

School Law for Administrators

Headlines on School Law

Bullying mixed-bag: Rates going down, but not enough

by Rob Taylor, Ph.d.

To many observers, the bullying intervention glass in our nation's schools is half-full. A significant annual report produced by the National Center for Education Statistics (NCES) and the Bureau of Justice Statistics at the U.S. Department of Justice, a report called *Indicators of School Crime and Safety*, shows that between 1992 and 2014 the total "victimization rate" at schools plummeted from 181 per 1,000 students to 33 per 1,000 students. The report logs incidents such as theft, assault, robbery, and sexual assault.

Moreover, the percentage of students aged 12 to 18 reporting being afraid of attack or harm at school or in transit to school went down from 12% in 1995 to 3% in 2013. And while 28.1% of students in 2005 reported being bullied, by 2013, that percentage had gone down to 21.5%.

School leaders and legislators nationwide have become increasingly aware of bullying behavior and have taken a variety of steps to reduce it, right? Yes, but there is continuing ambivalence about the results (for example, still more than 20% of all students are subjected to bullying every year). Such ambivalence is expressed well by NCES acting commissioner Peggy Carr: "The data shows that we have made progress, bullying is down, crime is down, but it's not enough. There are still much policy makers should be concerned about. Incident levels are still much too high."

One problem is that while physical bullying, including exclusion from activities and taunting, has been on the decrease, the use of social media for cyberbullying has been on the rise. In 2013, the data shows that approximately 7% of students aged 12 to 18 reported being cyberbullied during the school year.

In early May, another report on bullying was released by the National Academies of Sciences, Engineering and Medicine, as reported by the *Associated Press*. This report affirms the growing prevalence of cyberbullying. It also presses the key point that the best anti-bullying policies are "preventive and interventional."

The main focus in school should be "teaching tolerance," the report says. "We need to be able to learn to live and accept and get along with people who are different from us. Bullies are often very popular. . . there are a lot of kids who bully to maintain their popularity and social status, so schools need to be addressing that."

Critically, the report joins with the many educators and policy makers who have come to believe that zero tolerance policies are not only ineffective in combating bullying but often damaging to students.

ANTI-ZERO TOLERANCE MOVEMENT SURGING

When several years ago dramatic incidents of bullying became highly publicized—including suicides of students who had been relentlessly bullied at school—lawmakers nationwide passed measures aimed at impacting rates of bullying, and schools frequently put into place zero tolerance policies using suspensions and expulsions as automatic responses to bullying incidents.

But, as another report, this one put out by the Council of State Governments Justice Center—*The School Discipline Consensus Report*—concluded in 2014, too often zero tolerance policies have been harsh, used for minor infractions, and have increased the risk of failure, dropping out, and unnecessary involvement with the juvenile justice system.

Also, as an *EdWeek* analysis of the report said, "Even worse, these types of severe punishments disproportionately fall on children of color, particularly African-American students, who are three times more likely than white students to be suspended, even for similar types of misbehavior."

So, if zero tolerance practices can be counterproductive, bringing their own negative consequences, what can schools do? Baltimore appears a good example. In this city's school system of approximately 85,000 students—a good majority low-income and African-American—the high school graduation rate hovered for years around 34%.

In 2007, the district's chief executive, Andres Alonso, decided that massive use of suspension, often for minor violations of school rules, was a failing practice. So he revised the discipline code to reduce suspensions and make greater use of targeted counseling, after-school programs including tutoring, and academic interventions to assist misbehaving students. Within four years the dropout rate in Baltimore had been cut in half and 87% of students who started high school in 2007 had graduated or were making good progress.

The Baltimore example of what the report calls "positive discipline," as an alternative strategy to zero tolerance, is

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Around the Nation ~ Florida

Non-Spanish speaking teacher sues after not being hired for job requiring teaching in Spanish

A teacher at Coral Reef Elementary School in Florida named Tracy Rosner, filed suit in federal court against the Miami-Dade School District claiming race-based discrimination. Rosner, who is not bilingual, claims that her request to be assigned to the extended foreign language (EFL) program, where students receive one hour of foreign language instruction per day, was denied solely on the basis that she is non-Spanish speaking. She believes she is still qualified to teach Spanish, even though she cannot speak it.

According to Rosner, the principal's policy requiring foreign language teachers to actually speak the language they were teaching was "unfair." In her lawsuit, Rosner contends that other than not being able to speak Spanish, she was fully qualified for the job and that the policy is discriminatory. She believes that her supervisor could have been more open-minded and creative when thinking about the job, and he could have called another teacher in for an hour a day to teach the "speaking" portion of the class.

In the lawsuit, Rosner contends that after she complained

about not being hired for the job, her school's principal retaliated against her by doubling her workload and asking her to teach all the subjects instead of just reading and language arts. Before filing her lawsuit, Rosner complained to the superintendent and even made a formal complaint to the school district's civil rights office, but administrators there found no probable cause and closed the case, so she felt compelled to take it to the next level.

Additionally, in the lawsuit Rosner claims that non-Spanish speakers are a minority population in Miami-Dade County and that seeking employment solely from Spanish speakers "disproportionately affects" Rosner and others like her. "As a direct and proximate result of the retaliation against Ms. Rosner, and the violation of her rights . . . Ms. Rosner was provided a less desirable position and has damages including emotional pain, suffering, inconvenience, mental anguish, and loss of enjoyment of life," the lawsuit states.

Source: *Miami New Times*.

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touted by the report as a means of achieving "positive climates for teaching and learning." Other positive discipline tools include developing educator skills for managing behavior in the classroom, supporting collaborative problem-solving, and improving educational services for students in alternative ed. and juvenile justice settings so as to facilitate their transition back to the traditional public schools.

By 2016, the debunking of zero tolerance in favor of positive discipline has become commonplace. Many schools, believing that out-of-school suspension leads to much higher dropout rates, have turned to in-school suspension for more serious offenses.

A conference called "Rethinking Discipline" put on in 2015 by the U.S. Department of Education set out to explore an alternative set of strategies called "restorative practices." Such practices are based on the belief that students who have bullied and hurt other students need to accept responsibility for their actions by directly addressing the students they've bullied.

In the restorative justice movement, which has existed since the 1970s according to an *EdWeek* article, "face-to-face conferences [are used] to mediate and determine appropriate reconciliation between offenders and victims." This approach, as defined by proponents, should result in lasting behavior change and lead offending students to better accept disciplinary decisions, since they have participated in determining them.

Restorative justice makes use of small-group discussions, called "circles," held regularly throughout the school year. This strategy intends to allow even misbehaving students to participate in decision-making, take responsibility for their actions, try to repair harm they have caused, express their feelings, and develop empathy for others.

Critics of restorative practices see this approach as going too far in the opposite direction of zero tolerance. As one veteran teacher wrote, "There are some students who will NEVER take responsibility for their actions, and who NEED stricter discipline. As packed as our classrooms are. . . and as few supervisory personnel as most schools have due to underfunding, we are allowing chronic discipline problems to impact the entire campus."

Another *Education Week* article from a series on bullying is entitled "What Bullying Victims Don't Need from Teachers: Silence." If school-based responses to bullying can be arguable, a teacher's answer to this article is less so: "Bullying has lifetime consequences. It is critical that teachers that support bullied students and intervene to STOP student aggressors!"

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ADA Accommodation

Teacher sues school district for not accommodating her PTSD by denying her requests for transfer

Citation: *Lawler v. Peoria School District No. 150*, 32 A.D. Cas. (BNA) 1821, 2016 WL 4939538 (7th Cir. 2016)

The Seventh U.S. Circuit has jurisdiction over Illinois, Indiana, and Wisconsin.

The Seventh U.S. Circuit Court of Appeals has reversed the decision of a lower court in a case in which a teacher with PTSD sued the district after a transfer she requested after a reassignment was denied. The teacher claimed that the district failed to accommodate her disability and retaliated against her by giving her an unsatisfactory performance review. While the lower court had granted the district judgment without a trial, the appeals court found that Eymarde Lawler was a special education teacher working with children with learning disabilities in the Peoria School District No. 150. She had been diagnosed with PTSD before being hired, and worked for nine years with satisfactory results. However, in 2010 her doctor, Dr. Steven Hamon, determined she had suffered a relapse. She asked for a leave of absence and a transfer when her relationship with a principal deteriorated, and it was granted in May 2010. In the fall of 2010, Lawler was assigned to the Day Treatment program at Trewyn School where she worked with learning disabled children as well as children who had severe emotional and behavior problems. She was concerned that she was not trained to work with the latter group, and her supervisor, Mary Camp, shared her concerns and contacted Human Resources. However, the school district would not give her a transfer. At the end of the 2010-2011 school year, she received a satisfactory rating.

She had a difficult year, with her father dying, her disabled mother requiring care, and a couple of disturbing accidents, including one in which one of her students collided with her and she ended up with a concussion and went to the hospital.

Dr. Hamon notified Human Resources and requested a leave of absence and transfer for Lawler to a classroom with fewer students with behavioral issues. Teri Dunn, Director of Human Resources, met with Lawler on September 21, 2011, and gave her a two-week medical leave but not a transfer. According to Lawler, Dunn denied the transfer during the September 21 meeting. According to Dunn, she did not decide to deny the transfer until later because she said Lawler did not complete required paperwork she had been given to request a transfer.

During her leave of absence, Lawler sent an e-mail to Dunn saying she felt confident that she would be able to do her job on her return, and she understood there was no guarantee that she could be transferred. Dr. Hamon wrote a note saying Lawler

could return to work on October 5, 2011.

On her return, Lawler left a letter from her family physician on the school's copy machine. The letter stated that she would be removed from her position working with children with severe behavioral and emotional disabilities, and transferred to an environment similar to where she had been previously. The letter was found by Mary Camp, who sent Lawler home. Lawler contacted Dunn and let her know she had planned to give the letter to her union because she still wanted another position.

Mary Camp was replaced by Carolyn Nunn as Lawler's supervisor, and gave Lawler a performance review in February 2012. Nunn's evaluation of Lawler was unsatisfactory, and she cited details of Lawler's abrasive communications, interruptions of classes, inappropriate interactions with students and employees, and inappropriate handling of confidential matters. Lawler also received two disciplinary write-ups in the same school year.

After receiving the unsatisfactory evaluation, Lawler requested, with a letter from Dr. Hamon, a leave of absence for the rest of the school year and reassignment to a different classroom. After providing additional medical information, she was finally given leave for the rest of the school year. However, she was not reassigned and in April 2012 she was one of 57 teachers who were laid off because of a reduction in force. Lawler was not rehired when the RIF was reversed by the district. She sued the school district claiming that it had failed to accommodate her PTSD and also had retaliated with the unsatisfactory evaluation because she asked for an accommodation. The school district asked for judgment without a trial, and the court granted it. Lawler appealed.

The Seventh U.S. Circuit reversed the lower court's ruling and sent the case back for further proceedings.

On appeal, Lawler did not discuss the retaliation claim, so the court did not consider it. The issue at hand was her claim that the school district did not accommodate her disability. Under the ADA, both the "employer and employee are responsible for engaging in an 'interactive process' to find a reasonable accommodation for the employee's disability."

Lawler argued that Dunn "summarily refused to consider transferring her out of the Day Treatment program at Trewyn." This constituted a failure to engage in the required interactive process. She also argued that, if the school district assumed her e-mail stating she was confident about returning to work meant she no longer wanted an accommodation, someone

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Around the Nation ~ Maryland

A high school in Maryland is setting a strong precedent by hosting a gender-neutral homecoming court

In an effort to encourage students to be more open-minded and open to diversity, Bethesda-Chevy Chase High School (B-CC) is introducing a gender-neutral homecoming court this year. The administration announced that this year students will have the opportunity to decide for themselves whether they would prefer to be called a "king" or "queen," regardless of their gender. The change allows the two winners to be, for the first time, two boys, two girls, transgender students, or a boy and a girl.

This high school has been quite cognizant to gender issues in the last couple of years, and the students have done a lot of thinking about these issues. The decision to change the way Homecoming Court was done was a student decision that was finalized by a four to one vote last week by officers of the school-wide Student Government Association. Students at B-CC indicate leaders are making an effort to be more inclusive and open-minded. The school has an active LGBT club called "Spectrum." Another motivating factor in this decision was a story in the student newspaper that profiled the experiences of a transgender student in the school.

Gender issues have been the focus on lawsuits across the country as schools try to figure out where they stand on restroom rules, athletic membership, etc. Gender classifications have a major effect on students, and schools need to decide what they think is best for students. Many high schools across the country have already begun to make changes to their graduation robe assignments such as offering the same color to each student instead of having girls wear one color and boys another, others are slow to make any changes.

B-CC is a pioneer when it comes to gender equity. It is the first high school in the country to adopt a gender-neutral homecoming policy. However, other schools are close on their heels, and these types of changes are on the horizon. Students from a gay-straight alliance at Madison High School in Wisconsin created a petition in an effort to make the same change at their school, with over 1,000 students and staff members signing it. According to the principal Beth Thompson, the idea is more common at universities, but it is beginning to trickle down to high schools and it has worked for their school.

Source: *Education News*

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should have asked for clarification. However, no one followed up until she asked for a transfer again later that year. At that point her deteriorating performance had earned her an unsatisfactory evaluation.

The court found that the school district's response to her request for a transfer "amounted to a refusal to engage in the interactive process." After reading Hamon's letter in which he suggested Lawler should be transferred to a different environment, Dunn had denied her request. This action "belies any contention that District 150 made a reasonable attempt to explore possible accommodations, such as looking for open positions in other schools or reducing the number of students with behavioral or emotional disorders in Lawler's classroom." Indeed, the court noted, the school district "simply sat on its hands" instead of interacting with Lawler or following up to get more information. Many of the issues cited in her negative evaluation could have been the result of her PTSD, the court noted.

Further, the court found the school district's argument that it reasonably accommodated Lawler's PTSD by granting her leave was "frivolous." The court stated, "This short-term leave after Lawler's on-the-job injury and hospital visit did not address her psychologist's concern that Lawler's PTSD was aggravated by

working with the students having severe behavioral emotional disorders." A jury could easily find that her request for a transfer could have been accommodated, as there were at least seven openings for special education teachers at the time in the school district. "What was not an option, however, was for the school district to look the other way until Lawler could be fired for poor performance," the Seventh Circuit noted.

Regarding Dunn's claim that Lawler never filled out the required paperwork for a request for transfer, the court found that the packet of information given to Lawler only included information related to medical leave under the Family and Medical Leave Act—not to ADA or the Rehabilitation Act.

Even the fact that her family physician's letter was found by Lawler's supervisor and read by Dunn indicated that Lawler was still trying to get a transfer to accommodate her PTSD. Therefore, the court noted, "[a] jury reasonably could conclude that District 150's failure to seek clarification from Lawler or her doctors caused the breakdown in the interactive process."

The court vacated the lower court's judgement and returned the case to the court for further proceedings.

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