

Bullying in Elementary School: An American Perspective

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Abstract

Bullying in elementary schools is a recognized and widespread occurrence that threatens to rob children of their childhood. Part I of this commentary describes existing scientifically-based research on the nature, extent and effects of the phenomenon on children in United States schools. Part II analyzes the effectiveness of bullying prevention programs currently being adopted and implemented in the U.S. Part III describes and analyzes legislative and judicial responses to the problem. Finally, Part IV presents recommendations and strategies for taking action to prevent and reduce the incidences of bullying in elementary schools.

Introduction

Elizabeth Verboys was a happy, academically successful second grader until November of her Grade 2 experience, when she started to get very anxious about going to school. When her mother questioned her, Elizabeth said two girls in school were being mean to her. The girls had told Elizabeth that she was “too nice,” and they did not want to play with her. The two former friends also told the other girls in the class that they should not play with Elizabeth, and Elizabeth was being shunned.

Happily, Elizabeth’s story ended well. Elizabeth’s mother went to school and Elizabeth’s teacher listened to her story. The teacher confronted the two girls, and contacted their parents. Together they worked through the situation, and the girls accepted the message that “being nice” was a goal they should share with Elizabeth.¹

Montana Lance’s story did not end so positively. Montana was a nine year old who locked himself in the bathroom in the nurse’s office at school and hanged himself with his belt.

Montana was severely bullied in school.² Unlike Elizabeth, Montana struggled in school academically. He suffered from attention deficit hyperactivity disorder (ADHD), emotional disturbance, and speech impairment, and was designated as eligible for special education and related services.³ His aggressors physically and psychologically tormented him from Kindergarten through fourth grade, but when Montana repeatedly reported the bullying, school personnel allegedly called him a “tattletale” and a “bad child.”⁴

In December 2009, some students threatened to beat him up, and Montana brandished a small penknife.⁵ The school sent Montana to an alternative school, where the boy expressed

¹ Elizabeth is a real child. The author learned of Elizabeth’s situation and the outcome from her mother Eileen Verboys in February 2013.

² Estate of Lance v. Kyer, 2012 WL 5384200 (E.D. Tex. Sept. 11, 2012) (Slip copy).

³ *Id.* at *1.

⁴ *Id.*

⁵ *Id.* at *2.

suicidal ideation and despair to the school counselor, but the counselor determined that Montana was not high risk, and failed to report his threat of suicide to his parents.⁶

When Montana returned to his regular school, a student shoved him and called him names in the cafeteria.⁷ Later in the day, Montana was caught talking and he was placed in in-school suspension. While detained, he was allowed to use the nurse's bathroom.⁸ He went into the bathroom, locked the door, and committed suicide.⁹

Montana's mother sued the school district, alleging in her complaint that Montana's suicide was a result of the school district's failure to protect him from the students who bullied and harassed him.¹⁰ Mrs. Lance's suit continued in district court on May 11, 2012, with both parties making cross-motions to admit or deny testimony of their respective experts, arguing whether to admit testimony that Montana might have been successfully resuscitated if found in a timely manner, the extent of Montana's pain and suffering, and the educational expertise of various school personnel witnesses.¹¹ The Texas court finally acknowledged that the school district's treatment of peer bullying was "inadequate," and that the district administrators' reaction to what appeared to be widespread peer bullying at Montana's school was to "bury their collective heads in the sand."¹² However, the court dismissed all claims of liability on the part of the district.¹³

A prevailing American myth is that bullying begins in middle school. However, research studies in many Western countries indicate that bullying is more frequent among younger children than among older ones.¹⁴ In the United States over ten years ago, University of Washington researchers noted the widespread and negative effects associated with bullying and victimization in elementary school.¹⁵ In 2001-2002 Gwen Glew and her colleagues collected and analyzed the self-reports of three thousand five hundred thirty Grades 3 to 5 students from twenty-seven elementary schools in a large, urban school district on the West Coast.¹⁶ Questions used to probe the prevalence and effects of bullying and victimization were taken from the Olweus Bully/Victim Questionnaire, a widely used, well-validated measure¹⁷ considered to be

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ Estate of Lance v. Lewisville Indep. Sch. Dist., 2011 WL 4100960 (E.D. Tex., Aug. 23, 2011). Montana's mother died of a heart ailment on September 9, 2012, two days before the court announced its verdict releasing the school district from liability for Montana's bullying-related suicide. See Melissa Cutler, *Montana Lance's Mom, Anti-bullying Advocate, Dies*, (Sept. 10, 2012, 5:31 PM), <http://www.myfoxdfw.com/story/19505851/montana-lances-mom-anti-bullying-advocate-dies>.

¹¹ 2012 WL 1668198 (E.D. Tex. May 11, 2012).

¹² Estate of Lance v. Kyer, 2012 WL 5384200 at *4.

¹³ *Id.* at *5.

¹⁴ Joseph A. Dake, James H. Price & Susan K. Telljohann, *The Nature and Extent of Bullying at School*, 73 J. SCH. HEALTH 173, 173 (2003).

¹⁵ Gwen M. Glew, Ming-Yu Fan, Wayne Katon, Frederick P. Rivara & Mary A. Kernic, *Bullying, Psychosocial Adjustment, and Academic Performance in Elementary School*, 159 ARCHIVES PEDIATRIC & ADOLESCENT MEDICINE 1026, 1030 (2005).

¹⁶ *Id.* at 1029.

¹⁷ *Id.* at 1027.

the “gold standard” for interviewing students about these issues.¹⁸ Bystanders, students who reported that they were neither bullies nor victims, were used as the comparison group.¹⁹

Overall, 14% of students said they bullied others but were not bullied themselves, 6% said they were bullied “always,” but did not bully others, and 2% said they both bullied others and were bullied.²⁰ Bystanders constituted 78% of the total children responding to the bullying questions.²¹ Forty-nine percent of the students were ages eight to nine years old.²²

Lower achievement on standardized test scores was associated with being a bully or victim, and boys were more likely to be both bullies and bully-victims.²³ Victims and bullies admitted to feeling sad most days, suggesting that bullying and victimization are associated with a key depressive symptom as early as elementary grades.²⁴ Glew and colleagues advocated the adoption of antibullying interventions in elementary schools, but noted that evidence-based, whole-school programs to prevent bullying in elementary schools are rarely implemented.²⁵ Time has borne out the researchers’ observation, with most attention in American society focused on bullying in middle and high schools, and on the more dramatic post-bullying suicides of middle and high school students.²⁶ However, the serious consequences of peer bullying and victimization in elementary schools demand attention.

Part I of this commentary examines the origins of bullying of and by children and presents the statistically significant evidence of the damaging effects of peer bullying and victimization on young children. Part II describes scientifically-evaluated bullying prevention programs that have proven effective in curbing or preventing bullying in American elementary schools. Part III describes how state legislatures and the courts are reacting to the problem of bullying in America, and examines their effectiveness. Finally, in Part IV, recommendations for future research and action steps are presented.

Part I: The Origins of Bullying Among Children and Its Documented Effects

Researchers now report that children’s bullying behaviors can be seen outside the home as early as preschool, children’s first exposure to participation in a stable peer group with organized

¹⁸ *Id.* at 1031.

¹⁹ *Id.* at 1027. Later research has shown that bystanders also experience negative sequelae as a result of their witnessing bullying.

²⁰ *Id.* at 1029.

²¹ *Id.* Approximately 12% of students taking part in the survey failed to respond to the bullying questions.

²² *Id.*

²³ *Id.* at 1030.

²⁴ *Id.* at 1031.

²⁵ *Id.*

²⁶ See Kathleen Conn, *Sexting and Teen Suicides: Will School Administrators Be Held Responsible?* 261 EDUC. L. REP. 1 (2010). However, increasing numbers of younger students are taking their own lives as a means of escaping severe and relentless bullying to which school officials are indifferent. See Kathleen Conn, *Two Wrongs Never Make a Right: The Fifth Circuit Abrogates Public Schools’ Duty to Protect Students*, 283 EDUC. L. REP. 1 (2012).

activities.²⁷ The findings indicate that preschool children can be both bullies and victims, of both physical and relational bullying.²⁸ The percentage of preschoolers identified as bullies ranges from 11% to 25%, and as victims, from 6% to 22.1% in different studies; children identified as simultaneous bully-victims ranged from 1.9% to 10%.²⁹ Researchers have documented the co-occurrence, variability, and stability of peer problems such as loneliness, rejection, withdrawal, bullying, and victimization in children as early as the daycare and preschool years.³⁰

A. An Elementary Definition of Bullying

Examining bullying and peer victimization among young children may require a different definition of bullying from the definitions traditionally offered to describe the phenomena.³¹ Scandinavian researcher Dan Olweus, who first studied bullying on a systematic national level in Norway and Sweden, defined peer bullying as repeated exposure to negative actions by one or more peers exerting an asymmetric power relationship. Negative actions, according to Olweus, can include physical contact, words, making faces of dirty gestures, and intentional exclusion from a group.³²

However, because of their less sophisticated cognitive development, younger children may be prone to describe as bullying any actions which they perceive as aggressive, e.g., fighting, but not necessarily repetitive in nature.³³ Younger children may also react in relatively simple and direct ways to current situations or provocations, such as telling a peer that he or she will not be a friend unless the peer gives him or her a certain crayon.³⁴ Multi-informant, multi-method strategies for gathering data, such as developmentally appropriate questioning techniques (e.g., showing pictures of bullying situations before asking students to peer-nominate victims), and direct observations of children's behaviors, indicate that even preschool children can be perpetrators and victims of both direct and indirect peer aggression, and can display different forms of bullying such as physical, verbal, shunning, and social exclusion.³⁵

B. Home Environment and Bullying

Researchers from the United States Centers for Disease Control and Prevention (CDC) examined the effects of family relationships on children's later mental health, and found that safety,

²⁷ Maria Vlachou, Eleni Andreou, Kafenia Botsoglou & Eleni Didaskalou, *Bully/Victim Problems Among Preschool Children: A Review of Current Research Evidence*, 23 EDUC. PSYCHOL. REV. 329, 330 (2011).

²⁸ *Id.* at 333.

²⁹ *Id.* at 334.

³⁰ Kaarina Laine, Marita Neitola, Jatta Auremaa & Eero Laakkonen, *Longitudinal Study on the Co-Occurrence of Peer Problems at Daycare Centre, in Preschool and First Grade of School*, 54 SCANDINAVIAN J. EDUC. RESEARCH 471, 476 (2010).

³¹ Vlachou et al., *supra* note 27, at 331.

³² Dan Olweus, *Bullying or Peer Abuse at School: Facts and Intervention*, 4 CURRENT DIRECTIONS IN PSYCHOL. SCI. 196, 197 (1995).

³³ Vlachou et al., *supra* note 27, at 331-32.

³⁴ *Id.* at 335.

³⁵ *Id.* at 333.

stability, and nurturing deficits in the family resulted in trauma symptoms such as depression, anxiety, anger, and dissociation in children.³⁶ The study focused on a nationally representative sample of 2016 children ages two to nine years old, living in the contiguous United States.³⁷ Telephone interviews with caregivers explored incidents of family-perpetrated victimization, parenting behaviors, parent conflicts, parental dysfunction, family adversity, residential stability, and symptoms of children's trauma within the last year on the one child in the family under ten years of age with the most recent birthday.³⁸ Demographic information was also collected.³⁹ Trauma symptoms in children were significantly related to all negative study variables, but the strongest bivariate associations were found between children's trauma symptom scores and inconsistent and hostile parenting, emotional maltreatment, witnessing family violence, and parental conflict.⁴⁰ When all family risk factors were combined to give a family risk index, researchers found a clear linear and cumulative relationship between the degree of family risk and children's trauma symptom scores.⁴¹

Considerable research has linked harsh home environment in the early years not only to symptoms of trauma, but also to children's negative behavioral orientations such as aggression, hyperactivity, impulsiveness, and other deficits in children's self-regulation.⁴² These behavioral characteristics may also lead to peer victimization,⁴³ in addition to peer aggression. Researchers exploring the link between harsh home environment, peer victimization and aggression, and academic performance conducted a longitudinal study of five hundred eighty-five children in three regions in the states of Indiana and Tennessee, collecting data from the children's entrance into Kindergarten through Grade 6.⁴⁴ The researchers found that indicators of harsh home environment, peer victimization, peer aggression, and social rejection were negatively correlated with academic performance over all years of the study.⁴⁵ Peer victimization intensified the risks associated with harsh home environments, especially homes characterized by parental violence and hostile parenting styles.⁴⁶

³⁶ Heather A. Turner, David Finkelhor, Richard Ormrod, Sherry Hamby, Rebecca T. Leeb, James A. Mercy & Melissa Holt, *Family Context, Victimization, and Child Trauma Symptoms: Variations in Safe, Stable, and Nurturing Relationships During Early and Middle Childhood*, 82 AM. J. ORTHOPSYCHIATRY 209 (2012).

³⁷ *Id.* at 210.

³⁸ *Id.* at 211-12.

³⁹ *Id.* at 212.

⁴⁰ *Id.* at 213.

⁴¹ *Id.* at 214.

⁴² David Schwartz, Jennifer E. Lansford, Kenneth A. Dodge, Gregory S. Pettit & John E. Bates, *The Link Between Harsh Home Environments and Negative Academic Trajectories Is Exacerbated by Victimization in the Elementary School Peer Group*, 49 DEVELOPMENTAL PSYCHOL. 305, 305 (2013).

⁴³ See Joseph A. Dake, James H. Price & Susan Telljohann, *supra* note 14, at 174.

⁴⁴ Schwartz et al., *supra* note 42, at 306.

⁴⁵ *Id.* at 309.

⁴⁶ *Id.* at 311.

Early and increasing peer victimization may also uniquely predict children's depressive symptoms and aggression, independently of home environment effects.⁴⁷ Researchers followed four hundred thirty-three American children from second grade to the end of fifth grade, with three hundred seventy-three entering the study as second graders and an additional sixty children joining them as third graders.⁴⁸ Eighty-nine percent of the original four hundred thirty-three students remained in the study through fifth grade.⁴⁹

Both children and teachers completed surveys to assess degree of victimization, depression, and aggressive behaviors.⁵⁰ Researchers noted sex differences in types of aggression exhibited. Boys showed higher levels of overt aggression in second and fifth grade than girls did, and girls showed more relational aggression, but no sex differences were significant for depressive symptoms or peer victimization.⁵¹ Average levels of victimization declined from second to fifth grade, perhaps, researchers hypothesized, because children's peer groups stabilized, or perhaps as older fifth graders, children felt less of a need to assert themselves.⁵² However, for a distinct subgroup of children, victimization remained stable or increased. Both initial levels of victimization and growth in victimization significantly predicted depressive symptoms, as well as both overt and relational aggression.⁵³ Initial victimization exposure alone, even if not persistent, exerted a long term influence, suggesting that even children who do not continue to experience increased victimization are at risk.⁵⁴

C. Persistent Effects of Bullying and Peer Victimization

Several studies have confirmed a link between bullying and peer victimization in elementary school and problem behaviors in adolescence⁵⁵ and adulthood.⁵⁶ While children's aggression and victimization tend to decrease between toddlerhood and pre-adolescence, a small but significant number of children exhibit stability of aggression or victimization across childhood and adolescence.⁵⁷ Researchers conducting a longitudinal study of over five hundred families participating in the Wisconsin Study of Families and Work followed children from Grades 1 through 9, through multi-informant reports from mothers, teachers, and the children

⁴⁷ Karen D. Rudolph, Wendy Troop-Gordon, Elena T. Hessel & Jennifer D. Schmidt, *A Latent Growth Curve Analysis of Early and Increasing Peer Victimization as Predictors of Mental Health Across Elementary School*, 40 J. CLINICAL CHILD & ADOLESCENT PSYCHOL. 111 (2011).

⁴⁸ *Id.* at 113-14.

⁴⁹ *Id.*

⁵⁰ *Id.* at 114-15.

⁵¹ *Id.* at 115.

⁵² *Id.* at 117.

⁵³ *Id.*

⁵⁴ *Id.* at 118.

⁵⁵ Linnea R. Burk, Jeffrey M. Armstrong, Jong-Hyo Park, Carolyn Zahn-Waxler, Marjorie H. Klein & Marilyn J. Essex, *Stability of Early Identified Aggressive Victim Status in Elementary School with Later Mental Health Problems and Functional Impairments*, 39 J. ABNORMAL CHILD PSYCHOL. 225 (2011).

⁵⁶ Min Jung Kim, Richard F. Catalano, Kevin P. Haggerty & Robert D. Abbott, *Bullying at Elementary School and Problem Behaviour in Young Adulthood: A Study of Bullying, Violence and Substance Abuse from Age 11 to Age 21*, 21 CRIM. BEHAV. & MENTAL HEALTH 136 (2011).

⁵⁷ Burk et al., *supra* note 55, at 226.

themselves.⁵⁸ Using these reports, children were classified as Aggressors, Victims, Aggressive Victims, or Socially Adjusted in Grade 1, and data was collected on their internalizing symptoms, externalizing symptoms, inattention/impulsivity, academic competence, school engagement, global physical health problems, and use of school, medical, and community services over time.⁵⁹ Children were re-classified to groups in Grades 3 and 5, and the stability of group designations over time was examined.⁶⁰ While the groups of Socially Adjusted children and Aggressive Victims remained relatively stable over time, Aggressor and Victim groups were less stable and tended over time to move toward the Socially Adjusted group.⁶¹ Eighty-five percent of Aggressive Victims continued to have significant involvement in peer aggression, victimization, or both through Grade 5.⁶² These recurrent Aggressive Victims showed the highest levels of externalizing symptoms and the highest levels of inattention/impulsivity, along with the lowest levels of academic competence at Grades 5, 7, and 9 compared to all the other groups.⁶³ In addition, although many recurrent Aggressive Victims were receiving mental and physical health services, the levels of their overall impairments were not reduced over time.⁶⁴

Another study, a prospective longitudinal study of over nine hundred young people from Grade 5 through age twenty-one with low attrition over the years (a completion rate of 87%) demonstrated that bullying at Grade 5 was significantly associated with violence, heavy drinking, and marijuana use at age twenty-one, even after controlling for demographics and other risk factors.⁶⁵ The young men and women studied were participants in the Raising Healthy Children project recruited in 1993 and 1994 from ten suburban public elementary schools in the Pacific Northwest of the United States.⁶⁶ Childhood bullying was self-reported at Grade 5 as having committed one or more bullying or violent acts during the past year, with overt and relational bullying subsequently combined into a bullying scale value.⁶⁷ The percentage of youth reporting bullying was 78.4%,⁶⁸ with no statistically significant gender differences in bullying frequency.⁶⁹ Violence at age twenty-one was represented by an index variable that summed the total number of violent acts committed in the previous year,⁷⁰ with 33.6% of the over nine hundred participants reporting having committed one or more violent acts during the previous year.⁷¹ Substance use was reported as any heavy drinking, i.e., frequency of drinking four or more

⁵⁸ *Id.* at 227.

⁵⁹ *Id.* at 229. To ascertain use of health services, mothers reported on the number of school-based behavioral and academic services received by the child, the number of medications used for physical or mental health problems, and whether the child attended psychotherapy sessions. *Id.*

⁶⁰ *Id.* at 230.

⁶¹ *Id.*

⁶² *Id.* at 231.

⁶³ *Id.* at 233.

⁶⁴ *Id.* at 236.

⁶⁵ Kim et al., *supra* note 56, at 137.

⁶⁶ *Id.*

⁶⁷ *Id.* at 138.

⁶⁸ *Id.*

⁶⁹ *Id.* at 140.

⁷⁰ *Id.* at 139.

⁷¹ *Id.* at 138.

alcoholic drinks in a row for males or five in a row for females, in the past year or marijuana use within the past year.⁷² Of the total participants, 71.4% reported heavy drinking and 42.1% reported marijuana use.⁷³

No statistically significant interaction effects for family and peer risk factors, gender, race/ethnicity, socio-economic status or impulsivity were observed when correlating bullying with later problem behaviors.⁷⁴ One limitation of the study was that the violence measure did not capture the number of violent acts or the nature of the violent involvement.⁷⁵ However, the link between bullying in elementary school and later problem behaviors in young adulthood was shown to be statistically significant, even after controlling for various individual and family risk factors.

D. Bullying and Urban Poverty

While bullying by Grade 5 children in suburban elementary schools on the West Coast and its later effects proved to be independent of individual and family risk factors, the interplay of aggression and victimization may differ among high-poverty inner city youth.⁷⁶ Researchers studying children in Grades 1-3 in a large urban public school system in the Northeastern United States examined the dynamic interplay over time between peer aggression, victimization, and aggression-victimization in these early grades.⁷⁷ The data were collected as part of a larger longitudinal study on school drop-outs,⁷⁸ and included three hundred thirty-three children ranging in age from five to eight years old who completed sociometric and self-report questionnaires read to them by trained personnel, and peer-nominated classmates as being aggressive, victimized, socially accepted, prosocial, or withdrawn.⁷⁹

Analysis of results indicated that aggression was stable over time,⁸⁰ but whereas aggression in Grade 2 predicted aggression in Grade 3 for boys, no longitudinal association was found for girls for that same time frame.⁸¹ Victimization scores from Grade 1 to Grade 2 were not significantly correlated, but a significant association was found for victimization from Grade 2 to Grade 3.⁸² For boys, victimization in Grade 1 significantly and negatively predicted aggression in Grade 3, but the opposite was seen for girls: victimization in Grade 1 significantly and positively predicted aggression in Grade 3.⁸³ Children who scored high on victimization in

⁷² *Id.* at 139.

⁷³ *Id.* at 138.

⁷⁴ *Id.* at 139-140.

⁷⁵ *Id.* at 142.

⁷⁶ J. Loes Pouwels & Antonius H.N. Cillessen, *Correlates and Outcomes Associated with Aggression and Victimization Among Elementary-School Children in a Low-Income Urban Context*, 42 *J. YOUTH & ADOLESCENCE* 190, 192 (2013).

⁷⁷ *Id.* at 192.

⁷⁸ *Id.* at 193.

⁷⁹ *Id.* at 194.

⁸⁰ *Id.* at 195.

⁸¹ *Id.*

⁸² *Id.* at 197.

⁸³ *Id.*

Grade 1 were peer-nominated as progressively less prosocial over time, whereas children who scored low on victimization in Grade 1 were seen as becoming more prosocial over time.⁸⁴ Early levels of aggression and victimization were related to adverse behavioral outcomes overall; in particular, a “dose-response” type of interaction was seen, with initial levels of aggression directly related to increasingly negative behavioral outcomes over time.⁸⁵ In contrast, victimization was not stable over time.⁸⁶

The study clearly showed that aggression and victimization were present at the earliest stages in the urban setting.⁸⁷ These findings are most worrisome because aggression is stable over time and leads to progressively more negative behavioral outcomes over time.⁸⁸

E. Bullying and Children with Exceptionalities

Researchers studying four hundred eighty-four Grade 5 students from thirty-five classrooms in a state in the Southeastern United States disaggregated students into three groups: general education students (76.2%), academically gifted students (8.5%), and students with high incidence disabilities, e.g., learning disabilities, mild mental retardation, and mild emotional and behavioral disorders, who spent the majority of their day in general education classrooms (8.5%).⁸⁹ Students with high incidence disabilities generally display social skill deficits and are likely to have significant social interaction problems that lead to low social status, prompting researchers to hypothesize that such students would be more likely to develop social roles that support aggression or that, on the other hand, make them targets of peer aggression.⁹⁰

Researchers collected data⁹¹ from both teachers and students. Teacher rated students on a variety of characteristics relating to aggression, popularity, and academic competence; students nominated peers with according to descriptors of similar characteristics.⁹² General education students, gifted students, and students with disabilities were all equally likely to be considered aggressive or popular by both teachers and peers, and were equally likely to have aggressive associates.⁹³ However, teacher ratings of bullying were significantly higher for students with disabilities.⁹⁴ Students with disabilities who also had aggressive associates had more peer nominations as bullies than any other group.⁹⁵ Teachers and peers also rated students with disabilities as highest in being bullied, but the effect was moderated if the students with

⁸⁴ *Id.* at 199.

⁸⁵ *Id.* at 200.

⁸⁶ *Id.*

⁸⁷ *Id.* at 202.

⁸⁸ *Id.*

⁸⁹ David B. Estell, Thomas W. Farmer, Matthew J. Irvin, Amity Crowther, Patrick Akos & Daniel J. Boudah, *Students with exceptionalities and the Peer Group Context of Bullying and Victimization in Late Elementary School*, 18 J. CHILD & FAM. STUD. 136, 139-40 (2009).

⁹⁰ *Id.* at 138.

⁹¹ *Id.* at 140.

⁹² *Id.* at 141.

⁹³ *Id.* at 143.

⁹⁴ *Id.* at 144.

⁹⁵ *Id.*

disabilities associated with popular students.⁹⁶ Researchers concluded that the social dynamics of bullying and peer victimization involved the interplay between interpersonal characteristics of the disabled students and their associations with negative perceptions of their peer group choices.⁹⁷

Part II: Effective Bullying Prevention Programs

A. The Olweus Program

The Center for the Study and Prevention of Violence at the University of Colorado at Boulder identifies the Olweus Bullying Prevention Program (OBPP) as a Blueprint Model Program, the United States Department of Education lauds it as a “Level 2” program.⁹⁸ In a Policy Statement released in July 2009,⁹⁹ the American Academy of Pediatrics recognized the OBPP as a program proven effective internationally in combating bullying, but which needed “controlled evaluation”¹⁰⁰ in the United States. Such evaluation has resulted in mixed messages with respect to various child-protective outcomes as OBPP has been implemented in different parts of the country, in different public and private schools, and with male and female students at different grade levels.

The OBPP describes itself as a “comprehensive school-wide program” that involves students, teachers, and parents. Developed by Dan Olweus of Norway in the early to mid-1990s, the program proved effective in Grades 4 to 9 in schools in Norwegian schools in both Bergen and Oslo, showing student-reported decreases of from 21-52 % in bully-victim problems.¹⁰¹ The program consists of school level, classroom level, and individual level components, with additional interventions for individual students identified as bullies. School-wide components include questionnaires about experiences involving bullying for students and teachers, a conference day to discuss issues of bullying and the OBPP, formation of a Bullying Prevention Coordinating Committee, and increased supervision of students in critical areas of the school.¹⁰² Classroom components include establishment of class rules against bullying and regular class meetings facilitated by the classroom teacher.¹⁰³ Individual components include interventions with individual students and parents, conducted by teachers with the assistance of counselors and school-based mental health professionals.¹⁰⁴

⁹⁶ *Id.* at 146.

⁹⁷ *Id.*

⁹⁸ *Olweus Bullying Prevention Program*, <http://clemson.edu/olweus>. The United States Department of Education recognizes as Level 2 programs those programs that are scientifically demonstrated by experimental or quasi- experimental research to prevent or reduce delinquency among children.

⁹⁹ Committee on Injury, Violence, and Poison Prevention, *Policy Statement – Role of the Pediatrician in Youth Violence Prevention*, 124 PEDIATRICS 393 (2009).

¹⁰⁰ *Id.* at 397.

¹⁰¹ *See Evidence of Effectiveness, Research Basis for the Olweus Bullying Prevention Program*, <http://clemson.edu/olweus/evidence.html>.

¹⁰² *Blueprints for Violence Prevention Model Programs, Program Content*, (Aug. 2006) <http://www.colorado.edu/cspv/blueprints/modelprograms/BPP.html>, <http://colorado.edu/cspv/publications/factsheets/blueprints/FS-BPM09.pdf>.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

Costs of adopting and implementing the OBPP are substantial. Mandatory training programs facilitated by a certified Olweus trainer, program questionnaires, school-wide and individual teacher guides, DVDs and other resources can add up to over \$10,000.00 for initial implementation. Costs for substitute teachers and administrators attending the training days, kick-off events; salaries for the school coordinators, counselors and mental health professionals; lost pay for community members and parents who must participate in components of the program: these expenses add many more thousands of dollars to the overall cost of program adoption and implementation.¹⁰⁵ Although many schools and school districts absorb these costs, none to date has published a cost-benefit analysis.

The first systematic evaluation of OBPP in the United States, conducted in 1995-1997 and reported in 2004, involved eighteen rural middle schools in South Carolina.¹⁰⁶ The schools were in districts with the highest percentage rates of juvenile arrests in the state in the year before program adoption.¹⁰⁷ Implementation of the program was fully funded and the program employed numerous site-based project directors and facilitators, the complete set of OBPP questionnaires for students and teachers, and Olweus himself as a visiting observer and consultant.¹⁰⁸

Schools entered the program in two groups. At the end of Year 1, 1995-1996, schools in the first group experienced large decreases in students' self-reports of bullying others, but the positive outcome reversed in the following year, returning almost to the Fall 1995 baseline.¹⁰⁹ The second group of schools, which entered the program in Fall 1996, showed no positive outcomes as a result of implementation of the program for the 1996-1997 school year.¹¹⁰ The researchers postulated that perhaps fidelity of implementation in the second group of schools negatively influenced the outcomes, but merely attributed the second year drop-off in positive outcomes in the first group of schools to the difficulty of sustaining an initiative over time.¹¹¹

Research on the effectiveness of the OBPP in seven middle schools in Washington state demonstrated a 37 % decrease in physical victimization and a 28 % decrease in relational victimization among White students, but no positive program effects for students of other races/ethnicities.¹¹² A small-scale study of the OBPP in three elementary schools in southern California showed decreases in students' self-reported bullying victimization of 21 % after the

¹⁰⁵ Olweus Bullying Prevention Program, Cost of the OLWEUS Bullying Prevention Program (2009), <http://www.bullyingstatistics.org/content/olweus-bullying-prevention-program.html>.

¹⁰⁶ Susan P. Limber, Maury Nation, Allison J. Tracy, Gary B. Melton & Vicki Flerx, *Implementation of the OBPP Programme in the Southeastern United States*, in BULLYING IN SCHOOLS: HOW SUCCESSFUL CAN IMPLEMENTATION BE? 55 (Peter K. Smith, Debra Pepler & Ken Rigby, eds., 2004).

¹⁰⁷ *Id.* at 57.

¹⁰⁸ *Id.* at 55-56, 58

¹⁰⁹ *Id.* at 72-73.

¹¹⁰ *Id.* at 74.

¹¹¹ *Id.* at 73-75.

¹¹² Susan P. Limber, *Development, Evaluation, and Future Directions of the Olweus Bullying Prevention Program*, 10 J. SCH. VIOLENCE 71, 81 (2011).

first year of implementation, but only 14 % after Year 2 of the study.¹¹³ However, the lack of consistency in sample sizes, characteristics and sample demographic category information, lack of information about implementation of common program elements and the fidelity of that implementation, as well as the differences in the various metrics for determining significance make generalizing results from such studies problematic.

In the largest controlled study of the OBPP undertaken in the United States to date,¹¹⁴ participants included a total of 56,137 students and more than 2400 teachers in K-12 schools in central and western Pennsylvania. Participants were divided into two cohorts. One cohort, HALTS!, funded by the Windber Research Institute, participated in the OBPP for two years, 2007 and 2008. In 2007, 1010 students from six elementary schools, and 999 students from nine high schools participated in HALTS! During the second year, 10,276 students from twenty-eight elementary schools, 12,972 students from fifteen middle schools, and 7436 students from thirteen high schools participated. The second cohort, PA CARES, funded by the Pennsylvania Department of Education, participated during the second year, 2008, and was comprised of 7497 students from twenty-two elementary schools, 9899 students from thirteen middle schools, and 6048 students from seven high schools.

Although preliminary results are incomplete and outcomes reported differed across the cohorts, some positive outcomes were documented across nearly all grade levels in both cohorts. For example, student self-reports of bullying others were reduced in the HALTS! cohort after two years of program implementation. However, the baseline percentage of student self-reports in HALTS! elementary schools was low in Year 1 (with fewer than 10% of students reporting that they bullied others), and the percentage decrease was also small and differed in statistical significance among elementary schools. In the PA CARES Cohort, results after one year in the OBPP also showed statistically significant decreases in percentages of students' self-reports of bullying others at the elementary and high school levels, but showed practically no effect at middle school level.¹¹⁵

Students' self-reports of being bullied were not reported in the data for either elementary or middle schools in the total HALTS! cohort. Percentages of reports of bullying victimization in the twenty-two elementary schools in the PA CARES cohort were unchanged, remaining at a relatively high baseline level of nearly 30% after the year of OBPP implementation.

B. OBPP-Like Programs

Several meta-analytic studies have also examined the effectiveness of schoolwide anti-bullying programs similar to, or using elements of, the Olweus program. In one, fourteen studies of

¹¹³ *Id.*

¹¹⁴ Betsy A. Schroeder, Allison Messina, Diana Schroeder, Karla Good, Shiryl Barto, Jennifer Saylor & Matthew Masiello, *The Implementation of a Statewide Bullying Prevention Program: Preliminary Findings from the Field and the Importance of Coalitions*, 13 HEALTH PROMOTION PRAC. 489 (2012).

¹¹⁵ *Id.* at 494.

OBPP-like programs were reviewed; the studies each had three to five levels of interventions.¹¹⁶ Interventions in both primary and secondary schools were included, but where data from a given study included both primary and secondary school data, results were presented as two separate studies.¹¹⁷

The studies included in the meta-analysis were conducted in Australia, Belgium, Canada, England, Finland, Italy, Norway, Switzerland, and the states of South Carolina and Kansas in the United States, from 1989 to 2003.¹¹⁸ The interventions in the fourteen studies shared the core features of the OBPP;¹¹⁹ data was based almost exclusively on students' self-reports.¹²⁰ Effects of the interventions in reducing bullying and bullying victimization were almost exclusively small, negligible, or negative;¹²¹ none were statistically significant.¹²² The results clearly established that the success of the OBPP has not been replicated outside of Norway.¹²³ Researchers postulated that the reasons for this lack of successful replication may be due to the high quality of Scandinavian schools relative to schools in other countries, the small class sizes and well-trained teachers in Norwegian schools, and the Scandinavian tradition of state intervention in social welfare matters.¹²⁴ The researchers did not advocate abandoning school-wide interventions, but strongly suggested further program evaluation.¹²⁵

One of the largest meta-analysis of school-based bullying prevention programs located six hundred twenty-two reports concerned with bullying prevention, and examined eighty-nine reports describing fifty-three different program evaluations from 1983 to 2009.¹²⁶ Studies written in non-English languages were included.¹²⁷ Criteria for inclusion in the study included a specific focus on bullying, not merely peer aggression, inclusion of control groups, and analyses of effectiveness by reporting of effect sizes.¹²⁸

The numbers of students in each of the eighty-nine reports differed, but of those included in the study, two categories were created, "under two hundred students" (fifteen reports involving twelve program evaluations) and "over two hundred students" (sixty-two reports

¹¹⁶ J. David Smith, Barry H. Schneider, Peter K. Smith & Katerina Ananiadou, *The Effectiveness of Whole-School Antibullying Programs: A Synthesis of Evaluation Research*, 33 SCH. PSYCHOL. REV. 547, 550 (2004).

¹¹⁷ *Id.*

¹¹⁸ *Id.* at 551.

¹¹⁹ *Id.* at 548.

¹²⁰ *Id.* at 550.

¹²¹ *Id.* Eighty-six percent of victimization outcomes were negligible or negative; 14% were positive but small. Bullying outcomes were universally negligible or negative. Only 7% of studies had effect sizes that were considered medium, i.e., ES = .30 - .49. *Id.* at 555.

¹²² *Id.* at 554.

¹²³ *Id.* at 557.

¹²⁴ *Id.*

¹²⁵ *Id.* at 558.

¹²⁶ Maria M. Ttofi & David P. Farrington, *Effectiveness of School-Based Programs to Reduce Bullying: A Systematic and Meta-Analytic Review*, 7 J. EXPERIMENTAL CRIMINOLOGY 27, 27 (2011).

¹²⁷ *Id.*

¹²⁸ *Id.* at 31-32.

involving thirty-two program evaluations).¹²⁹ Therefore, forty-four program evaluations were analyzed. In all cases, the effect sizes for the under-two-hundred programs were non-significant.¹³⁰

Programs were also categorized according to study design: randomized designs, before-and-after quasi-experimental designs, other quasi-experimental designs, and age-cohort designs.¹³¹ No significant effect on bullying was found in the programs with randomized study designs,¹³² but 36% of the twenty-one before-and-after intervention designs found statistically significant reductions of bullying, and 78% of the nine age-cohort designs found significant reductions.¹³³ Thirty-three percent of the randomized study designs showed barely significant reductions in bullying victimization, but 78% of the age-cohort study designs showed significant reductions in bullying victimization.¹³⁴ The authors calculated that the data overall indicated a 17% to 23% decrease in bullying and 17% to 20% fewer victims in the intervention programs compared with controls.¹³⁵ However, data from the age-cohort study should be interpreted carefully with respect to potential outcomes in American schools. Of the nine programs analyzed in the category of age-cohort study design, only one study was conducted in the United States, a study in Chula Vista, California. Four of the nine were OBPP studies conducted in Norway; the others took place in England, Finland, and Ireland.

The researchers found that the most effective program elements associated with reducing bullying were (1) parent trainings and meetings, (2) improved playground supervision, (3) intensity for teachers and children, and (4) duration for children.¹³⁶ Parent trainings and meetings were highly significant in reducing bullying victimization.¹³⁷ Conversely, work with peers, the formal engagement of peers in tackling bullying, was associated with an increase in bullying victimization.¹³⁸ Researchers noted that this finding agreed with other research showing that programs targeting delinquent peers tend to cause an increase in offending behaviors.¹³⁹

C. Successful Non-OBPP-Like Programs

Although the success of the Olweus program has not been replicated uniformly in the United States, several different non-OBPP-like programs have shown promise, particularly in high-risk, low-income area schools.

1. Peaceful Schools Programs

¹²⁹ *Id.* at 34. Twelve reports of nine program evaluations were not included in the meta-analysis because of inability to calculate an effect size.

¹³⁰ *Id.* at 35. This is contrary to the speculation offered above that small school size may increase the positive effect of bullying prevention programs.

¹³¹ *Id.* at 34.

¹³² *Id.* at 35.

¹³³ *Id.*

¹³⁴ *Id.* at 37.

¹³⁵ *Id.*

¹³⁶ *Id.* at 41.

¹³⁷ *Id.*

¹³⁸ *Id.* at 43.

¹³⁹ *Id.* at 44.

Researchers at the Menninger Clinic, Baylor College of Medicine, Houston, Texas developed an anti-bullying effort called the Peaceful Schools Project which they reported was based on the concept of “mentalizing,” i.e., development of a capacity to understand the desires, feelings, and beliefs of oneself and others as a way to build collective empathy and value relationships over content and information.¹⁴⁰ The goal of the Peaceful Schools program is to create a social environment that is incompatible with interpersonally aggressive behaviors.¹⁴¹ Bullying is viewed as a symptom of a larger group problem, a dysfunctional, coercive, and disconnected social system.¹⁴²

The essential elements of the Peaceful Schools Project are the following: (1) positive climate campaigns, using counselor-led discussions, posters, and other language-based tools to identify coercive power dynamics, (2) classroom management that involves whole-class interventions to an individual’s inappropriate behavior, rather than punishments, accompanied by parent trainings to show the relationships between home and classroom behaviors, (3) peer and adult mentorships, emphasizing the resolving of problems collaboratively and without blame, (4) the gentle warrior physical education program, where children are taught to protect themselves and others using non-aggressive physical and cognitive strategies, including role-playing, relaxation, and defensive martial-arts techniques, and finally, (5) reflection, a period of ten minutes or so at the end of each day in which children discuss their behaviors and the behaviors observed from the perspectives of bully, victim, and bystanders. At the end of reflection time, the children collectively decide whether to hang a “good day” banner outside their classroom.¹⁴³

The researchers spent seven years testing, piloting, and refining the program, before undertaking a randomized controlled trial with in nine K-5 schools in a medium-size city in the Midwest, involving a total of 3600 students exposed to the interventions.¹⁴⁴ A traditional psychiatric consultation model, a treatment-as-usual model (i.e., a control group), and the Peaceful Schools program¹⁴⁵ were employed in nine elementary schools, three schools receiving each intervention, with 1345 Grades 3-5 students providing peer and self-reported data on

¹⁴⁰ Stuart Twemlow, Peter Fonagy, & Frank C. Sacco, *A Developmental Approach to Mentalizing Communities: II. The Peaceful Schools Experiment*, 69 BULL. MENNINGER CLINIC 282, 282 (2005).

¹⁴¹ *Id.* at 293.

¹⁴² *Id.*

¹⁴³ *Id.* at 297-300.

¹⁴⁴ *Id.* at 301.

¹⁴⁵ See also Peter Fonagy, Stuart W. Twemlow, Eric M. Vernberg, Jennifer Mize Nelson, Edward J. Dill, Todd D. Little & John A. Sargent, *A Cluster Randomized Controlled Trial of Child-Focused Psychiatric Consultation and a School Systems-Focused Intervention to Reduce Aggression*, 50 J. CHILD PSYCHOL. & PSYCHIATRY 607 (2009). Three elementary schools received traditional psychiatric consultation, the School Psychiatric Consultation (SPC) intervention, a manual-based protocol to address individual children with disruptive behaviors, internalizing problems, or poor academic performance. Three schools received the whole-school intervention Creating a Peaceful School Learning Environment (CAPSLE), a teacher-facilitated protocol developed at the Child and Family Center of the Menninger Clinic. Three elementary schools receiving treatment-as-usual (TAU) were the control group.

bullying and victimization, aggression and bystander helping behaviors, and empathy towards victims.¹⁴⁶ Students also reported incidences of disruptive and off-task classroom behaviors.¹⁴⁷

The Peaceful Schools intervention showed statistically significant decreases in peer-reported victimization ($p < .01$), aggression ($p < .05$), and aggressive bystanding ($p < .05$) that were greater than results in either the psychiatric intervention protocol group or the control, treatment-as-usual group.¹⁴⁸ Students in the Peaceful Schools intervention also reported positive findings regarding empathy, and a decrease in disruptive and off-task classroom behaviors ($p < .001$ for both classroom behaviors).¹⁴⁹ The positive effects were sustained and even increased in significance in the second and third years of the program.¹⁵⁰

The Menninger Foundation researchers also conducted an independent study of the Gentle Warriors martial arts program to see its effect as a psychosocial intervention in elementary schools.¹⁵¹ The two hundred fifty-four Grades 3-5 students who participated in this study were recruited from elementary schools in a large city in the Midwest that were implementing the Peaceful Schools project.¹⁵² Data for the study were obtained at Year 3 of the intervention trial, which was a maintenance phase after two years of actively managed implementation of the program.¹⁵³ The program consisted of only three forty-five minute training sessions rather than the nine sessions each year during the previous years of active intervention.¹⁵⁴ Techniques taught during the program were self-protective in nature: blocking, escapes, defensive positioning, and balance. The students were also taught conflict avoidance techniques, such as vocalizing displeasure toward aggression.¹⁵⁵

Students reported a significant increase in helpful bystander behavior at the end of the year ($p \leq .001$), with results greatest among the Grade 3 students.¹⁵⁶ However, the effect was moderated by gender, with the effect attributed to boys only.¹⁵⁷ Significant decrease in aggression also occurred only among boys ($p \leq .001$).¹⁵⁸ Researchers speculated that the lower effects of the program on girls reflected a lower baseline of aggression before the study, or perhaps the nature of girls' aggression being more relational than physical.¹⁵⁹ Researchers noted that the effects observed derived solely from the "booster effect" of the study, and may have

¹⁴⁶ Twemlow et al., *supra* note 140, at 301.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at 301-02.

¹⁵¹ Stuart W. Twemlow, Bridget K. Biggs, Timothy D. Nelson, Eric M. Vernberg, Peter Fonagy & Stephen W. Twemlow, *Effect of Participation in a Martial Arts-Based Antibullying Program in Elementary Schools*, 45 PSCHOL. IN SCH. 947, 948 (2008).

¹⁵² *Id.* at 950.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.* at 952.

¹⁵⁷ *Id.* at 955.

¹⁵⁸ *Id.* at 954.

¹⁵⁹ *Id.* at 956.

differed from the overall effect of the Peaceful Schools intervention over the three years of total intervention.¹⁶⁰

A K-8 Catholic school in Philadelphia, Pennsylvania has successfully used its own version of the Peaceful Schools program.¹⁶¹ The school and its over five hundred students are located in an area of high violence. Nearly twenty years ago, teachers at the school grew dismayed by the frequency of shootings and violence in the school neighborhood.¹⁶² Together they devised curriculum units that were integrated into the various curricular disciplines, teaching students the necessity of resolving conflicts and how to resolve conflicts peacefully. They set aside a room in the school, called the Peace Room, where students could go to resolve their conflicts by talking together.

Outfitted with a round table and chairs, the room still functions today. Students may ask permission to go to the Peace Room to solve conflicts. Adult facilitators are available, but students rarely ask for adult help. Outside the Peace Room, a Peace Wall displays photographs of students whose teachers or peers have nominated them as “Peacemakers.” In addition, there is a plaque to the “Unknown Peacemaker,” acknowledging that even if not nominated or formally recognized, individual children can still be peacemakers and make a difference.

At the end of the school year, a “Peacemaker of the Year” is elected by the whole school and honored. In 2011-2012, the school had only two student altercations that resulted in disciplinary action.

2. The Positive Action Program

A matched-pair, randomized control design study in the Chicago, Illinois Public Schools also demonstrated that a school-wide program focusing on problem behaviors could be effective even in the urban setting with its higher exposure to violence. The study, conducted in fourteen low-performing elementary schools and involving 3530 Grades 3-5 students, implemented an anti-bullying program called Positive Action (PA).¹⁶³ The PA program included training of school staff in delivering the over one hundred forty fifteen-minute age-appropriate lessons per grade, designed to be taught four days per week.¹⁶⁴ Support for teachers and staff members included continuing workshops, opportunities to share experiences, and individual consultations with an implementation coordinator.¹⁶⁵

¹⁶⁰ *Id.* at 957.

¹⁶¹ See St. Francis de Sales School, Who We Are, Peace Program, <http://www.desalesschool.net>.

¹⁶² The author received this information about the school’s development of its peace initiative in a telephone conversation with Sister Constance, I.H.M., one of the original program developers on February 13, 2013.

¹⁶³ Kin-Kat Li, Isaac Washburn, David L. DuBois, Samuel Vuchinich, Peter Ji, Vanessa Brechling, Joseph Day, Michael W. Beets, Alan C. Acock, Michael Berbaum, Frank Snyder & Brian R. Flay, *Effects of the Positive Action Programme on Problem Behaviors in Elementary School Students: A Matched-Pair Randomised Control Trial in Chicago*, 26 PSYCHOL. & HEALTH 187, 189-90 (2011)

¹⁶⁴ *Id.* at 192.

¹⁶⁵ *Id.*

Seven schools were chosen randomly to receive the PA interventions; seven schools did not participate in the PA interventions.¹⁶⁶ Teachers in the program completed implementation reports every six weeks, but, because of their young age at the beginning of the study, students responded to surveys related to bullying, lifetime substance abuse, and serious violence only at the end of the study, when they were in Grade 5.¹⁶⁷ Self-reports from students in the schools that did not receive the PA interventions indicated that 35% of the students had used at least one illegal substance and endorsed at least one violent behavior; about 30% reported currently engaging in bullying and 18% reported engaging in disruptive behavior.¹⁶⁸

In comparison, the self-reports of Grade 5 students in the schools receiving the PA intervention showed a 31% reduction in substance use behavior ($p = 0.05-0.06$), 36% reduction in violence behavior ($p = 0.02$), 41% reduction in bullying behaviors ($p = 0.03-0.05$), and 27% reduction in disruptive behaviors ($p = 0.24-0.31$).¹⁶⁹ Therefore, all reductions were statistically significant except the reduction in disruptive behaviors.¹⁷⁰ Researchers credited the positive program effects to the time-intensive programmatic elements,¹⁷¹ as well as the re-training efforts directed at teachers throughout the three years of the program duration.¹⁷²

Part III: Effectiveness of State Legislative Actions and Judicial Remedies

A. State Statutes

Forty-nine states have now passed anti-bullying statutes, leaving Montana the only state without such a statute.¹⁷³ Many states have amended previously enacted statutes, and the overall state of the law changes continuously.¹⁷⁴ Although all state statutes focus on the responsibilities of schools to address bullying, differences in content and level of detail in the statutes are pronounced, from different definitions of bullying to inclusion of model policies or mere directives to schools to devise and adopt policies.¹⁷⁵ Statutory language typically borrows from legal definitions of harassment and case law,¹⁷⁶ especially the “material and substantial disruption” language of the U.S. Supreme Court’s *Tinker v. Des Moines Independent Community Schools*¹⁷⁷ decision.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.* at 192-93.

¹⁶⁸ *Id.* at 196.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.* at 198.

¹⁷² *Id.* at 199.

¹⁷³ See Bully Police USA, [http:// www.bullypolice.org](http://www.bullypolice.org).

¹⁷⁴ Dena T. Sacco, Katharine Silbaugh, Felipe Corredor, June Casey & Davis Doherty, *An Overview of State Anti-Bullying Legislation and Other Related Laws* 3 (February 23, 2012), http://cyber.law.harvard.edu/sites/cyber.law.harvard.edu/files/State_Anti_Bullying_Legislation_Overview_0.pdf.

¹⁷⁵ *Id.* at 3-4.

¹⁷⁶ *Id.* at 4.

¹⁷⁷ 393 U.S. 503 (1969) (where the court ruled that school officials were not constitutionally allowed to infringe students’ in-school speech or expression unless the speech or expression materially or substantially interfered with the operation of the school or the ability of other students to learn).

1. Differences/Similarities in State Laws

Eight states define bullying as including behaviors that are repetitive, systematic, or continuous, but five only encompass severe or pervasive conduct.¹⁷⁸ Sixteen states require that the intent to harm another person is present.¹⁷⁹ Thirty-eight states include some references to electronic bullying or cyberbullying in their statutory language.¹⁸⁰ Mandatory reporting of bullying incidents by staff or students is found in fewer than half the state statutes, and only nine states require reporting to law enforcement in certain cases.¹⁸¹ Most state statutes require or encourage schools to take disciplinary action against bullies, but few detail specifics.¹⁸² Sixteen states require schools or school districts to report bullying incidents to the state Department of Education or similar body.¹⁸³ One state, Pennsylvania, requires that reports of student violence made to law enforcement authorities indicate whether the offender received special education services, and if so, the nature of the student’s specific disability.¹⁸⁴

Funding to implement the mandates of the state anti-bullying statutes is often an afterthought or no thought at all. Only eleven states identify a source of funding, and of those, only six provide for state appropriations and the other five rely on private donations.¹⁸⁵ Two states, Delaware and Florida, established sources of funding, but funding is contingent on the school districts’ adoption and implementation of satisfactory anti-bullying policies.¹⁸⁶

2. New Jersey’s Anti-Bullying Law as an Example

Many state anti-bullying laws were passed in response to student suicides after bullying or cyberbullying, and the attendant panic and haste is evident in some. Governor Chris Christie of New Jersey, for example, signed into law in January 2011 what has been called the “toughest legislation against bullying in the nation,”¹⁸⁷ in reaction to the suicide of Rutgers student, Tyler Clementi after his roommate aired online a video of Tyler and a male friend having a sexual encounter. The new law, called the “Anti-Bullying Bill of Rights Act,” amended New Jersey statutes in effect since 2002 with the stated goal of strengthening bullying prevention efforts and

¹⁷⁸ Sacco et al., *supra* note 174, at 4-5.

¹⁷⁹ *Id.* at 5.

¹⁸⁰ *Id.*

¹⁸¹ *Id.* at 7.

¹⁸² *Id.* at 8.

¹⁸³ *Id.* at 10-11.

¹⁸⁴ *Id.* at 10-11.

¹⁸⁵ *Id.* at 12.

¹⁸⁶ *Id.*

¹⁸⁷ Winnie Hu, *Bullying Law Puts New Jersey Schools on Spot*, N.Y. TIMES (Aug. 30, 2011), <http://www.nytimes.com/2011/08/31/nyregion/bullying-law-puts-new-jersey-schools-on-spot.html?pagewanted=all>. The law was challenged several months later by two school districts, as an unfunded mandate. The legislature revised the law to appropriate one million dollars into the law’s Bullying Prevention Fund, and to create a new seven-member task force to guide implementation of the law. New Jersey Coalition for Bullying Awareness and Prevention, *Legal Issues*, <http://njbullying.org/legalissues.htm>.

helping to reduce the risk of suicide among students.¹⁸⁸ New provisions required training in suicide prevention and the link between bullying and suicide for teachers and for members of school boards.¹⁸⁹

The New Jersey statute mandates the reporting of off-campus bullying as well as on-campus incidents,¹⁹⁰ and critics have noted possible First Amendment issues arising from the statutory language of the New Jersey law, as well as from similar language in other state statutes passed in the wake of student suicides.¹⁹¹ Reactions to the New Jersey law by school administrators, parents and students have been mixed, with administrators stressing the difficulty of complying with all the provisions of the law, and parents and students seeing no improvement in schools' tackling the bullying issue in school.¹⁹²

3. Effectiveness of State Anti-Bullying Statutes

State anti-bullying statutes may be affording parents false hopes that they can use the laws to compel school districts and school administrators to respond to bullying incidents. Several Connecticut courts have ruled that state anti-bullying laws do not provide a private right of action.¹⁹³ Moreover, courts in Arizona, Arkansas, and Georgia have held that parents who allege violations of Constitutional rights like rights to due process and bodily integrity in an attempt to hold public school administrators liable for not complying with state anti-bullying laws either (1) cannot support their claims with underlying constitutional violations, or (2) that plaintiffs cannot sue in federal courts for constitutional violations of state statutes.¹⁹⁴ Similarly, a New York court has ruled that courts in New York should not recognize cyberbullying as a cognizable tort action.¹⁹⁵

With avenues to court enforcement of anti-bullying statutes cut off, examination turns back to the statutes themselves. An analysis of the effectiveness of state anti-bullying laws showed that state anti-bullying statutes may not be reducing bullying behaviors overall.¹⁹⁶ A Chi

¹⁸⁸ Assembly, No. 3466, State of New Jersey, 214th Legislature 2. I (introduced Nov. 8, 2010), http://www.njleg.state.nj.us/2010/Bills/A/3500/3466_R1.HTM.

¹⁸⁹ *Id.* at § 2, § 13.

¹⁹⁰ *Id.* at § 2.

¹⁹¹ See, e.g., Lindsay Nash, *New Jersey's Anti-Bullying Fix: A Solution or the Creation of an Even Greater First Amendment Problem?*, 2012 BYU L. REV. 1039 (2012). See also John O. Hayward, *Anti-Cyber Bullying Statutes: Threat to Student Free Speech*, 59 CLEV. ST. L. REV. 85, 86 (2011) (criticizing Missouri's anti-bullying law passed in response to the suicide of Megan Meier).

¹⁹² Jeanette Rundquist, *Six Months into N.J. Law to Halt Bullying, a Survey Takes a Look at How It's Working*, STAR LEDGER (Mar. 11, 2012, 1 P.M.), http://blog.nj.com/ledgerupdates_impact/print.html?entry=/2012/03/6_months_into_nj_law.html.

¹⁹³ See Santoro v. Town of Hampden, 2006 WL 2536595 (Conn. Super. Aug. 18, 2006), *Antalik v. Thomaston Bd. of Educ.*, 2008 WL 4150132 (Conn. Super. Aug. 13, 2008), *Dornfield v. Berlin Bd. of Educ.*, 2008 WL 5220639 (Conn. Super. Sept. 26, 2008).

¹⁹⁴ See *Chisolm v. Tippens*, 658 S.E.2d (Ga. App. 2008), *O'Dell v. Casa Grande Elem. Sch. Dist. No. 4*, 2008 WL 5215329 (D. Ariz. Dec. 12, 2008) (Slip copy), *Wolfe v. Fayetteville, Ark. Sch. Dist.*, 600 F. Supp. 2d 1011 (W.D. Ark. 2009).

¹⁹⁵ *Finkel v. Dauber*, 906 N.Y.S.2d 697, 703 (Sup. Ct. Nassau Cnty. 2010).

¹⁹⁶ Samantha Niemann, Brandon Robers & Simone Robers, *Bullying: A State of Affairs*, 41 J. L. & EDUC. 603 (2012).

square test of the percentage of bullied students versus the presence of a state law revealed no significant difference between the expected and observed rates of victimization ($p = 0.22$).¹⁹⁷ ANOVA analysis showed no significant difference due to the severity of the law.¹⁹⁸ Of the states whose laws attempted to impact bullying itself, only the laws that were most severe appeared to decrease the negative behaviors. States whose laws were only moderately severe showed both increases and decreases of negative behaviors, while states whose laws were of low severity actually showed increases.¹⁹⁹ New Jersey's law, under this analysis, reduced negative behaviors in only several categories: fights, school avoidance, weapon carrying, and gun carrying.²⁰⁰ More research is needed to confirm these findings and to help legislators craft effective but constitutionally valid anti-bullying statutes.

B. Judicial Remedies

1. Parent and Student Causes of Action Alleging Harms Due to Bullying

Prior to the turn of the recent century, lawsuits alleging causes of action for bullying harms were rare.²⁰¹ Claims of bullying and harassment based on sexual characteristics were often couched as violations of Title IX,²⁰² which prohibits discrimination on the basis of sex in institutions receiving federal funding. Although many suits now allege violations of both tort law and federal Constitutional rights because of severe and pervasive bullying, few plaintiffs prevail unless they can clearly show that the bullying was (1) on account of the student's disability or perceived disability,²⁰³ (2) perpetrated on a student who was a member of a Constitutionally-protected category, e.g., race, ethnicity, religion,²⁰⁴ or (3) perpetrated on the basis of a student's sex.²⁰⁵ Most cases are dismissed in favor of the school defendants.²⁰⁶ Courts also decide most allegations of bullying in non-publishable form or in "slip copy," limiting their precedential value.

¹⁹⁷ *Id.* at 644.

¹⁹⁸ *Id.* at 644-45.

¹⁹⁹ *Id.* at 647.

²⁰⁰ *Id.*

²⁰¹ Kathleen Conn, *Bullying in K-12 Public Schools: Searching for Solutions*, Policy Issue (2002), http://www.cepi.vcu.edu/policy_briefs.html.

²⁰² Education Amendments of 1972, § 901, 20 U.S.C.A. § 1681.

²⁰³ *T.K. v. N.Y. Cty. Bd. of Educ.*, 779 F. Supp. 2d 289 (E.D.N.Y. 2011) (where the court ruled that bullying of female student deprived her of a free appropriate public education under the Individuals with Disabilities Education Act, and delivered a lengthy review of court decisions upholding students' and parents' causes of action for school administrators' deliberate indifference to bullying). The T.K. decision also stressed the responsibility of school administrators to heed the Dear Colleague letters from the federal Office for Civil Rights about school liability for indifference to bullying of which it knew or should have known. *Id.* at 316-17.

²⁰⁴ *G.D.S. v. Northport-East Union Free Sch. Dist.*, 2012 WL 6734686, --- F. Supp. 2d --- (E.D.N.Y. 2012) (where court ruled that a Jewish student stated a cause of action for bullying based on religion to which the school district was deliberately indifferent).

²⁰⁵ *McSweeney v. Bayport Bluepoint Cent. Sch. Dist.*, 864 F. Supp. 2d 240 (E.D.N.Y. 2012) (where an elementary female student failed to prevail on her claims that a male student bullied her based on her sex).

²⁰⁶ Jill Grim, *Peer Harassment in Our Schools: Should Teachers and Administrators Join the Fight?*, 10 BARRY L. REV. 155, 161-69 (2008).

2. Other Judicial Avenues

The Supreme Court of New Jersey, in a decision pre-dating the passage of New Jersey's anti-bullying statute, ruled that New Jersey's Law Against Discrimination (NJLAD) recognizes a cause of action for student-on-student affectional or sexual orientation harassment.²⁰⁷ A Missouri Court of Appeals held in similar manner that a school was a place of public accommodation and, therefore, under the Missouri Human Rights Act (MHRA), a school could be liable for student-on-student sexual harassment of which they knew or should have known, but failed to take action.²⁰⁸ The court specifically noted that harassment was a form of bullying, "a problem facing the state's educational system," and that recognizing this cause of action under MHRA will further promote safe learning environments for students.²⁰⁹

Part IV. Recommendations and Conclusions

Public school administrators in the United States considering the adoption and implementation of programs to reduce the incidence of face-to-face bullying and bullying victimization must analyze available programs with a critical lens. One size does not fit all,²¹⁰ and one anti-bullying program is not the right choice for every school. Programs that prove effective in European or other non-U.S. schools may not work in an American school environment. School demographics are critically important. The size of the school and its population and demographics may be determining factors in the success of a bullying prevention program. Grade levels served in the school, socio-economic conditions of the school and community, parental cooperation, and any other distinguishing features of the school: all may affect the success of a given program.

A. *Effects of the Family on Bullying Involvement*

Bullying must be recognized as a group phenomenon, not only in the sense of the interplay between and among bullies, victims, and bully/victims, but also in the larger social context where all individuals are engaged in ongoing relationships.²¹¹ Among these, family environment and relationships within the family have proven to have a significant impact on bullying and bullying-associated behaviors.²¹² Family violence models bullying behavior and establishes norms for bullying, and other features of the family, such as low parental warmth, low family

²⁰⁷ *L.W. v. Toms River Reg. Sch. Bd. of Educ.*, 915 A.2d 535 (N.J. 2007) (where the court ruled that the New Jersey Law Against Discrimination provided a remedy for a school district's deliberate indifference to bullying of which it knew or should have known).

²⁰⁸ *Doe v. Kansas Cty., Mo. Sch. Dist.*, 372 S.W.3d 43 (Mo. Ct. App. 2012) (where the court ruled that the Missouri Human Rights Act applied to sexual harassment in the form of bullying in public schools).

²⁰⁹ *Id.* at 52, n. 2.

²¹⁰ See also Cindy M. Casebeer, *School Bullying: Why Quick Fixes Do Not Prevent School Failure*, 56 PREVENTING SCH. FAILURE: ALTERNATIVE EDUC. CHILDREN & YOUTH 165 (2012).

²¹¹ Clayton R. Cook, Kirk R. Williams, Nancy G. Guerra, Tia E. Kim & Shelly Sadek, *Predictors of Bullying and Victimization in Childhood and Adolescence: A Meta-Analytic Investigation*, 25 SCH. PSYCHOL. Q. 65, 66 (2010).

²¹² Aubrey L. Spriggs, Ronald J. Ianotti, Tonja R. Nansel & Denise Haynie, *Adolescent Bullying Involvement and Perceived Family, Peer and School Relations: Commonalities and Differences Across Race/Ethnicity*, 41 J. ADOLESCENT HEALTH 283, 284 (2007).

cohesion, and single parent family structure, have been positively associated with bullying involvement.²¹³

Although schools have no direct control over what occurs in the home, school administrators must proactively seek to encourage the participation of families in the school community. Family “pot-luck” suppers, where each family brings a sample of their family’s favorite dish, can be opportunities to showcase posters and leaflets about school anti-bullying efforts. Such informal gatherings can also provide opportunities for parents to share perceptions of the school culture with each other and with school personnel, and to foster volunteerism in the schools to monitor playgrounds, hallways, and other “hotspots” of bullying.

B. Choosing a Bullying Intervention

Before choosing a bullying prevention program, administrators and school personnel must ascertain the nature and extent of the peer bullying and victimization problem in a given school. The federal Centers for Disease Control and Prevention, National Center for Injury Prevention and Control (CDC) has recently published a guide to help administrators choose a measuring instrument that will assess the degree of school-associated bullying, peer victimization, and bystander involvement.²¹⁴ The guide recommends considering the specific bullying-related behaviors to be measured, as well as the psychometric validity of the measuring instrument chosen.²¹⁵ The CDC rates the measuring instruments included in the guide according to statistical significance, reliability and validity.²¹⁶ An extensive list of peer-reviewed references is also supplied.²¹⁷

The New Jersey Coalition for Bullying Awareness and Prevention has developed a “critical criteria” checklist as a tool for use in selecting anti-bullying programs.²¹⁸ The checklist includes the following elements:

1. A framework based on empirical research
2. Involvement of the entire school community
3. Attention to the role of adults in modeling acceptable behaviors
4. Integrated program elements/components that are age and developmentally appropriate, as well as culturally responsive
5. A long-term view
6. Baseline measurements and follow-up assessments
7. Active supports for at-risk students

²¹³ *Id.*

²¹⁴ Centers for Disease Control and Prevention, National Center for Injury Prevention and Control (CDC), *Measuring Bullying Victimization, Perpetration, and Bystander Experiences: A Compendium of Assessment Tools* (Merle E. Hamburger, Kathleen C. Basile & Alana M. Vivolo, eds. 2011), <http://www.cdc.gov/violenceprevention/pdf/bullyCompendiumbk-a.pdf>.

²¹⁵ *Id.* at 3.

²¹⁶ *Id.*

²¹⁷ *Id.* at 111.

²¹⁸ New Jersey Coalition for Bullying Awareness and Prevention, *Selecting Effective Anti-Bullying Programs: A Guide for School and Agency Administrators*, <http://www.njbullying.org/selectingprograms.htm>.

The Peaceful Playgrounds program adds the recommendations that schools form a bullying prevention leadership team, and train staff in identification, intervention, and prevention strategies.²¹⁹ Twenty- to forty-minute weekly meetings in each classroom with mini-lessons on anti-bullying strategies are recommended.²²⁰

C. Conclusions

Although violence in schools has declined since 1991, the prevalence of bullying has not changed.²²¹ Much is left to learn about why bullying and victimization prevention programs vary in effectiveness, and how to make them more effective in the future. We do know that programs must be both proactive and reactive in any comprehensive approach,²²² and they must be sustained.²²³ Any bullying prevention program must be implemented with fidelity, and teacher and administrator training is key - both in the sense of teachers being able to recognize bullying and in administrators and teachers knowing how to intervene effectively.²²⁴ Schools are places where students spend nearly one-third of their waking hours. Bullying and peer victimization robs children of opportunities for academic success and social growth, especially when experienced in the preschool and elementary school years.

Research has shown that sustained change of values and attitudes is the goal of an effective anti-bullying intervention. School personnel cannot accomplish the goal alone; families are important; students are important; the whole community is important.²²⁵ Bullying must be unacceptable in any form, on any level.

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