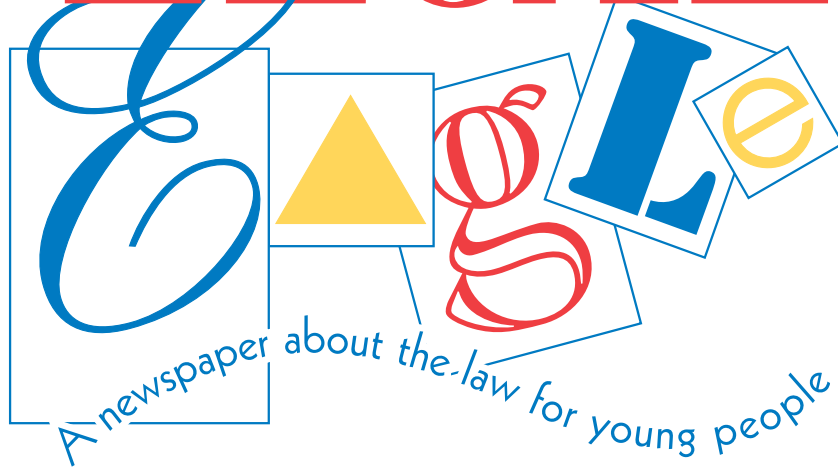


# THE LEGAL



**SPECIAL ANTI-BULLYING EDITION**

## Where Bullying Flourishes No One Goes Unscathed

by Jodi L. Miller



If you have ever been bullied at school you're not alone. A 2009 Centers for Disease Control and Prevention report revealed that 32 percent of 12 to 18-year-olds are bullied each year and more than five percent of high school students, or approximately 864,000 teens across the country, admitted to staying home at least one day a month because they feared for their safety.

**CONTINUED ON PAGE 14**

## Cyber-Bullying: Cruelty or Crime?

by Phyllis Raybin Emert

A 2006 National Crime Prevention Council study revealed that 40 percent of all teens had experienced cyber-bullying and it is especially common among 15 and 16-year-old girls. The recent case of the Rutgers University freshman who took his own life after a compromising video of him was allegedly posted on the Internet,

**CONTINUED ON PAGE 8**



## New Jersey Strengthens Its Anti-Bullying Law

by Cheryl Baisden

On Jan. 6, 2011, New Jersey Governor Chris Christie signed into law the Anti-Bullying Bill of Rights, believed to be the toughest state law regulating student-related bullying, harassment and intimidation in the nation.

The new law focuses on bullying, harassment and intimidation in kindergarten through 12th grade, as well as in the state's public colleges and universities.

Although it had been in the works for more than a year, the Anti-Bullying Bill of Rights moved quickly through the Legislature after 18-year-old Rutgers University student Tyler Clementi committed suicide by jumping from the George Washington Bridge on Sept. 22, 2010, following an Internet video broadcast by his roommate focusing on Clementi's sexual orientation. The bill was drafted and passed in the Senate 38-0 and in the Assembly 73-1 just two months after Clementi's death.



### Response to new law

"We have witnessed too many instances where aggressive or

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# When Bullying Turns Deadly

by Barbara Sheehan

Bullying causes pain and despair for millions of young people each year. While most kids go on to realize that things get better, a small percentage of bullying victims turn to suicide.

This topic has received a lot of attention recently, although bullying experts say it is not new.

While the cases of a bullying victim committing suicide are relatively small compared to the vast amount of bullying incidents overall around the country, the phenomena has provided society with a new word—bullycide. Bullycide refers to a suicide that can be attributed to the victim having been bullied to the point of hopelessness. Neil Marr and Tim Field first coined the term in their book *Bullycide: Death on the Playground*, where they discussed the first known case of bullycide, which occurred in 1967 in the United Kingdom.

One incident of bullycide that has generated a lot of headlines and perhaps brought the issue to the forefront is the case of Phoebe Prince, the Massachusetts teen who took her own life after relentless harassment from a number of her classmates. Six students are awaiting

trial in the case, charged with, among other things, violation of Prince's civil rights and stalking.

### Who is most at risk?

While we have heard a number of reports of bullycide in recent years, it is not clear just how many kids are affected because there are no specific statistics available. This may be in part because suicide is a complex decision, and it is often difficult to attribute it to one specific cause.

According to a study of high school students that was published in the *Journal of the American Academy of Child Adolescent Psychiatry*, a “clear association” was shown among bullying, depression, suicidal thoughts and suicide attempts.

Madelyn S. Gould, a professor of psychiatry and public health at Columbia University and one of the authors of the study, told MSNBC, “If you are vulnerable and being bullied, it can be the straw that breaks the camel's back.”

In her research, Young-Shin Kim, an assistant professor with the Yale Child Study Center in Connecticut,

**CONTINUED ON PAGE 3**

### Catch Us on the Web and Read *The Legal Eagle* Online

Back issues of *The Legal Eagle* since its inception in 1996 may be downloaded from the New Jersey State Bar Foundation's website at [www.njsbf.org](http://www.njsbf.org).

While you're there, check out other law-related education publications for kids, such as *Bill of Rights Bulletin*, *Constitutionally New Jersey*, *What You Need to Know About Plagiarism*, and *Students' Rights Handbook*.



found that victims of bullying are 5.6 times more likely to attempt or have thoughts of suicide.

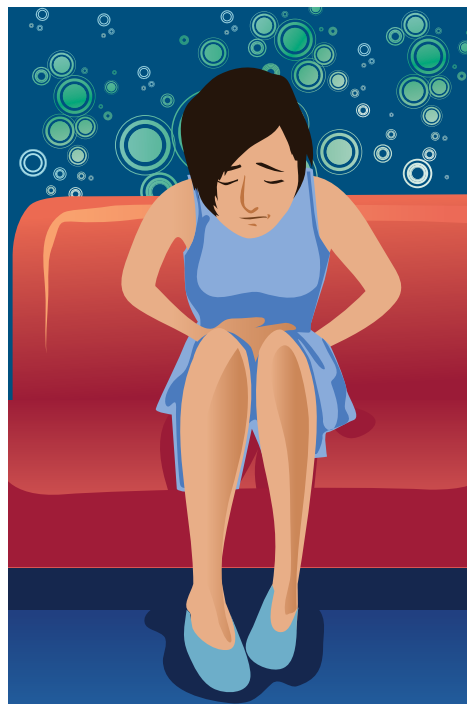
Debbie Zegas Berman, a Connecticut teacher who lost her 14-year-old daughter, Alexa, to suicide in 2008, has testified before the Connecticut Legislature hoping to strengthen that state's laws against bullying. Berman, who was very frank in her discussion of her daughter's suicide, noted people who die by suicide usually have an underlying mental illness, as was the case with Alexa.

"This doesn't mean that all depressed and/or bullied individuals take their lives," Berman said. "These fragile individuals, however, are more likely to do this if they are taunted, belittled and made to feel worthless. Had [Alexa] not been bullied throughout her eighth-grade year, I don't think she would have chosen to end her life three days prior to beginning high school. Had she lived, as she got older, she hopefully would have learned better coping skills."

While kids may think about suicide for a variety of reasons, the core issue is a sense of hopelessness, said Stan Davis, who has been working with children and families for decades as a social worker, school counselor and most recently as a bullying prevention expert.

"Youth who are excluded socially, who are in groups who are likely to be mistreated or excluded, who have little other support in their lives, and who have other vulnerabilities are more likely to consider suicide than youth with strong support systems,"

Davis said. He noted that gay, lesbian, bisexual and transgender (GLBT) youth are more likely to consider suicide because of the way they are treated by today's society. "Being GLBT does not make a person more vulnerable to suicide. Being excluded and devalued by others does," he said.



### What if a friend threatens suicide?

Often, before people commit suicide, they talk about it with someone. If you or someone you know is thinking about suicide, it is extremely important that you tell a trusted adult right away. Don't worry about breaking a trust or breaking a friendship if you tell someone, said Berman.

In Alexa's case, her parents knew their daughter was struggling with depression and that she had experienced problems with bullying both at school and online. Alexa was

receiving counseling, and outwardly she seemed to be doing much better. Alexa's parents would later learn that Alexa blogged about and talked about killing herself as recently as the day she died. By the time her parents found this out, it was too late.


### A wake-up call

As we examine the topic of bullycide, stories like Phoebe's and Alexa's are a wake-up call. Bullying is a very real problem and more must be done to help all the kids who are hurting.

Schools, in particular, must do more, said Stuart Green, founder and director of the New Jersey Coalition for Bullying Awareness and Prevention and a medical educator at Overlook Hospital and Atlantic Health. With that said, he noted there are reasons to be hopeful.

Among those, he pointed to the recent repeal of the Don't Ask, Don't Tell policy for gay and lesbian people serving in the military, which he views as a sign of growing tolerance.

He also said that he is encouraged by New Jersey's new anti-bullying legislation signed by Governor Chris Christie in January, which some say is the strongest in the country.

It is clear, Green noted, that society expects and demands more of our schools. In turn, he said, schools must be vigilant and ask, "Are we doing enough to affirm and support all of the vulnerable kids?" 

# Is Prosecution the Answer?

by Jodi L. Miller

When there is wrongdoing it is natural to want someone to pay the price. Someone should take the blame, right? When bullying drives a victim to suicide shouldn't someone be held responsible?

Prosecutions in the suicide deaths of Phoebe Prince in Massachusetts and Tyler Clementi in New Jersey have grabbed headlines, but the fact is that prosecuting bullies criminally for their bad behavior is controversial and rare. Some argue prosecution, as a deterrent in cases of bullying is the best course of action.

"Prosecutors bring one case once against a bully and people pay attention," Wendy Murphy, a professor at New England School of Law, told *The Crime Report*. "It makes a difference. This is not to beat up the bullies, but I think we should respect life enough to be able to say to the bully that if someone kills [himself or herself], you bear the burden. That one consequence is criminal prosecution."

Others think that criminal prosecution is going too far. "Every tragedy doesn't have to result in somebody going to jail," Paul Butler, a former federal prosecutor and an associate dean at George Washington University, wrote in an editorial for *The New York Times*. "If the only tool you have is prison, then every problem looks like a crime. A national conversation about the importance of civility and respect would be a more effective tribute to Tyler Clementi than trying to prosecute his bullies for manslaughter. They acted meanly, and possibly even criminally, but not homicidally."

## Proving intent

The difficulty in prosecuting bullies criminally is that under the law a prosecutor must prove what is known as "intent."

According to *Black's Law Dictionary*, intent refers to

"the state of mind existing at the time a person commits an offense and may be shown by act, circumstances and inferences."

Alan Zegas, a criminal law attorney in Chatham, explained that in order to prosecute a person criminally there must be criminal intent, which requires "knowing and purposeful conduct or reckless conduct" on the part of the bully, and "the object of the conduct has to be criminal."

"Though a student who sends a mean-spirited message to another student, even anonymously over the Internet, may do so intentionally, the act has to be done in violation of a law," said Zegas. "If the message were to threaten harm, then a wrongful intent may be inferred."

Kimberly Yonta Aronow, a former Hudson County assistant prosecutor, further explained that the type of harm caused by cyber-bullying, for instance, and the type of harm the law protects a victim from is different because "the nexus [or link] between cyber-bullying and the

action that the victim takes to commit suicide is very thin. For example, when someone threatens to kill another and then proceeds to use physical force against the person, the law is clear," Yonta Aronow said.

"When someone uses speech to taunt a person and tease that person so that they feel bad time after time, the law only considers this to be harassment or terroristic threats."

A conviction of harassment is a petty disorderly persons offense, punishable with up to 90 days in detention, while a conviction for making terroristic threats is punishable with up to five years in detention if the threat was to physically cause harm or kill.

"Criminal law is to some extent limited by foreseeability and the requirements of specific intent to commit and cause harms," said Justin Loughry, a criminal attorney in Camden. "There has to be a fairly tight fit between action and result."





Zegas contends that the problems with prosecuting bullies differ with each case. “Often bullying does not manifest itself through aggressive conduct but rather in passive-aggressive conduct, such as the **ostracism** of another. While assaulting someone is a crime, leaving him or her alone is not. Yet isolating a person can be far more painful than physically inflicting harm.”

### **Holding parents responsible**

What about a bully’s parents? Should they be held accountable for the acts of their children? Having raised a child who is bullying another, shouldn’t they bear some responsibility? Loughry explained that U.S. criminal laws do not allow one person to be held liable for the acts of another.

“To extend liability to the parents in a criminal context would create a new frontier of criminal liability that offends **due process** of law because you would be punishing one person for the acts of another,” said Loughry.

Zegas agreed and said, “Criminal laws generally make persons liable for acts they intended to cause. If a child intends to act in a criminal way, and the parent is unaware of what the child is doing, and has no reason to know that the child is acting unlawfully, the parent is not criminally accountable.”

Yonta Aronow agreed that parents can only be held criminally responsible if they had knowledge of their child’s actions or aided in the bullying in

**CONTINUED ON PAGE 6**

## **Reaching Out: Organizations that Can Help**

If you or someone you know is in immediate danger of committing suicide, call 911 right away. If you are being bullied, it is important to seek help and tell a trusted adult. Here are other resources that may help you.

### **National Suicide Prevention Lifeline**

([www.suicidepreventionlifeline.org](http://www.suicidepreventionlifeline.org)); 800-273-TALK (8255) — a national, 24-hour hotline.

### **The Trevor Project**

([thetrevorproject.org](http://thetrevorproject.org)); 866 4U TREVOR (866-488-7386) — a 24-hour, national help line for gay and questioning teens.

### **New Jersey Coalition for Bullying Awareness and Prevention**

([www.njbullying.org](http://www.njbullying.org)) — provides information about bullying in New Jersey and what is being done to stop it.

### **Stop Bullying**

([stopbullying.gov](http://stopbullying.gov)) — is an official U.S. Government website managed by the Department of Health & Human Services in partnership with the Department of Education and Department of Justice.

### **Youth Voice Research Project/Stop Bullying Now**

([stopbullyingnow.com](http://stopbullyingnow.com)) — run by Stan Davis, a social worker and family therapist who has been focusing on bullying prevention since the mid-1990s.

### **The Gay, Lesbian and Straight Education Network**

([glsen.org](http://glsen.org)) — works to eradicate bullying and bias in schools for all students.

### **Stop Cyberbullying**

([stopcyberbullying.org](http://stopcyberbullying.org)) — provides information about cyber-bullying through Wired Safety Group, whose executive director is Parry Aftab, a renowned Internet privacy attorney.

### **It Gets Better**

([itgetsbetter.org](http://itgetsbetter.org)) — launched by Dan Savage, an international syndicated columnist, the site features inspirational videos of the famous (President Barack Obama, Anne Hathaway, Colin Farrell, Matthew Morrison, Ke\$ha and Adam Lambert) and not so famous (staffs of The Gap, Google and Facebook) advising kids that there is life after being bullied and things do in fact get better.

some way. However, she pointed out an argument could be made that because a parent provides a cell phone or computer to his or her child and these instruments were used in the bullying, depending on the facts of the case, parents could bear some responsibility.

"It would be the prosecutor's job in the case to prove a parent's knowledge and/or purpose for there to be criminal responsibility," Yonta Aronow explained. "Morally, I believe that the parents are just as responsible as the school district. Parents must start taking responsibility for their children. If parents don't teach their children how to behave, then who will?"

### Civil liability

When it comes to prosecuting bullies, Loughry contends, "criminal law is a poor vehicle for assessing and imposing sanctions or penalties. My view is that civil law, where consequences such as damages are the norm, may be the place for such liability. There, the concept of 'negligence' and a lower standard of proof, 'more likely than not' as opposed to 'beyond a reasonable doubt' would prevail."

There have been successful bullying lawsuits brought against school districts across the country, which have obtained **reparations** for bullying victims. So why do the parents of the victims sue the school district and not the parents of the bully?

Jerry Tanenbaum, a civil trial attorney in Cherry Hill, said, "The fundamental

reason is that suits against families of bullies are about money and suits against schools are about services and changing circumstances, and parents of victims are more concerned generally with the latter." In Tanenbaum's opinion, "schools are in a better position to influence behavior than even the parents."

### Education is key

Debbie Zegas Berman, a Connecticut teacher who fights for the rights of bullying victims in her home state, and whose own 14-year-old daughter was a victim of bullying and committed suicide in 2008,

believes bullies should bear some accountability for their actions.

"It will never stop until the bullies and their parents know that there are consequences to be suffered. With youth, they would serve time in a juvenile facility," Berman said. "I don't think they need to languish there for a great length of time, but a few months to get the point across that their behavior ended someone's life, would be a deterrent to other kids and their parents that you are not going to get away with this horrific behavior."

Berman also advocates having bullies participate in mandated

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## Are You a Bully?

Take this quiz to find out if you've ever bullied someone. Put a check in the boxes if you've done these things before.

- ☐ There's a boy or a girl (or maybe more than one) whom you've repeatedly shoved, or punched or physically pushed around in a mean way just because you felt like it.
- ☐ You had someone else hurt someone you don't like.
- ☐ You've spread a nasty rumor about someone, in conversation, in a note, or through email or instant messaging.
- ☐ You and your friends have regularly kept one or more kids from hanging out or playing with you. Examples: at your lunch table at school, during sports or other activities, or activities that are a part of a club or other kind of group activity.
- ☐ You've been part of a group that did any of these things — even if you only wanted to be part of the crowd.

If you checked any of these boxes, you're not alone. All over the country, in all types of neighborhoods and schools, there are all types of young people who bully others. Bullying is serious business. It causes young people a lot of pain, and it can affect their ability to do well in school and their general happiness.

But it doesn't have to be that way. Learn about better ways to treat your friends and acquaintances, as well as become part of the solution to this serious problem.

Source: [stopbullyingnow.hrsa.gov](http://stopbullyingnow.hrsa.gov)

# Silence is Not Golden: A Pivotal New Jersey Anti-Bullying Case

by Jodi L. Miller

A landmark case in New Jersey that helped shape the state's anti-bullying laws was *L.W. v. Toms River Regional Schools Board of Education*. While the case went through many legal channels culminating with a 2007 ruling by the New Jersey Supreme Court, the story begins in 1995 when L.W. was a fourth-grader at South Toms River Elementary School.

Described in court documents as a “very happy child” before the mistreatment by his classmates, L.W. would suffer unspeakable episodes of humiliation and harassment at the hands of his tormentors. Beginning in fourth grade, L.W. was called any number of homosexual **epithets**, including gay, homo and fag. According to court documents, the fourth-grader had to be told what the epithets meant.

His torment would escalate in middle school. In one reported incident (one of the tamer ones) L.W. was surrounded by 15 classmates in the school's cafeteria and struck on the back of his head while being taunted with more homosexual epithets. L.W. would testify that the taunting was so frequent in middle school, “If I made it through a day without comments, I was lucky.” When he sought help from a guidance counselor at the school, he was told, “Toughen up and turn the other cheek.” The bullying of L.W. intensified in high school where twice other students physically assaulted him. He would eventually transfer to another high school to escape the bullying.

## Complaint filed

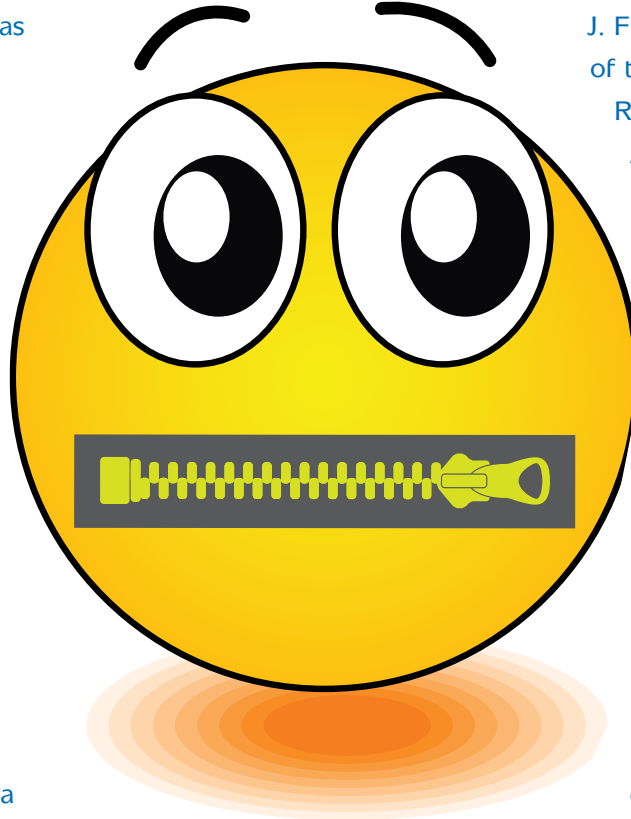
L.W.'s mother filed a complaint with the New Jersey Division on Civil Rights against the school district on her son's behalf, claiming he was “repeatedly subjected

to harassment by his peers due to his perceived sexual orientation” and this was a violation of New Jersey's Law Against Discrimination (LAD). After a three-day hearing, an administrative law judge (ALJ) determined LAD did not apply to student-on-student sexual harassment and a school district could not be sued under this law, thereby dismissing the complaint.

J. Frank Vespa-Papaleo, director of the New Jersey Division on Civil Rights at the time, rejected the ALJ's dismissal finding that LAD recognized hostile environment claims and this included a school district. The Division on Civil Rights found that the Toms River School District was “deliberately indifferent to the reality that L.W.'s educational environment was permeated by anti-gay hostility” and concluded a school district “will be liable for such harassment where the school administrator or his agents knew or should have known of the harassment and failed to take effective measures to stop it.”

In 2004, the Division on Civil Rights awarded L.W. \$50,000 in damages for emotional distress and awarded his mother \$10,000. In addition, the district was fined \$10,000, required to pay L.W.'s legal fees and ordered to revamp its policies regarding the prevention of peer sexual harassment.

“This school district unsuccessfully argued, as so many do, that it handled every incident that was reported, and that this was sufficient,” Greg Guderian, a spokesperson for the Gay, Lesbian and Straight Education Network, (GLSEN) said in a press statement after the Division on Civil Rights ruling was announced. “There was a climate of hostility which the



CONTINUED ON PAGE 20

demonstrates that cyber-bullying doesn't necessarily end after high school.

### Gossip and rumors

Juicy Campus, a gossip website, which at one time extended to over 60 colleges and universities across the country, was called "a virtual bathroom wall for abusive, degrading and hateful speech" by Timothy Chester, the chief information officer at California's Pepperdine University. When Juicy Campus folded in February 2009 due to lack of revenue it was being investigated by two states—Connecticut and New Jersey—as well as many college campuses.

The gossip on Juicy Campus was particularly nasty and included posted statements that certain people (with real names given) deserved to be assaulted or beaten. At Juicy Campus, anyone could post comments anonymously on the website without consequence. An exception occurred when students posted messages that threatened shooting incidents on campus and the police became involved. In all cases, however, Juicy Campus was immune from legal liability under the Federal Communications Decency Act because the content was from a third-party, just as AOL, for example, is not responsible for the outrageous things that are said in their online chat rooms.

### New Jersey Attorney General responds

In August 2008, a complaint from a victimized Princeton

University student led Anne Milgram, New Jersey's Attorney General at the time, to send letters to the presidents of all colleges and universities in the Garden State "to express...concern about the online safety of...students." According to Milgram, "Such postings can do



more than temporarily harass. Once an item is posted on the Internet, regardless of veracity [truthfulness], it becomes part of one's 'permanent cyberspace record,' subject to review by everyone from college admission officers to prospective employers." In her letter, Milgram suggested stronger codes of conduct from the college administration to limit access to student information, penalties for those who are involved in Internet harassment, and educating students in these stricter policies.

### Freedom of speech?

Milgram's letter prompted a response from leaders of the Student

Press Law Center, the Foundation for Individual Rights in Education (FIRE) and the New Jersey Society of Professional Journalists. In a letter to Milgram, the organizations stated their concern that "lawful speech that falls within the protection of the First Amendment" might also be censored, and proposed meetings to clarify the issue. The letter noted that bullying "is not a defined legal term...There is a difference...between speech that threatens versus that which merely causes hurt feelings...If cyber-bullying is to be recognized as a new and distinct basis for discipline, colleges must be given unambiguous [clear-cut] legal standards to apply so that protected speech is not swept up in the cyber-bullying dragnet."

The letter stated, "colleges are places in which the free and open exchange of ideas—even controversial and at times disturbing ideas—is to be nurtured. If colleges are free to penalize any hurtful or upsetting speech as bullying, then the editorial commentator whose opinion is challenging to others' religious, social or political views could face punishment as a 'bully.' The mere uncertainty of what constitutes punishable speech will invariably cause speakers to self-censor lawful commentary, resulting in a[n]...chilling effect on campus."

### Regulating cyberspace

Stephen Latimer, a Hackensack attorney who specializes in constitutional and civil rights law, stated "the laws that attempt to regulate speech that occurs in private

**CONTINUED ON PAGE 9**



places, [such as] posting something on Juicy Campus in your own bedroom are probably not effective. I think that the most effective means of dealing with the issue is educating people about the harm they can cause, even if they do not mean to cause harm."

According to Latimer, "bullying is a serious problem in schools," but he doesn't believe "criminalizing" the behavior is acceptable. "If a student is hurt because he or she is insulted online, the school can deal

with it in traditional ways," Latimer declared. "The problem is that once you begin to punish speech, even hurtful speech, it opens the possibility of punishing speech that one might simply disagree with, or misinterpret." He warned, "Anytime government attempts to control the content of speech, even with the best of intentions, there is a real danger of censorship."

The problems of free speech on the Internet are magnified, Latimer explained, because once

"the damaging words are out there" they can't be taken back. "All people should be made aware that their posting on a blog or on Facebook or Twitter is not private and may have consequences far beyond what the poster intended," Latimer said.

Noting the failure of Juicy Campus from a financial standpoint, Latimer said, "the ultimate sanction in a capitalist society is whether in the marketplace of ideas...it will either wilt or flourish. If it had any value, it

**CONTINUED ON PAGE 11**

### **Federal Legislation Proposed to Combat Bullying at College Level**

New Jersey is at the forefront of a proposed federal anti-bullying bill. Senator Frank Lautenberg and Congressman Rush Holt introduced the Tyler Clementi Higher Education Anti-Harassment Act in November 2010, but the measure failed to come up for a vote before the 2010 legislative session ended. Both lawmakers have indicated they will re-introduce the bill this year.

The law would require that colleges and universities that receive federal funding have a written policy in place that prohibits harassment, including cyber-bullying, based on a student's actual or perceived race, color, national origin, sex, disability, sexual orientation, gender identity or religion. Schools would have to distribute the anti-bullying policy to students, along with information on what to do if harassment occurs, and provide information about counseling and other services available to both victims and perpetrators of harassment.

The bill also proposes establishing a \$250 million grant program to help colleges and universities develop and expand anti-bullying programs.

"The tragic impact of bullying on college campuses has damaged too many young adults, and it is time for our colleges to put policies on the books that

would protect students from harassment," Lautenberg said in a press release at the bill's introduction.

"While there is no way to eliminate the cruelty that some students choose to inflict on their peers, there should be a clear code of conduct that prohibits harassment. It is vitally important that all students have the opportunity to learn in a safe and secure environment."

"In the wake of the Tyler Clementi tragedy, we should help colleges across the nation strengthen their anti-harassment programs and make campuses a more positive and safe atmosphere," Holt added.

Just like the New Jersey legislation, opponents of the measure, including the Philadelphia-based Foundation for Individual Rights for Education (FIRE), believe it would violate students' constitutional rights to free speech.

Greg Lukianoff, FIRE's president, told *The Daily Record*, "The proposed law requires universities to police even more student speech under a hopelessly vague standard that will be a disaster for open debate and discourse on campus."

—Cheryl Baisden

## Prosecuting a Cyber-Bully: A Missouri Case

Like the Tyier Clementi case, the Missouri case of Megan Meier had tragic consequences. Megan and Sarah Drew were best friends until they had an argument and went their separate ways. Sarah believed Megan was saying things about her to other people behind her back. Sarah and her mother, Lori Drew, and her mother's employee, 18-year-old Ashley Grills, decided to get back at her former friend. They knew Megan had a MySpace account, so Lori Drew purposely registered on MySpace as a fictional 16-year-old boy named Josh Evans, who was new to the area. "Josh" began a flirtatious online romance with Megan. According to Megan's parents, Josh's "affectionate" messages were the first she had ever received.

Drew, her daughter and Grills sent messages for weeks and Megan was reportedly thrilled by “Josh’s” attention. In October 2006, things went sour and the fictional Josh turned against Megan. Grills, writing as Josh, told Megan, among other things, “the world would be better off without you.” Soon after, according to Grills, Megan wrote back, “You’re the kind of boy a girl would kill herself over.” According to newspaper reports, within an hour after that last message Megan killed herself. It was three weeks before her 14th birthday.

## Public outcry, then prosecution

The public outrage and condemnation against Drew after Megan's suicide led prosecutors to examine the case; however, there was no Missouri law against cyber-bullying that Drew had broken. Federal attorneys decided to prosecute the case against her in Los Angeles, where MySpace was based. Drew was originally charged with four felony counts of unauthorized computer access (or hacking) under the Computer Fraud and Abuse Act.

The MySpace user agreement  
(the click to agree contract)  
requires registrants to  
provide factual information,

and forbids harassment or harm to other people using information from the site. After hearing the evidence, the jury reduced the **felony** charges to misdemeanors because there was no proof that Drew intended to hurt Megan. The jury found Drew guilty of three **misdemeanor** counts of violating the service agreement with MySpace. The jury deadlocked on a fourth count of conspiracy.

## Judge overturns verdict

In July 2009, at Lori Drew's sentencing hearing, U.S. District Judge George Wu overturned the jury's verdict and **acquitted** her of all charges. Judge Wu stated, "It basically leaves it up to a website owner to determine what is a crime and therefore it criminalizes what would be a breach of contract." Judge Wu was concerned that the case might set a standard for prosecuting any person who broke the service agreement of a website. "Is a misdemeanor committed by the conduct which is done every single day by millions and millions of people?" Judge Wu asked. "If these people do read [the terms of service] and still say they're 40 when they are 45, is that a misdemeanor?"

## Missouri changes law

The 2006 death of Megan Meier did result in an expansion of Missouri harassment law so that it now covers cyber-bullying (minors) and cyber-stalking (adults). However, not everyone supports the tougher cyber-bullying law. Missouri defense attorney Michael Kielty told the Associated Press that the new law in his state “criminalizes behavior that otherwise wouldn’t be illegal except for the medium. It’s not criminal. It might be mean-spirited, but it’s not criminal.”

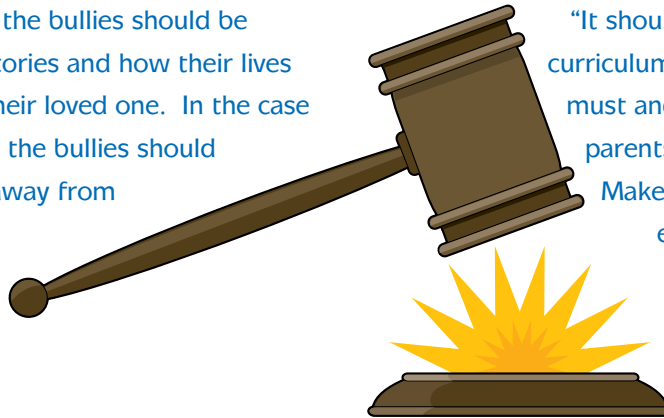
—Phyllis Raybin Emert




## Prosecution CONTINUED FROM PAGE 6

bullying prevention programs, which ideally would include having bullies meet families of kids who have killed themselves due to relentless tormenting at the hands of their peers. According to Berman, the bullies should be made to listen to these families' stories and how their lives have changed since the death of their loved one. In the case of cyber-bullying, Berman believes the bullies should have "all electronic devices taken away from them for an extended period of time, just as a car would be taken away from them if they drive recklessly or kill someone."

When it comes to combatting bullying, Berman believes in education for all, and doesn't believe it should be a choice.



"It should be part of the school curriculum," Berman said. "But it also must and should be mandated for all parents beginning in kindergarten. Make it a requirement before the child even enters school. All students and parents need to know and understand the consequences of bullying." 

## Cyber-Bullying CONTINUED FROM PAGE 9

would still be around and that is as it should be."

### Going too far


But what happens when cyber bullying rises to another level as it did in the Tyler Clementi case? The Rutgers University freshman committed suicide after his roommate secretly videotaped his encounter with another male student. Criminal charges have been brought against the roommate and another student who allegedly viewed the encounter on another computer in the student's room.

Even as bullying over the Internet has become common, Alan Zegas, a criminal law attorney in Chatham, noted, "the laws have not kept pace with the changing nature of the offense. There have been fewer prosecutions for Internet bullying, but as more states pass laws aimed at the problem, the number of prosecutions should increase."

According to Zegas, prosecutors in the Clementi case are having difficulty deciding what charges to bring against the defendants and a final decision has not been reached. Zegas explained that under New Jersey's **statutes** regarding invasion of privacy, it is a fourth degree crime to view images of nudity or sexual contact without the person's consent, however it is a more serious third degree crime to transmit or distribute those images. A third degree crime carries a maximum penalty of five years in prison although for a first offense other less severe punishments are available. Zegas pointed out that if the Clementi case is treated as a bias or hate crime, which has reportedly been considered in this case, the offense would be elevated to a second degree crime, carrying mandatory imprisonment.

"A far more difficult question is whether the students charged should be accountable for the suicide that

occurred after the secret tape was made public," Zegas said. "It would likely be difficult for prosecutors to prove that the persons involved with the taping had the intention of causing the death of Tyler Clementi by disclosing the tape, or that their conduct was so reckless that the likely result would be the suicide of the person secretly taped."

Zegas explained that New Jersey's hate crime laws, considered to be the strictest in the nation, "protect through strong criminal penalties, the civil rights of victims who are harmed by another out of hatred for their race, religion, ethnicity, disability or sexual orientation." New Jersey's new anti-bullying law protects students who are "harassed, teased, physically harmed or otherwise harmed by other students perhaps for no reason at all," Zegas said. 

intimidating actions directed at a child have tragic consequences,” Senator Diane Allen, one of the key sponsors of the bill, said in a press release following the governor’s signing. “The Anti-Bullying Bill of Rights Act will ensure that teachers and administrators are properly trained to intervene in these incidents, and are required to act when bullying is witnessed or reported. Parents will be empowered with information on their school district’s effectiveness in combating bullying and a direct line of communication with school officials if their child is affected. While we cannot change human nature, we can change how government and school officials respond to unacceptable behavior. That is exactly what this law does.”

Clementi’s death focused national attention on the fact that harassing, intimidating and bullying behavior among students is a serious concern needing stronger laws that address the possibility of cyber-bullying as well as traditional bullying.

“The days of bullies being the tough kid on the playground who roughs up classmates for lunch money are over. Children can now be bullied at any time and any place, whether face-to-face or through hateful text messages or emails,” said Senator Barbara Buono, a prime sponsor of New Jersey’s bill, during a news conference when the bill was first introduced. “Every child has a right to grow up free of the emotional pain that can lead them into despair that life is not worth living.”

Kevin Costello, a Mt. Laurel attorney who advocates for students, doesn’t believe the law goes far enough and is concerned that it simply requires standards “in a vacuum” with no mechanism for the enforcement of infractions. At most Costello said the new law makes the **evidentiary** burden for bullying victims a little easier, but “no new

door has been opened” by the new law in terms of seeking damages. In fact, Costello worries that school districts, if they find themselves subject to a lawsuit, will point to the new law and contend that they followed the law’s guidelines and therefore should not be held liable. Costello

applauds the law for raising awareness on the bullying issue; however, he would like to see a passage written into the law that actually states a victim has a right to sue a school district for failure to comply with the law.

“Although I’m pleased to see it, its supporters really should stop calling it ‘tough’ because, in my experience, ‘tough’ means that someone is actually held responsible for failure,” Costello told SchoolSafetyPartners.org. “I hope a child doesn’t have to have his or her life ruined or ended before we realize that the bullying law has to have teeth.”

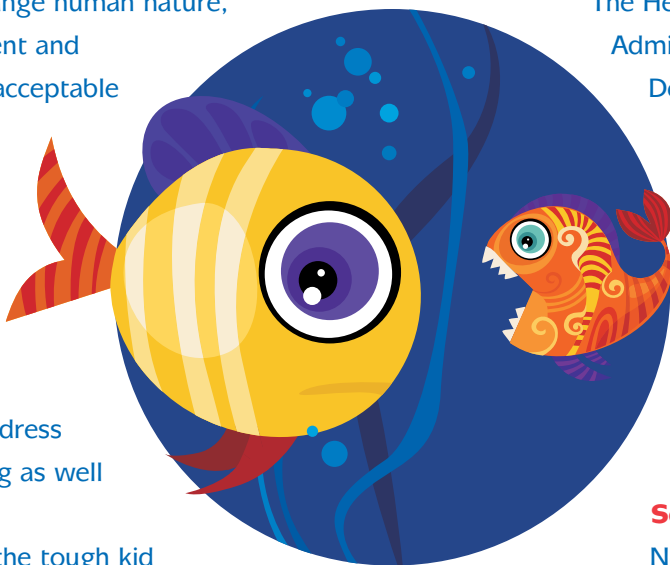
The Health Resources and Services Administration (HRSA) within the U.S. Department of Health and Human Services oversees the national bullying campaign, Stop Bullying Now. According to HRSA, five states (North Dakota, South Dakota, Michigan, Montana & Hawaii), as well as Washington, DC, currently have no anti-bullying laws.

### Second time around

New Jersey’s first anti-bullying law was passed in 2002. While the previous law *encouraged* public schools to create anti-bullying programs, they were not *required* to do so as they are with the new law. By 2007, concerned that the state’s law, one of the first of its kind passed in the nation, might need revamping, the New Jersey Commission on Bullying in Schools was created by former Governor Jon Corzine to study the issue of bullying as well as the existing law.

In 2009, the commission released a report proposing several legislative changes to update and strengthen the law, which experts believed over time had become one of the weakest in the nation. Seeming to support the belief, that same year the U.S. Departments of Justice and Education released a report revealing that 33 percent of New Jersey students between the ages of 12 and 18 had experienced bullying, a percentage point higher than the national average.

“Simply stated, the world has changed,” Assemblyman Patrick Diegnan noted in a press release after the governor





signed the bill into law. “Our laws, which at one time were cutting edge, do not properly address the problem now. We live in very different times and we need to employ an approach that deals with the bully and the victim along with the environment in which bullying flourishes. This behavior can have a lasting effect on an individual’s development well into adulthood.”

The severity of bullying behavior was driven home during hearings held by the Senate and Assembly education committees before the Anti-Bullying Bill of Rights was introduced to the Legislature for a vote, when several students who had been bullied at school and several parents testified. Among them was Matthew Zimmer, a 16-year-old Ridgewood resident who sank into depression and turned to online schooling due to bullying about his sexuality, and Michele Weinberg of Upper Saddle River, whose son committed suicide in his senior year after being bullied.

“I’m here today,” Weinberg told the Assembly Education Committee, “because my son, Larry, can’t be. The pain and the humiliation overwhelmed him. There are hundreds and hundreds of kids out there right now who are being bullied. On behalf of everyone’s sons and daughters, I am urging you to pass this bill so that those kids can live in peace, and please do it for Larry, so that he can rest in peace.”

Because a major complaint from parents dealing with the bullying of their children was how long it takes for school personnel to respond to their concerns, New Jersey’s Anti-Bullying Bill of Rights sets a timeline for dealing with incidents of bullying and intimidation. Under the law, school personnel must report the details to the principal within one day of becoming aware of a bullying incident, and the investigation must be completed within 10 days. The principal also must notify the parents or guardians of everyone involved, and may suggest counseling and other services that may help both the victim and the bully.

Twice each year school districts must release a report of all incidents and how they were resolved. That information will be used by the state to grade the district’s anti-bullying efforts, and the grades will be posted on the district’s web page. Contact information for schools’ anti-bullying coordinators must also be made available to the public.

The new law **mandates** that every school must provide year-round, age-appropriate anti-bullying instruction and recognize a Week of Respect, focusing attention on preventing harassment, intimidation and bullying beginning the first Monday of each October. School districts must develop anti-bullying policies and procedures, and establish school safety teams to review bullying complaints. And all educational staff members (administrators, teachers, support staff, etc.), as well as school board members, must be trained in dealing with bullying, harassment, intimidation and suicide prevention. Public colleges and universities in the state are also required to develop anti-bullying rules and procedures and distribute them to every student within the first seven days of the fall semester as a result of the new law.

Another difference between the new law and the previous one is that the new law

### Take the Bullying Quiz

True or False?

1. Always leaving someone out is bullying. \_\_\_\_\_
2. Bullies are just insecure kids with personal problems. \_\_\_\_\_
3. Popular kids are never bullies. \_\_\_\_\_
4. A group of kids always telling other kids they are not allowed to sit with them at the lunch table is bullying. \_\_\_\_\_
5. Spreading rumors on the Internet is a form of bullying. \_\_\_\_\_
6. Boys and girls usually bully the same way. \_\_\_\_\_
7. Bullies always act alone. \_\_\_\_\_
8. Playing keep-away with a student’s jacket on the bus after he asks you to stop is considered bullying. \_\_\_\_\_
9. Adults can’t be bullies. \_\_\_\_\_
10. Hurtful teasing is a form of bullying. \_\_\_\_\_

Answers:  
1. True; 2. False; 3. False; 4. True; 5. True;  
6. False; 7. False; 8. True; 9. True; 10. True

CONTINUED ON PAGE 19

These staggering statistics indicate that while bullying may once have been an accepted part of growing up, the “rite of passage” and “boys will be boys” arguments for ignoring the problem do not hold water anymore.

### Defining bullying

Before a problem can be combatted, it must first be defined. In 1997, Canadian researchers Debra Pepler and Wendy Craig identified bullying as “the assertion of power through aggression.” According to their research, “bullying occurs in school playgrounds every seven minutes and once every 25 minutes in class.”

The Olweus Bullying Prevention Program, created by Dan Olweus, who conducted the first in-depth, systemic research on bullying beginning in 1970, contends that “a person is bullied when he or she is exposed, repeatedly and over time, to negative actions on the part of one or more other persons, and he or she has difficulty defending himself or herself.”

As a complement to its existing violence prevention programs, the New Jersey State Bar Foundation implemented its anti-bullying program in 2001. Its Definition of Bullying poster, one of eight posters created for the program, states: “Bullying is unfair and one-sided. It occurs when someone keeps

hurting, frightening or leaving someone out intentionally.

Bullying always involves an imbalance of power that is not based on size.” That

imbalance of power can be physical in nature or it could be gender, cultural or racially-based.

The National Center for Victims of Crime asserts “bullying is when one person hurts or threatens someone in their peer group.

Anyone can be a bully, and bullying can be carried out in different ways. Physical bullying may include shoving, pushing and hitting. Words and non-verbal behavior can also be used to hurt someone by spreading rumors, taking part in gossip, or threatening someone with looks, notes or pictures.”

### The bullying myth

Over the years, there have been many myths regarding bullying that are unfortunately still being perpetuated today. One of the biggest myths is that bullies have low self-esteem, which experts continually say is untrue. Studies have shown, in fact, that bullies have an average or above average sense of self. As director of the New Jersey State Bar Foundation’s Teasing and Bullying Program, as well as its Conflict Resolution and Peer Mediation Programs, Leisa-Anne Smith says the self-esteem myth is “the toughest to dispel.”

So why do some kids bully? The Olweus Program suggests three reasons for a bully’s behavior — a strong need for power and dominance; a satisfaction in causing others injury and suffering; and the reward, whether monetarily (such as the classic bully stealing someone’s lunch money) or psychologically

(a feeling of superiority), for their behavior. Bullies, it seems, do not have a lack of self-esteem, but a lack of **empathy** for their victims.

Another myth that Smith strenuously tries to dismiss in her role as director is that bully-victim situations can be mediated. Smith emphasizes in her trainings, which are attended by educators and administrators, that bullying is an imbalance of power and because of this imbalance between the bully and the victim these situations cannot be mediated.

“Bullying is victimization and always necessitates adult intervention,” Smith says. “Conflict resolution and peer mediation programs are enormously successful in addressing normal conflict, but they were never intended to address bullying. Schools who utilize conflict resolution programs in that manner are re-victimizing the victims.”

Normal conflict is a disagreement that can be worked out between two students of equal status. An example of normal conflict that could be mediated would be a discrepancy over the score in a competition or an argument over whose turn it is to play with a certain piece of sports equipment at recess. A situation, however, that involves aggression by one student toward another or the spreading of rumors or the deliberate exclusion of a particular student would require adult intervention. Bullying involves not only an imbalance of power, but what Smith refers to as the “fear factor.”

### Everyone involved

Experts agree that the key to combatting bullying is changing a school's culture and climate to one that promotes a positive learning environment. As with the success of any program this change must emanate from the top. According to Smith the administrator is the one who sets the tone for the building and respect is crucial.

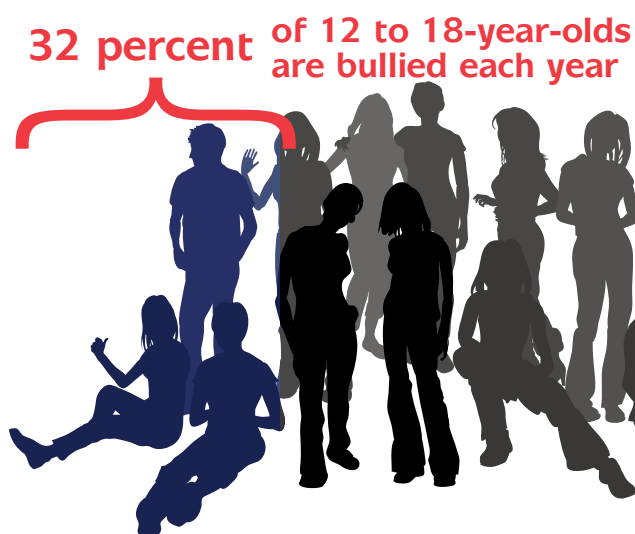
"Administrators who promote collegiality and collaboration generally have good school climates," Smith says. "The adults in the building must model appropriate, respectful behavior and send a clear message to the students that anything less is unacceptable."

Stan Davis, author of *Schools Where Everyone Belongs: Practical Strategies for Reducing Bullying*, compares a school's culture and climate with a workplace environment since he says school is the workplace for students.

"Adults in schools set and enforce behavior standards in the same way a good employer insists that all staff act in ways that allow everyone to do his or her job and thus contribute to the productivity of the workplace," Davis says. An anti-bullying consultant, Davis told *The Christian Science Monitor*, "Where bullying is bad is in places where the culture has become horribly polluted, where people have been taught to accept an almost Darwinian system, that there will

always be a pecking order, and there's not much you can do."

Stuart Green, founder and director of the New Jersey Coalition for Bullying Awareness and Prevention, contends, "Preventing bullying and responding to it at the school level, where almost all bullying occurs, depends on each school, and especially its principal, fully understanding that bullying is the most common serious problem of the school-age child, the most important indicator of the quality of the school's



culture and every important aspect of how a school and its educators function is impacted, for better or worse, by the degree to which bullying is effectively prevented and addressed."

### Zero tolerance for zero tolerance

Zero tolerance for bullying—sounds like a good concept right? According to the experts, it isn't. A 2006 American Psychological Association Task Force report stated, "zero tolerance has not been shown to improve school climate or

school safety." The report revealed that disciplinary problems actually increased, as did dropout rates.

In terms of using zero tolerance to deal with bullying situations, the experts are even more vehement in their response, saying that consequences, such as suspension or expulsion (the punishment most zero tolerance policies employ) used for every incident of bullying is ineffective.

Green, who is a behavioral scientist and also chaired the Governor's

Commission on Bullying in Schools, appointed by former Governor Jon Corzine, points out that even if harsh penalties were applied on a consistent basis, these severe penalties tend to corrode rather than strengthen a school's culture and climate.

Smith, who is an attorney and also sat on the governor's

commission, agrees, "Schools who adopt consequences that are swift, sure and sustaining as well as escalating in nature, have greater success in addressing bullying."

In other words, a school's anti-bullying program should have set consequences for the first incident of bullying and the severity of the consequence should **escalate** for the bully when the behavior is repeated.

CONTINUED ON PAGE 16

### Helping victims

Stand up for yourself. Ignore the bully. Appeal to the bully's sympathy or use humor to diffuse the situation. These are examples of advice that victims sometimes receive on how to deal with bullies. But the experts agree this advice is flawed or misguided at best and at worst dangerous. Davis declares these strategies unfair to the victim.

Along with his colleague, Dr. Charise Nixon, an associate professor of developmental psychology at Penn

### Long-term bullies

Not addressing bullying behavior can be devastating for a victim, but it has also proven to be harmful to the bullies themselves, and by extension, society at large. Studies have shown that children who bully have a higher tendency toward criminal behavior and can lead to increased rates of dating violence, assault, partner abuse, child abuse, animal cruelty and elder abuse. Smith contends that bullying is a societal problem, not one relegated solely to schools.

So, can empathy be taught if that is what bullies lack? Davis believes that it can.

"For people who cannot or do not develop empathy, they need to learn to follow internal and external rules that control their negative actions," Davis says. "For example, if there are frequent traffic stops for drinking and driving and consistent small consequences, many people choose not to drink and drive because they don't want to be in trouble, even if they don't see drinking as wrong."

**"In the end, we will remember *not* the words of our enemies, *but* the silence of our friends."**

— Dr. Martin Luther King Jr.

State Erie, Davis has launched a large-scale research project and to date has surveyed 13,000 teens, asking what works and what doesn't work when dealing with bullies. Davis says one thing that continually came up in the surveys was that seeking support from both peers and adults helped in dealing with these situations.

It also helps to "remember that mean behavior tells us something about the aggressor," Davis says. "It does not indicate that there is something wrong with the person being mistreated. Also, our own resiliency depends on support and connection from others

and from participation in hobbies, interests and whatever else brings us joy."

"Students who engage in chronic bullying tend to stick with the behavior long after they leave school, Smith says. "It is well known that kids who continue to bully have a higher incidence of drug and alcohol abuse as well as a higher rate of involvement with law enforcement."

In fact, according to the Olweus research, "children (especially boys) who bullied others were particularly likely to be involved in other anti-social behavior such as shoplifting and drug abuse." The research revealed, "approximately 60 percent of boys who were described by teachers and peers as being bullies had a least one criminal conviction by the age of 24 and 35 – 40 percent of these bullies had three or more convictions by that age."

### On the sidelines

So there is the bully and there is the victim, but there is also one more side to this bullying triangle—the bystander. These are the students who witness bullying and don't come forward either because they have a desire not to get involved or a fear for their own safety in case the bully should turn his or her focus on them. The professionals agree that bystanders can be immensely helpful in combatting bullying in school and changing a school climate for the better.

According to Smith, 85 percent of students are bystanders, meaning these students are not victims of bullying, nor are they engaging in bullying behavior.



"The goal is to communicate to students that there is strength in numbers," Smith says. "Successful strategies include mobilizing the bystanders from the silent majority into the caring majority. Students need to be taught the steps they need to take in order to be good citizens of their school and community."

Davis' research revealed that victims of bullying were comforted by peers who offered words of encouragement and took the time to make them feel better.

"Bystanders can give alliance, support and the safety involved in belonging and being part of a group," Davis says.

Green agrees that bystanders can be very helpful in offering vulnerable students encouragement by expressing disapproval of bullying by their classmates. However, he cautions placing the burden of combatting bullying on those "upstanders."

"Child bystanders should not be expected to become 'upstanders' and it won't be effective enough in schools and environments in which the adults are not adequately addressing the problem," Green says. "Bullying should not be 'turned over' to children to handle without adult support."

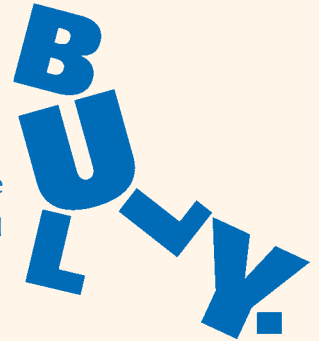
Just as there are long-term consequences for victims and bullies, there can also be long-term effects for bystanders as well. In her book *The Bully, the Bullied and the Bystander*, Barbara Coloroso writes, "Standing idly by or turning away have

## **NJSBF Program Combats Bullying for a Decade and Is Still Going Strong**

In 2001, the New Jersey State Bar Foundation expanded its violence prevention initiatives and launched its Teasing and Bullying Training Program. Held at the New Jersey Law Center in New Brunswick, separate trainings are conducted for administrators and educators, tailored to the special needs of both positions. The administrator training (for superintendents, principals and vice principals)

focuses on implementation at the managerial level and stresses the importance of developing a whole-school approach to combat bullying. The educator training is designed for those who deal with the student body on a regular basis and witness bullying behavior first-hand. In addition to teachers, other professionals encouraged to attend the educator training include, counselors, para-professionals, crossing guards, cafeteria workers and child study team personnel.

Attendees to either training receive the Foundation's *Bully-Busting Curriculum: Six Essential Lessons for Grades K-12*, as well as eight colorful classroom posters. Posters include the Definition of Bullying, Creating a Positive Classroom and a quote from Martin Luther King Jr. regarding the importance of bystanders. All of the Bar Foundation's trainings are **free** and held in the fall, winter/spring and summer. To learn more about any of the Foundation's programs, visit us online at [www.njsbf.org](http://www.njsbf.org), where the current training dates are always posted. **To obtain a registration form for any training please call 732-937-7528.** For questions regarding the Foundation's Teasing and Bullying program, please contact the program's director Leisa-Anne Smith, Esq. at 732-937-7517 or [lasmith@njsbf.org](mailto:lasmith@njsbf.org)



**Following are the summer 2011 Teasing and Bullying training dates:**

### **Administrator Training**

Thursday, July 28, 2011

### **Educator Trainings**

Thursday, August 4, 2011

Thursday, August 18, 2011

Wednesday, August 24, 2011

their own costs. Injustice overlooked or ignored becomes a **contagion** that infects even those who thought they could turn away. The self-confidence and self-respect of the bystander are eroded as they wrestle with their fears about getting involved and with the knowledge that to do nothing is

to abdicate their moral responsibility to their peer who is the target.”

### Why so slow?

Why are things so slow to change in the anti-bullying movement? Green likens the fight to the civil rights movement of the 1960s.

“We sometimes refer to anti-bullying as being where civil rights was 50 years ago in that significant changes in law had started to occur, societal awareness of the problem was rapidly growing and expectations for better treatment and for justice

**CONTINUED ON PAGE 19**

## “That’s So Gay” — Not Cool to Say

According to Dr. Paula Rodríguez Rust, an educational consultant on bullying prevention and diversity awareness, the term “that’s so gay” has become part of everyday language in schools. The phrase is used to describe something that is bad, uncool, undesirable or poor.

Most people don’t think about what the phrase really means, Dr. Rodríguez Rust said, and they do not realize that it is offensive and contributes to a hostile school environment, just like negative comments about race or religion. “I was only joking” or “I didn’t mean gay people” or “I didn’t say it to offend anyone” are not acceptable excuses for using the phrase according to Dr. Rust, who maintains the website [spectrumdiversity.org](http://spectrumdiversity.org).

The word “gay” refers to a type of person, Dr. Rust stated. It is the word people use when referring respectfully to gay people, she explained. “Therefore, to use that word in a negative way, as in ‘that’s so gay,’ is to use someone’s identity as an insult,” Dr. Rust said. “It makes gay people and those who respect and care about their gay friends and family members feel uncomfortable and unsafe.”

While Dr. Rust admits, “most people who say ‘that’s so gay’ are not referring to gay people at all, but simply using a phrase that has become common, it doesn’t matter because the effect is still hurtful.”

Dr. Rust uses the following example to emphasize the cruelty of the phrase: Think of the phrase “that’s so \_\_\_\_\_,” but put the name of your specific ethnic ancestry in the blank.



That’s so Italian



That’s so Irish

For example, Dr. Rust is German, so the phrase would be “that’s so German.” Then imagine how you would feel if, starting today, everyone at your school started saying, “Oh, that’s so German” whenever they disliked something.

“I find that, even though the people saying it don’t intend to offend Germans, and claim that they are ‘not talking about Germans’ when they say it, it still sounds offensive,” Dr. Rust said. “Why would they be using the word ‘German’ in this way if there weren’t some underlying bias against Germans? The fact that they don’t think they are insulting Germans by saying it almost makes it even more of an insult.”

Dr. Rust takes the example one step further with the suggestion of placing your name in the blank. “Imagine if you came to school one day and instead of ‘that’s so gay,’ everyone was using the phrase ‘that’s so (your name).’ How would you feel at the end of the day, after hearing your name used as a put-down all day long? Then imagine that you asked someone why they were using your name as an insult and they said, ‘Oh, it’s okay; I’m not talking about you.’ Would that excuse satisfy you? Or would it make you feel more hurt or annoyed because it shows that they don’t understand or care how it makes you feel.”


The thought-provoking ideas that Dr. Rust presents above and on her website negate the notion of “sticks and stones can break my bones, but words will never hurt me.” Words can hurt. The scars are just not visible on the outside.

\* Parts excerpted from *How to Explain Why “That’s So Gay” Is Not Cool to Say* by Dr. Paula Rodríguez Rust

in those being hurt were rising,” says Green. “But in terms of real conditions on the ground for those being hurt, change was still occurring too slowly. That’s where we are right now with bullying. The daily experience of vulnerable and bullied

young people is still very painful and still inadequately addressed.”

The issue of bullying affects everyone. Whether you’re the victim, the bully or the bystander, those effects can carry through to adulthood. Although the suicides will always grab the headlines, it is

the name-calling, shoving, hitting, gossiping and exclusion that make up everyday bullying that keeps kids home, feigning illness because they can’t face another agonizing day of school and the prospect of being singled out. 

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## Anti-Bullying Law CONTINUED FROM PAGE 13

protects all students who are bullied, not just those students who fall into what is known as protected classes, including race, color, religion, disability, gender and sexual orientation.

### A constitutional concern

While there is a consensus that bullying should not be tolerated, and that tougher legislation was necessary in New Jersey, some concerns have been raised about the constitutionality of the state’s new law regarding the First Amendment right to free speech.

“In this country we have a right not to have the government restrict our speech, even if our speech is offensive to others....On the other hand, just to give a few examples, the government can limit speech that is a danger (the proverbial yelling of “fire” in a crowded theatre) or is disruptive to the workplace...or disruptive to the school... Free speech issues apply to schools because schools are a governmental entity,” explained Cherry Hill attorney Jerry Tanenbaum. “Bullying might raise a gray area in which some speech might be offensive but protected and some speech may be abusive, non-protected attacks. The circumstances will likely make the difference.”


Of particular constitutional concern is the section of the law that deals with bullying, harassment or intimidation occurring off school grounds or over the Internet. The Anti-Bullying Bill of Rights authorizes school districts to deal with a bullying matter that occurs at school or during school-related functions, as well as off school grounds, no matter where or when, if it “substantially disrupts or interferes with the orderly operation of the school or the rights of other students.” Since there is no clear definition of what this portion of the law includes, the Anti-Bullying Bill of Rights could face legal challenges from parents who

feel a school district has violated a student’s constitutional rights, according to Ed Barocas, legal director for the American Civil Liberties Union of New Jersey.

“We [the ACLU] think the latter part of the language (‘or the rights of other students’) is unclear and vague,” Barocas explained. “At the very least, we would like to see it clarified to ‘or the rights of other students *at school*’... it would make clear that, for example, the school does not have the right to discipline for an action that occurred on a Saturday (and had nothing to do with school) or that occurred in the middle of July while two students were at summer camp together.”

Jennifer Keyes-Maloney, assistant director of government relations with the New Jersey Principals and Supervisors Association, who recently spoke at an anti-bullying forum held at Montclair University, gave a different view of a school’s responsibility with regard to bullying incidents occurring off school grounds.

“A ‘hostile environment’ that is created either on or off school grounds can cause physical or emotional harm to the student and prohibit that child from learning,” Keyes-Maloney said. “The new law emphatically makes it clear to schools that they have a duty here.”

As the law now stands, the constitutionality of this portion of the bill will likely be tested in court. Still, at least one other state is considering using New Jersey’s Anti-Bullying Bill of Rights to draft its own legislation. Just a few short weeks after New Jersey’s bill became law, California lawmakers, recognizing the need for stronger regulation in their state as well, announced they were considering introducing their own bill based on New Jersey’s new law. 

## Silence is Not Golden

CONTINUED FROM PAGE 7

administration accepted by its silence, an attitude that some students belong and others don't. As a result, little was done to prevent the same behaviors."

Stressing that the ruling was not just a victory for anti-gay bullying, Guderian said, "For every gay youth who is harassed for being gay, there are four straight kids who suffer the same treatment. This kind of emotional violence can harm them for life."

### On appeal

The school district **appealed** the decision to the Appellate Division, which **affirmed** the \$50,000 award to L.W. but **reversed** the \$10,000 award to his mother, finding that "she was not an aggrieved person under LAD." The Appellate Division also reversed the order requiring the revamping of the district's policies on peer sexual harassment. Because one judge dissented in that finding, the case was sent to the New Jersey Supreme Court to determine whether a school district could be held liable under the New Jersey Law Against Discrimination.

On February 21, 2007, former Chief Justice James R. Zazzali delivered the opinion of the New Jersey Supreme Court, which held "Students in the classroom are entitled to no less protection from unlawful discrimination and harassment than their adult counterparts in the workplace." The opinion went on to say, "...we hold that the LAD recognizes a cause of action against a school district for student-on-student sexual orientation harassment. We also hold that a school district is liable for such harassment when the school district knew or should have known of the harassment but failed to take actions reasonably calculated to end the mistreatment and offensive conduct. Our conclusion furthers the legislative intent of eradicating the scourge of discrimination not only from society, but also from our schools, thus encouraging school districts to take proactive steps to protect the children in their charge."

Anti-bullying experts agree that the *L.W.* case was influential in the effort to combat bullying; however, the goal will always be to prevent bullying before it gets to the point where court intervention is necessary. 🏴



**acquitted** — cleared from a charge.

**affirm** — to uphold, approve or confirm.

**appeal** — a complaint to a higher court regarding the decision of a lower court.

**beyond a reasonable doubt** — must believe to a moral certainty in the guilt of the accused. This is the highest standard required in a criminal case.

**contagion** — the transmission of an idea or emotion from person to person.

**due process** — legal safeguards that a citizen may claim if a state or court makes a decision that could affect any right of that citizen.

**empathy** — the capacity to feel emotions or thoughts similar to those experienced by others.

**epithet** — a word or phrase meant to demean someone.

**escalate** — to increase.

**evidentiary** — pertaining to the rules of evidence.

**felony** — a serious criminal offense usually punished by imprisonment of more than one year.

**mandate** — an authoritative order or command.

**misdemeanor** — a lesser crime, usually punishable by a fine or short jail term.

**more likely than not** — the standard of proof in a civil case, which is less strict than "beyond a reasonable doubt."

**negligence** — carelessness or failure to pay proper attention.

**ostracism** — exclusion from society.

**reparations** — financial compensation.

**reverse** — to void or change a decision by a lower court.

**statute** — a particular law established by a legislative branch of government.