 U.S.C. § 1412(a)(1)(A) (2004)]. The Ninth Circuit has held that bullying can be used as a factor in establishing that a school district has denied an appropriate education to students with disabilities. Specifically, in *M.L. v. Federal Way School District* (2005), a student with autism and mental retardation was placed in an integrated classroom and repeatedly teased by other students. The court reasoned that a school violates the Individuals with Disabilities Education Act if the school is deliberately indifferent to bullying that is so severe and pervasive that it interferes with educational opportunity. Thus, if a school fails to adequately protect students with disabilities from bullying at school, that school might be held to have denied the student an appropriate education and would be liable to the family for damages.

## CONCLUSION

Extensive bullying research has demonstrated that there are negative effects from being a bully

or being bullied. Such negative effects can be far reaching and long lasting, but some interventions, especially school-wide or targeted ones, have shown success in reducing both the incidence and negative effects of bullying. Lawmakers have attempted to address bullying by legislating against bullying behaviors; at this point, however, the legal attention has been varied at best. State legislatures tend to focus on prohibiting bullying behaviors without defining, or at least defining consistently, what such

behaviors are. Legislation also tends to place much of the decision-making authority on the individual school districts such that the different districts can decide on the interventions and general methods to address bullying. Although case law exists related to bullying, the courts have been relatively reluctant to get involved for a variety of reasons. Future work in this area should consider addressing the legal inconsistencies and provide lawmakers with clear and consistent policies.

## DISCLOSURE STATEMENT

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