

Reducing Bullying in Delaware Schools: Progress Made, But Much Work Left to Do

Matt Denn

Delaware Attorney General

When I ran for Lieutenant Governor of Delaware in 2008, with advocacy for children being my central platform, I don't think I ever discussed the issue of school bullying. But once I began spending significant amounts of time inside our public schools as Lieutenant Governor, talking to teachers, students, and staff, it became clear to me that bullying was a significant issue in our education system that affected kids' ability to learn and teachers' ability to teach. Over the last few years, we have made real progress in combating bullying, but some of the toughest work is yet to come.

The turning point for me came in 2011, when I visited McCullough Middle School in New Castle. In 2011, McCullough was one of the best middle schools in the state; it was one of only five schools in the state – and the only middle school – to win an Academic Achievement Award, an award that I persuaded the state to create in 2009 that provided recognition and a financial grant to schools whose students were showing extraordinary progress, especially among students from lower income backgrounds. I always spent time visiting the award winners, because I wanted to learn what they were doing that was bringing such great success. When I asked the McCullough's principal Betsy Fleetwood what her greatest challenges were in overseeing the school, cyberbullying was one of the first things she mentioned – bullying that took place over Facebook, Twitter, and other social media. She was obviously handling it well; her students were excelling and I could tell from visiting them that they loved the school. But Betsy told me that dealing with cyberbullying was exhausting for teachers and administrators – a single incident could have a ripple effect inside the school that would take hours or days to unwind.

This first-hand impression I developed of bullying in our schools was borne out by both local and national statistics. As former Attorney General Biden and I indicated in our first joint report on bullying in 2014, a 2013 survey published in the national *Journal of Adolescent Health* suggested that bullying was a significant public health problem, affecting between 20% and 56% of young people annually; that specific sub-groups such as gay and lesbian students were far more likely to be victims; that bullying was associated with poor mental and physical health and risky behaviors; and that there was an association between bullying and depression and suicide-related behaviors. The National Center for Education Statistics developed similar numbers: it estimated that 28% of middle school aged children were bullied. Locally, a 2013 Delaware study conducted by the University of Delaware Center for Drug and Alcohol Studies indicated that 18% of high school students reported being bullied on school property in the prior twelve months, and the same study showed that 14% of high school students reported being the victims of cyberbullying in the same time period.

In 2011, I talked with Attorney General Biden about bullying, based on what we were both hearing, and we decided to focus on two areas. The first was this issue of cyberbullying, which was – in some ways – more damaging to school environments than traditional bullying: as opposed to isolated instances of physical or verbal bullying, cyberbullying incidents stayed on the internet indefinitely and often metastasized as other students joined in. Cyberbullying was

often anonymous. And most cyberbullying took place off school property, leading to real questions among school officials as to what, if anything, they could do anything about it.

The second area we decided to focus on was holding schools accountable for reporting bullying incidents to the state and to parents of both the victim and the bully. The state had laws in place that required schools to report “substantiated” bullying incidents, but the laws were unclear and rarely enforced.

Cyberbullying

Dealing with cyberbullying was a significant legal challenge, because around the country, First Amendment free speech challenges had been successfully raised to other school districts’ efforts to combat this type of bullying. A number of courts had issued decisions saying, to one degree or another, that schools’ ability to limit what students said on social media was strictly limited because the students had free speech rights and were not under the school’s supervision when they engaged in their cyberbullying.

Inside Delaware, we had to deal with a separate problem: school districts’ fear of expensive litigation. No school district was eager to aggressively police cyberbullying, because the cost of hiring legal counsel to defend against a First Amendment lawsuit brought by a disgruntled student or their parents could easily run into the six figures.

Attorney General Biden and I decided to attack these challenges with a three-pronged strategy. First, we would hold a series of public hearings up and down the state to get a detailed, nuanced sense of the problems that cyberbullying was creating in the classroom. The case law from around the country was clear that the degree to which the state could regulate off-campus cyberbullying was tied to the level of disruption it was creating inside the school. Before crafting a cyberbullying law for Delaware, we had to have a good factual record of the problems it was creating, so we could generate a law that was tailored to deal specifically with the in-school effects of cyberbullying. Second, we would take the time to craft a model cyberbullying policy for our public schools that was based on the record from those hearings, and use the increasing body of case law from around the country to make sure that model policy was on solid legal ground. Finally, we would write our law so that schools that adopted the model cyberbullying policy would be defended by the state – not by private legal counsel – if a student challenged the policy in court.

We held our hearings, which were attended by a diverse group of parents, teachers, and school administrators, and wrote a model cyberbullying policy for the entire state. That policy was promulgated by the Delaware Department of Education in 2013, and took effect for all school districts and charter schools in the 2013-2014 school year. The policy made clear that school districts could punish cyberbullying – in some instances even if the bullying originated off school grounds – and gave students fair notice that posting things on particular social media platforms would be considered as broadcasting them to the entire student body – not private communications between students. At the same time, the General Assembly passed legislation in 2012 that afforded the state’s legal protection to school districts that enforced this new cyberbullying policy and ended up having to defend their actions in court.

There is no statistical evidence on the efficacy of this more aggressive approach to policing cyberbullying – its frequency was not charted before these reforms took place, so it is impossible to quantify whether it is happening less frequently. However, the anecdotal response I have

received from schools in the last three years is that these efforts have made a difference: that students are more aware that their activities on social media may subject them to school discipline, and that teachers and administrators are more confident directly addressing incidents of cyberbullying because they know that they have clearly written regulations allowing them to do so, and the legal backing of the state. Statutes and rules cannot eliminate cyberbullying, but at this point, Delaware has among the most robust legal frameworks in the state for its schools to minimize this very serious problem.

Reporting of Bullying

As noted earlier, a second problem that Attorney General Biden and I identified was the underreporting of bullying in our public schools – both reporting to the state and to parents. To my mind, the underreporting to parents and guardians was a serious problem. No matter how much programming takes place in schools, the reality is that students' character and behavior in school is largely shaped at home. But if parents are not aware of what their kids are doing in school, there is no opportunity for them to address problems. The statistics we saw suggested that in some districts and schools, there was great reluctance to report bullying incidents – caused either by the school's fear of generating unfavorable statistics, or the school's reluctance to bring bad news to parents (especially involving bullying, where the facts can sometimes be subtle and contentious).

Once again, we tried to address this problem on two fronts. The first was that state law only required reporting of bullying incidents that schools "substantiated." This was a well-intentioned provision in the law, but ended up being a loophole for some schools and districts. If a school was disinclined to report bullying incidents, it could set an artificially high threshold for "substantiating" them, and thereby elude any responsibility for reporting all but the most serious incidents to the state or to parents. The second was that there was no accountability for schools with respect to reporting. It certainly appeared from reporting statistics that some schools were taking their reporting duties more seriously than others, but it was impossible for the state to prove this or do anything about it.

In 2012, Attorney General Biden and I asked the legislature to address these problems by passing new legislation that substantially changed the state's bullying reporting laws.

First, schools and school districts would be required to report all alleged bullying incidents to both the state and to parents – parents both of the bullying victim and the alleged bully. The school could note whether the incident was substantiated or not, but the school was required to report the incident to the state Department of Education. This would eliminate any incentive the school had to take a hands-off approach to investigating bullying incidents, and kept parents better informed. Parents of kids who were being bullied – many of whom might be too embarrassed to tell their parents what was going on in school – would know what was happening, and parents of kids who were engaged in bad behavior would be aware of it and have the opportunity to address it at home.

The second provision of the proposed new law was that the state's Department of Education would audit a random sampling of public schools every year to ensure that bullying incidents were being reported as required. There was no penalty written into the statute for schools that were not diligently reporting, but the hope was that public reporting of the audit results would incentivize the schools to be more diligent about reporting bullying incidents.

Finally, an important addition to the proposed new law was that the state would begin to keep and report classifications of bullying victims, so the state could track whether particular groups of students were being singled out by bullies and in need of additional protection.

The legislation we proposed was passed by the General Assembly and signed by the Governor in July 2012. The first audits were conducted in 2013, and when we issued our first public report on those audits in 2014, the results were mixed: of the ten schools that were audited, about half were reporting alleged bullying incidents fairly diligently, but the other half were not. We named the schools that were not, and the report was widely publicized in the local press.

In the short term, it appears that this combination of auditing and transparency was successful. The following year, when the second round of audits was done in a second randomly selected group of schools, the rate of compliance was much higher. It appears that the message has been received by schools that they must diligently make reports of alleged bullying to both the state and to parents. It is too early to tell if this enhanced sharing of information with parents will pay dividends over the long run, but common sense tells us that it will. Parents who know what their kids are doing are better able to shape what their kids are doing. Even if not every parent will take advantage of this information, I am confident that some will.

Increasing the Role of the Department of Justice

After I became Attorney General last year, I had the opportunity to see firsthand how the Department of Justice could helpfully intervene in individual bullying incidents in our schools. The Department of Justice has, for about 5 years, had an “ombudsman” on staff to intervene with schools on issues of school violence and school bullying. On those occasions when the ombudsman has become involved in cases, he has been a very effective advocate for parents in situations where schools have not treated bullying incidents with sufficient gravity. However, very few parents or students know that the Department of Justice is available to become involved in these bullying incidents. Earlier this year, we asked the General Assembly to address this gap by requiring that schools provide every parent or guardian of a student involved in an alleged bullying incident a form generated by the Department of Justice informing the parent of the availability of the ombudsman’s assistance. The requirement that this form be distributed just took effect at the beginning of the 2016-2017 school year, and we are optimistic that it will result in additional involvement by our ombudsman in bullying incidents and more satisfactory outcomes for victims and their parents.

Changing the Culture in Our Schools

It is apparent that there has been a great deal of legislative and regulatory activity around the issue of bullying over the last few years. As a result of that activity, Delaware now has a much better regulatory regimen for the problem of cyberbullying, and a much more effective oversight process to ensure that schools are reporting and handling incidents of all bullying properly. That is progress. But the larger challenge is to ensure that these incidents do not occur in the first place, and Delaware – like every other state – still has work to do in that area.

After my years of firsthand involvement in this issue, I am convinced schools that create a culture among their students where diversity is valued and tolerance is expected, will see less bullying. Students know that they are not supposed to bully other students, so I do not believe that programs and campaigns designed to simply hammer home this message add a great deal of

value in a vacuum. What does add value is programming that also pushes back against the tendency to ostracize or demean other students. My experience has also left me with two related impressions. The first is that these messages of valuing diversity and encouraging tolerance are most impactful at the middle school and high levels when they come from other students. And the second is that in this era of social media, smart phones, and the like, that the mechanisms by which we communicate with students about bullying must line up with the way that students receive information today.

To that end, my office is actively meeting with a wide group of experts, and we are hoping to unveil – during the coming school year – a model anti-bullying program for schools that will incorporate all of these ideas and take advantage of the expertise and experience of people who have far more knowledge in this subject area than I do. If we can effectively communicate the right messages to students in our schools, we will be able to build upon the legal and regulatory changes we have made over the last three years and make our schools even more safe and hospitable to our state's children.

Copyright (c) 2016 Delaware Academy of Medicine / Delaware Public Health Association.

This is an Open Access article distributed under the terms of the Creative Commons Attribution Non-Commercial License (<https://creativecommons.org/licenses/by-nc-nd/4.0/>) which permits unrestricted non-commercial use, distribution, and reproduction in any medium, provided the original work is properly cited.